

# Water Pollution in China: Can Law Turn the Tide?

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## Overview

### The Problem

- Water pollution in China – how bad is it?
- Who cares?
- Context: government enforcement

### Parts of the Solution?

- The role of public litigation
- The role of foreign businesses & corporate social responsibility (CSR)



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## Water quality in major rivers and lakes

### Condition

- 27% of monitoring points in China's 7 major rivers have water quality below Grade V
- 43% of monitoring points in China's 28 major lakes have water quality below Grade V

Source: 2005 Report on the State of the Environment in China (SEPA, June 2006)

### Causes of water pollution

- Agriculture & fertiliser use in northern China
- Rural industry - TVEs
- Lack of wastewater treatment or operating equipment



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## Key concerns

Water problems are *"the bottleneck constraining growth in China"*  
– Pan Yue, Vice-Minister of SEPA

### Economic concerns

- Water pollution → loss of 1.7% GDP
- Response → economic disruption

### Social concerns

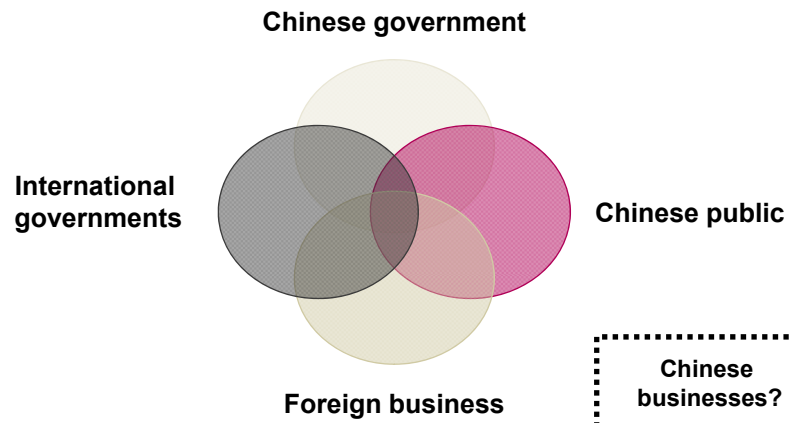
- Health
- Internal migration
- Social stratification
- Protests

### Environmental concerns

- Lack of comprehensive information
- Individual pollution incidents

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Who cares?



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**Public litigation to address  
water pollution**

## Water pollution laws

- Constitution
- General Principles on Civil Law
- Environment Protection Law
- Water Pollution Prevention and Control Law
- Criminal prosecution in serious cases
- ... and over 800 detailed local regulations and rules



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## Context of government enforcement

### Central government focus

- 5-year plans & stand-alone 5-year environment plans

### Challenges

- Scarce central government resources
- Unclear legislative drafting
- Influence of local government
  - may protect enterprises
  - “no clean official, no clean water”
  - funds EPBs and judiciary
- Few prosecutions for environmental crimes
- Campaign-style enforcement



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The State Council has called for "perfection of the legal assistance system for pollution victims, and research and establishment of an environmental civil and administrative public interest litigation system".

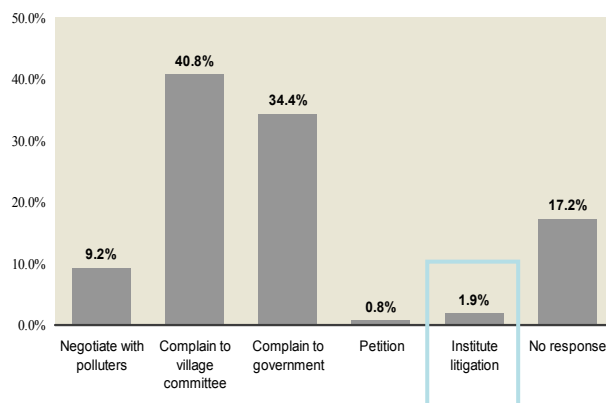


Decision on Implementation of Scientific Development and Strengthening of Environmental Protection (State Council, 3 December, 2005)

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## Public litigation – a non-traditional approach to dispute resolution

"What means do you prefer to change the pollution situation?"



Source: Li Zhiping, "Protection of Peasants' Environmental Rights During Social Transition: Rural Regions in Guangdong Province (2007) 8 *Vermont Journal of Environmental Law* 337

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## What laws enable public litigation against polluters?

Law	Provision	Notes
General Principles on Civil Law (art 24)	"Any person who pollutes the environment and causes damage to others in <b>violation of state provisions</b> for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law."	Reversal of burden of proof
Environmental Protection Law (art 41) & Law on the Prevention and Control of Water Pollution (art 55)	"A unit that has caused an [environmental pollution/water pollution] hazard shall have the obligation to <b>eliminate it and make compensation</b> to the unit or individual that suffered <b>direct losses</b> ..."	No need to prove violation of laws Defences include: losses due to plaintiff's fault

**Heike Damm**

## Fang Ting Brewery Case

Effluent flows during 1993-4 from Fang Ting Brewery & others (Tongshan County) affect Pizhou County farmers

→ economic losses (death of fish and ducks, unusable irrigation water): RMB 6.3million



### Sept 1994

Complaints to government agencies  
→ **RMB150k**

### Jan – Mar 1996

Jurisdictional challenges (Pizhou & Xuzhou)  
→ Pizhou jurisdiction upheld

→ *Lack of independent judiciary*

### May 1996

Merits trial at Pizhou Court  
→ award of **RMB705k**

→ *Enrichment or pollution?*  
→ *Cause of losses?*  
→ *Availability of lawyers and legal aid*  
→ *Costs – fees, experts*

### Nov 1998

Further appeal "settled through negotiation of the government":  
→ **RMB400k** settlement

→ *Obstacles to recovering damages*

**Heike Damm**

## Addressing obstacles to public litigation

### Environmental class actions

- Permitted under arts 54-55 of the Civil Procedure Law 1991 (> 10 plaintiffs)
- Greater resources and capacity for litigation
- May be assisted by NGO



### Assistance of NGOs

- Center for the Legal Assistance of Pollution Victims
  - Assists pollution victims
  - Involved in drafting legal rules
- Informal community coalitions
- Others: Friends of Nature



**Elke Duvem**

Foreign business action  
and CSR to address  
water pollution

## Foreign business benefits from...

### 1. Its own good environmental performance

- Reputation – negative and positive
- Leverage with government agencies

### 2. Economy-wide good environmental performance

- General stability
- Supply chain reliability
- Loss of potential markets
- Competitive disadvantage



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## Foreign business action

- Funding environmental NGOs
- Philanthropy
- Influencing standards of Chinese suppliers
- Business groups
- CSR performance reporting



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## CSR as

“a concrete action taken by Chinese companies to implement the political aspiration of the new Communist Party collective leadership – ‘putting people first to create a harmonious society’”



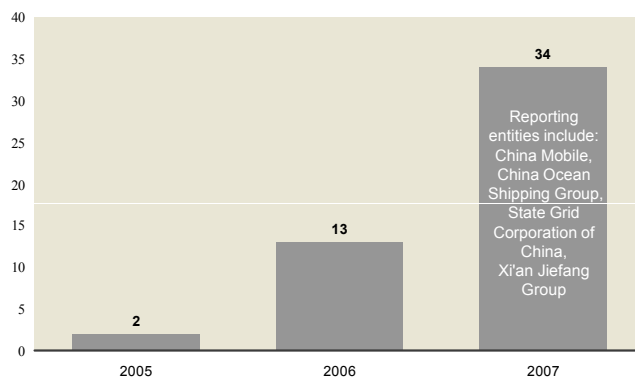
Yi Xiaozhuan, Assistant Minister of Commerce, PRC

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## Chinese companies and CSR

- CSR and CSR reporting new and largely unfamiliar, but increasing

CSR reports issued by Chinese companies



Source: "China Sees More CSR Reports", Business Daily Update, 13 August 2007

**Black & Veatch**

## In conclusion

- Water pollution is a serious problem in China
- Profound enforcement challenges
- 2 emerging ways of supplementing government efforts
  - Public litigation
  - Promotion of CSR, led by foreign businesses



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