

# ENVIRONMENTAL COURTS AND THE DEVELOPMENT OF ENVIRONMENTAL PUBLIC INTEREST LITIGATION IN CHINA

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Environmental public interest litigation (EPIL) has been the subject of much discussion in China for a number of years. However, even though the State Council's "Decision on the Implementation of Scientific Development and Strengthening of Environmental Protection" specifically mentioned the "promot[ion of] environmental public interest litigation" in 2005,<sup>1</sup> the development of environmental

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1. Relevant wording stated in Article 27: "Develop the potential of social groups, encourage reporting to authorities and exposing various environmental law violations, promote environmental public interest litigation." See *Decision on the Implementation of Scientific Development and Strengthening of Environmental Protection*, (St. Council, effective Dec. 13, 2005) ST. COUNCIL GAZ. (P.R.C.), available at [http://www.gov.cn/zwgk/2005-12/13/content\\_125680.htm](http://www.gov.cn/zwgk/2005-12/13/content_125680.htm).

public interest litigation has been slow to move beyond desire and debate.<sup>2</sup> This situation fundamentally changed on December 27, 2007, when the Environmental Court of Qingzhen, a county-level city under the jurisdiction of Guiyang, the provincial capital of Guizhou Province, publicly rendered its judgment on the *Tianfeng Chemical Factory* case.<sup>3</sup> Though only a few other environmental public interest litigation cases have been filed and accepted in China since then, the Qingzhen Environmental Court and ten other environmental courts in Guizhou Province, Jiangsu Province, and Yunnan Province have nonetheless become important focal points for the development of the legal framework and the implementation of environmental public interest litigation, as these courts have set forth innovative rules on EPIL and provided an important forum for such cases. What was the impetus for the development of these courts? How have they performed in practice? What are their strengths and weaknesses? How have they advanced the development of environmental public interest litigation? What is the future of these courts? This article will address and provide preliminary answers to these questions.

### Environmental Courts in China

China has a four-level court system, including Basic Courts, Intermediate Courts, Provincial High Courts, and the Supreme People's Court. While there were experiments with environmental courts as early as the late 1980s,<sup>4</sup> the environmental courts established

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2. See *id.* Others have focused on expanding the role of various government entities, such as the procuratorate (which handles criminal prosecutions), and various agencies with environmental responsibilities in bringing public interest lawsuits. In remedy, it is often contrasted with "private interest" suits that seek compensation or other remedies that do not accrue to the benefit of the general public; therefore, public interest remedies are often injunctive in nature, seeking to stop pollution or harm to natural resources.

3. See *infra* note 16.

4. In 1989, the People's Court in Qiaokou District of Wuhan attempted to establish an environmental court, but the Supreme People's Court (SPC) vetoed the attempt in an official response. See [Report about Establishing an Environmental Court by the People's Court of Qiaokou District in Wuhan City] (Sup. People's Ct, effective Feb. 10, 1989) 1989 FAJINGHAN 19 (P.R.C.). Subsequently, in the early 1990s, many courts established environmental *xunhui* (literally, "circuit") courts, which were later disbanded by the SPC in the mid-1990s. See Xuehua Zhang, *Enforcing Environmental Regulations in Hubei Province, China: Agencies, Courts, Citizens* (2008) (unpublished Ph.D dissertation, Stanford University) (on file with author) at 105-106 [hereinafter *Enforcing Environmental Regulations*].

since 2007 have been noteworthy in setting forth rules or implementing practices with a variety of innovations in standing, jurisdiction, and remedies, among other things. The term “environmental courts,” as used in this article, refers to judicial bodies established for the adjudication of environmental protection cases in China.<sup>5</sup> The environmental courts have generally taken the form of environmental divisions within Intermediate People’s Courts (*huanbao shenpanting*) and environmental divisions or separate tribunals at the basic court level (*huanbao fating*).<sup>6</sup> As of this writing, eleven environmental courts in three provinces in China have been in operation long enough for preliminary analysis of their experiences to be possible: two in Guizhou Province, one in Jiangsu Province, and eight in Yunnan Province.<sup>7</sup>

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5. This does not include environmental panels (*huanbao heyiting*) and environmental *xunhui* courts, which generally involve judges being assigned to work onsite at agency offices, including environmental protection bureaus (EPB’s), land bureaus, and water bureaus (*huanbao xunhui fating*). These bureaus have been more limited experiments that have not produced significant breakthroughs for public interest litigation.

6. In addition, members of China’s Supreme People’s Court, as well as legal experts, have proposed that the role of China’s maritime courts be expanded to incorporate adjudication of water pollution cases, including trans-boundary cases. Reduction of the influence of local government and other interests on a court’s adjudication of cases, commonly referred to as local protectionism, is a major aim of this proposal. Wan E’xiang, the Deputy Chief Justice of the SPC, has been one of the most prominent supporters of this reform. At the 2009 National Conference of Maritime Court Presidents, Wan recommended that Provincial High Courts grant the maritime courts the authority to try water pollution cases. For example, the Wuhan Maritime Court has jurisdiction over cases on the Yangtze River and its tributaries, and could try water pollution cases occurring within these geographic bounds. Wan also encouraged maritime courts to explore environmental public interest litigation brought by water resource agencies, environmental groups, and environmental protection legal aid institutes. See *The Supreme Court requires improvement of the special jurisdiction system of the maritime courts, relevant higher courts may grant maritime courts jurisdiction over water pollution cases*, LEGAL DAILY, June 26, 2009 (P.R.C.), available at <http://news.sohu.com/20090627/n264802523.shtml>. Wan submitted a proposal to the 2010 National People’s Congress and Chinese People’s Political Consultative Conference (CPPCC) proposing legal amendments to grant maritime courts jurisdiction over water pollution cases and to establish a national environmental public interest litigation system. See *Wan E’xiang: Build public interest litigation system, execute the special jurisdiction*, XINHUA NEWS, Mar. 12, 2010 (P.R.C.), available at [http://www.gov.cn/2010lh/content\\_1554274.htm](http://www.gov.cn/2010lh/content_1554274.htm).

7. Environmental courts have also been established since mid-2009 in Zhangzhou, Fujian Province [see [http://www.enlaw.org/bmgl/wrfz/201005/t20100525\\_21984.htm](http://www.enlaw.org/bmgl/wrfz/201005/t20100525_21984.htm) (P.R.C.)]; in Tuorong, Fujian Province [see <http://www.ndzrw.cn/sygl/dtxx/201003/117213.html> (P.R.C.)]; in Nanjing, Fujian Province [see [http://www.enlaw.org/bmgl/wrfz/201006/t20100606\\_22023.htm](http://www.enlaw.org/bmgl/wrfz/201006/t20100606_22023.htm) (P.R.C.)]; in Liupanshui, Guizhou Province [see <http://www.legaldaily.com.cn/zfb/content/>

While the traditional practice in the Chinese court system is to direct cases to separate civil, criminal or administrative divisions, these environmental courts have adopted new rules that allow them to accept and process *all* environmental cases, whether civil, administrative or criminal. Although enforcement of judgments has traditionally been handled by a separate enforcement division, some of the environmental courts have also incorporated enforcement authority as well.

### **The Impetus for Environmental Courts — Major Environmental Pollution Accidents**

The establishment of the environmental courts followed the outbreak of major local environmental pollution incidents. The two environmental courts in Guizhou Province — the Guiyang Environmental Court and the Qingzhen Environmental Court<sup>8</sup> — were established on November 20, 2007, to address serious environmental pollution in Hongfeng Lake, Baihua Lake, and Aha Reservoir, the main sources of drinking water for the 3.9 million people of Guiyang Municipality.<sup>9</sup> The Wuxi Environmental Court was established on May 6, 2008, exactly one year after a well-publicized major outbreak of blue algae in nearby Tai Lake. Yunnan Province established its first group of environmental courts in December 2008<sup>10</sup> and six additional environmental courts by September 2009. Showing no signs of slowing, the Province announced plans to establish more environmental courts in the future.<sup>11</sup> The establishment of the Yunnan environmental courts was triggered in part by the discovery of high levels of arsenic from industrial pollution in Yangzong Lake.

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2010-03/04/content\_2072929.htm?node=20609 (P.R.C.); and in Qingdao, Shandong Province [see [http://www.enlaw.org/bmg1/wrfz/201004/t20100414\\_21747.htm](http://www.enlaw.org/bmg1/wrfz/201004/t20100414_21747.htm) (P.R.C.)].

8. Qingzhen is a county-level city within the jurisdiction of Guiyang Municipality. Cases in the Qingzhen Environmental Court, a basic-level court, are appealed to the Guiyang Environmental Court, an intermediate-level court.

9. Zhou Zhijiang, *Guiyang City establishes environmental protection courts to make polluters of water resources accountable*, XINHUANET, Nov. 21, 2007, [http://news.xinhuanet.com/newscenter/2007-11/21/content\\_7119580.htm](http://news.xinhuanet.com/newscenter/2007-11/21/content_7119580.htm) (P.R.C.).

10. Bai Licheng, *Environmental Protection Tribunal of Kunming Intermediate Court established and Kunming has specialized court for environmental cases*, YUNNAN NET, Dec. 12, 2008, [http://www.yunnan.com.cn/2008page/yn/html/2008-12/12/content\\_161890.htm](http://www.yunnan.com.cn/2008page/yn/html/2008-12/12/content_161890.htm) (P.R.C.).

11. Wang Yan, *Yunnan promotes environmental courts in the whole province*, XINHUANET, May 14, 2009, <http://env.people.com.cn/GB/9296891.html> (P.R.C.).

### **Environmental Court Caseloads**

The caseloads of the environmental courts differ greatly in number and type. Seventy percent of the cases handled by the Guiyang environmental courts have been criminal cases. On the other hand, ninety-five percent of the cases handled by the Wuxi Environmental Court have been non-litigation administrative enforcement cases, pursuant to Article 66 of China's Administrative Litigation Law.<sup>12</sup> The Kunming court handled a mixture of criminal, civil and administrative cases.

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12. Non-litigation administrative enforcement cases in the environmental context are cases in which local EPB's seek assistance from the courts to enforce administrative penalties or injunctive orders against intransigent enterprises.

**Table I**  
**Environmental Court Caseloads**

<b>Court (Date of Establishment)</b>	<b>Total # of Cases</b>	<b>Case Distribution</b>
Two courts in Guiyang, Guizhou Province <sup>13</sup> (Nov. 20, 2007)	110 <sup>+</sup>	70% - criminal cases; 12% - civil cases; 9% - enforcement cases; 8% - non-litigation administrative enforcement cases; 0% - administrative cases.
Wuxi Environmental Court, Jiangsu Province <sup>14</sup> (May 6, 2008)	More than 300 <sup>++</sup>	95% are non-litigation administrative enforcement cases brought by environmental authorities
Kunming Environmental Court, Yunnan Province <sup>15</sup> (Dec. 11, 2008)	12 <sup>+++</sup>	4 - criminal cases; 1 – administrative case; 6 – civil cases (all related to one incident)
<sup>+</sup> Nov. 20, 2007 – Dec. 20, 2008 <sup>++</sup> May 2008 – May 2009 <sup>+++</sup> Dec. 2008 – May 2009		

The Guiyang courts and the Wuxi environmental court are noteworthy for having accepted several public interest litigation cases including the *Guiyang Two Lakes and One Reservoir Management Bureau v. Guizhou Tianfeng Chemical Ltd.* decided in late 2007.<sup>16</sup> This case included innovations with regard to (i) standing – a government agency brought a civil suit against a polluter; (ii) jurisdiction – the

13. Data provided by Qingzhen Environmental Court, April 2009 (interview notes on file with author).

14. Zhao Weimin, Chief Judge, Administrative Division of Wuxi Intermediate Court, Address at the Environmental Litigation and Environmental Court Workshop, Beijing (May 22-23, 2009).

15. Yuan Xuehong, Member, Adjudication Committee of the Kunming Intermediate Court, Address at the Environmental Litigation and Environmental Court Workshop, Beijing (May 22-23, 2009). According to Yuan, the Kunming Environmental Court has been the most active of the Yunnan environmental courts.

16. *Guiyang Two Lakes and One Reservoir Management Bureau v. Guizhou Tianfeng Chemical Ltd.*, (Qingzhen Env'tl Ct., Dec. 27, 2007) (P.R.C.).

defendant was outside of the normal geographic jurisdiction of the Qingzhen court, which was granted jurisdiction over the case by the Guiyang Intermediate Court; (iii) remedy — the court ordered an injunction to stop defendant fertilizer manufacturer from dumping waste that polluted a local drinking water source, and ordered remediation of existing waste, and (iv) evidence - the court in effect lowered the evidentiary burden on plaintiff by requiring only a demonstration that water quality standards had been violated, rather than a showing of economic or health damages suffered and causation between such damages and defendant's actions.<sup>17</sup>

The Guiyang Municipal Procuratorate (responsible for criminal prosecution in China) brought a suit against defendants for illegal building construction in a water source protection area in the *Guiyang Procuratorate v. Xiong Jinzhi, Lei Zhang and Chen Tingyu* case.<sup>18</sup> This case included innovations in standing — a procuratorate brought a civil suit against polluters<sup>19</sup> — and and remedy — the court ordered an injunction to tear down the illegal building and reforest the water source protection area.

Although the *Zhu Zhengmao and All-China Environmental Federation (ACEF) v. Jianguyin Port Container Ltd.* case was ultimately settled through mediation, the court issued a written document setting forth the agreement between the parties<sup>20</sup> and elaborating several key legal issues: (i) standing — this was the first civil suit accepted by a Chinese court with an environmental group as the

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17. *Case four: Guizhou Province Tianfeng Chemical Company Environmental Tort Case*, May 8, 2009, (P.R.C.).

18. *Guiyang Procuratorate v. Xiong Jinzhi, Lei Zhang and Chen Tingyu*, (Qingzhen Env'tl Ct., Nov. 26, 2008) (P.R.C.).

19. Though this was the first civil suit brought by a procuratorate in the environmental courts, the practice of procuratorate-initiated civil suits in state-owned property protection and environmental protection had commenced in other courts and maritime courts in years prior. Wang Fuhua, a Chinese law professor, cited a state-owned property protection civil case brought by local procuratorate in Pujiang, Zhejiang province. See Wang Fuhua, *The Dilemma of the Procuratorate's Role in Civil Suits*, CCELaws, July 7, 2002, <http://www.ccelaws.com/chengxufaxue/2009-01-01/6063.html> (P.R.C.). Bie Tao, Deputy Director General of the Law and Policy Department of China's Ministry of Environmental Protection, cited an environmental civil case brought by local procuratorate in Leling, Shandong province. See Bie Tao, *Environmental Public Interest Litigation is Emerging*, CENEWS 2003, [http://www.cenews.com.cn/xwzx/fz/qt/200812/t20081229\\_597206.html](http://www.cenews.com.cn/xwzx/fz/qt/200812/t20081229_597206.html) (P.R.C.).

20. *Zhu Zhengmao and All-China Environmental Federation (ACEF) v. Jianguyin Port Container Ltd.*, <on file with author> (Wuxi Env'tl Ct, July 6, 2009).

plaintiff, (in the court document, the Wuxi environmental court affirmed ACEF's standing by pointing to its registered organizational mission as an environmental protection group<sup>21</sup>); (ii) remedy – the court ordered a preliminary injunction before the hearing to prevent further harm from pollution during the judicial process; (iii) evidence – the court cited violations of environmental impact assessment procedures as the basis for ordering an injunction, and did not require proof of economic or other harm; and (iv) enforcement of the settlement agreement – defendant was required to submit periodic enforcement progress reports with official monitoring data to the environmental court.

In *ACEF v. Qingzhen Land and Resources Management Bureau*<sup>22</sup> the plaintiff withdrew its complaint after the defendant agency acted to reclaim a piece of land near a water source protection area, thereby mooting plaintiff's case. This case was noteworthy for being the first administrative lawsuit accepted by a Chinese court with an environmental group as the plaintiff.<sup>23</sup>

### Local Rules on Standing, Jurisdiction and Remedies

The environmental courts or their local governments have promulgated detailed local court rules that include innovations in standing, jurisdiction and remedies, among other things. There are presently no central level laws, regulations or policies explicitly governing environmental courts.<sup>24</sup>

21. See All-China Environment Federation, *China's first environmental public interest civil litigation brought by a social organization - the All-China Environment Federation (ACEF) - is resolved through mediation*, <zhonghua huanbao lianhehui tiqi de woguo shouli shetuan zuzhi huanjing gongyi minshi susong tiaojie shenjie (Sept. 23, 2009), <http://www.acef.com.cn/html/hjflfw/wqdt/3854.html> (P.R.C.). See also Associated Press, *China Accepts 1st Environment Lawsuit Against Govt*, ECON. TIMES, July 31, 2009, <http://economictimes.indiatimes.com/Environment/China-accepts-1st-environment-lawsuit-against-govt-/articleshow/4841442.cms>.

22. *ACEF v. Qingzhen Land and Resources Management Bureau*, <on file with author>, (Qingzhen Env'tl Ct., July, 28, 2009) (P.R.C.).

23. See All-China Environment Federation, *China's first environmental public interest administrative lawsuit - brought by the All-China Environment Federation - is accepted*, <zhonghua huanbao lianhehui tiqi de woguo diyi li huanjing gongyi xingzheng susong huo li'an>, July 28, 2009, <http://www.acef.com.cn/html/hjflfw/wqdt/3361.html> (P.R.C.).

24. Indeed, the legal authority for these environmental courts is uncertain, and the innovative rules appear to conflict with existing law. While it is common practice in China for the government to designate pilot sites or zones, the environmental courts do not appear to have been formally authorized as pilot sites. Such a situation is unlikely to persist for long and the Supreme People's



## Guiyang

The Guiyang Intermediate People's Court issued a series of documents and orders to establish the basic rules on the handling of cases in the Guiyang and Qingzhen Environmental Courts.<sup>25</sup> According to these documents and orders, procuratorates, relevant administrative agencies, and special agencies such as the Management Bureau of Honghong Lake, Baihua Lake, and Aha Reservoir, have standing to initiate public interest actions. More importantly, the People's Congress of Guiyang Municipality, working with the environmental courts, adopted the *Regulations Promoting the Development of Ecological Civilization* in October 2009. This document, approved by the Standing Committee of the People's Congress of Guizhou Province, has been effective since March 1, 2010, and creates the legal authority for expanded standing set forth in the Guiyang court documents and orders.<sup>26</sup> Article 23 of the Guiyang Municipal regulations specifically provides that the procuratorates, environmental authorities, and environmental non-governmental organizations (NGOs) have standing to bring suit. This is the first law in China to explicitly authorize broadened standing of this sort for environmental cases.<sup>27</sup> The Guiyang Environmental Court also used an innovative reading of the procedure laws for civil, administrative and criminal litigation to grant expanded jurisdiction to the Qingzhen Environmental Court.<sup>28</sup>

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Court will likely issue guidance either authorizing or canceling these experiments.

25. Documents and orders include: the "Implementation Plan on the Establishment of Environmental Court of Guiyang Intermediate People's Court;" the "Decision of the Guiyang Intermediate People's Court on the Change of Venue (2007);" and the "Rules on the Jurisdiction of the Environmental Protection Tribunal of Guiyang Intermediate People's Court and the Environmental Protection Tribunal of the Basic People's Court of Qingzhen City."

26. Unlike in the United States, standing to sue in China is not a constitutional limit on access to the courts. The legal basis for standing in Guiyang and the other jurisdictions discussed herein is unclear, nor is there public documentation authorizing these jurisdictions to conduct pilot experimentation, as is the common practice in China.

27. *Guiyang: Environmental NGOs may bring cases for inaction of the government concerning the environment and resources*, XINHUANET, Jan. 15, 2010, [http://www.3.xinhuanet.com/chinanews/2010-01/15/content\\_18777895.htm](http://www.3.xinhuanet.com/chinanews/2010-01/15/content_18777895.htm).

28. See <zhonghua renmin gongheguo minshi susong fa 中华人民共和国民事诉讼法> [Civil Procedure Law] art. 37, 39 (promulgated by the President, Apr. 9, 1991, effective Apr. 9, 1991) LAWINFOCHINA (last visited July 23, 2010) (P.R.C.). See also <zhonghua renmin gongheguo xingzheng susong fa> [Administrative Procedure Law] art. 23, 23 (promulgated by the President, Apr. 4, 1989, effective Oct. 1, 1990) LAWINFOCHINA (last visited July 23, 2010) (P.R.C.). See also <zhonghua renmin

### Wuxi

In November 2008, the Wuxi Intermediate People's Court and the Wuxi Procuratorate jointly issued the *Experimental Rules on the Handling of Civil Environmental Public Interest Actions*, the first local rules on environmental public interest litigation in China.<sup>29</sup> Compared with the documents and orders issued by the Guiyang Intermediate People's Court, the Wuxi rules provide more expansive and detailed procedural rules on civil environmental public interest litigation, including with respect to: (i) the procuratorate's standing to bring EPIL civil suits; (ii) the procuratorate's role in supporting other work units or individuals to bring environmental suits and in urging relevant agencies to bring EPIL civil suits; and (iii) plaintiff-favorable litigation fee rules. Given the procuratorate's involvement in the drafting of the rules, it is not surprising that these rules emphasize the role of the procuratorate in the Wuxi environmental court. The rules do not cover standing regarding other actors or alter jurisdiction in any way. In practice, however, the Wuxi Environmental Court was the first court to grant standing for an environmental organization to bring a civil environmental public interest lawsuit in *All-China Environment Federation v. Jiangyin Port Container Company, Ltd.*<sup>30</sup>

### Yunnan

Yunnan's environmental court system is the largest in the country with eight environmental courts. Yunnan has also promulgated environmental court rules at the provincial High Court level and the intermediate court level.<sup>31</sup> For example, in November

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*gongheguo xingshi susong fa* [Criminal Litigation Law] art. 26 (promulgated by 2d Session of the 5th Natl. People's Cong., effective, July 1, 1979) LAWINFOCHINA (last visited July 23, 2010) (P.R.C.).

29. Chen Yuanyuan, *Wuxi issues rules on environmental public interest actions*, CHINA ENVIRONMENT DAILY, Nov. 24, 2008, [http://www.cenews.com.cn/xwzx/fz/qt/200811/t20081124\\_591631.html](http://www.cenews.com.cn/xwzx/fz/qt/200811/t20081124_591631.html).

30. ACEF is a government-organized non-governmental organization (GONGO) registered under the Ministry of Civil Affairs and supervised by the Ministry of Environmental Protection, so it remains unknown whether the court would grant standing to a wholly-private non-governmental organization.

31. Kunhuanbao [Implementation Opinions Regarding Implementation of a Coordinated Environmental Protection Enforcement System] No. 520 (Kunming Intermediate People's Ct., Kunming People's Procuratorate, Nov. 6, 2008) Kunming Env'tl. Protection Bureau (P.R.C.), available at <http://www.kmepb.gov.cn/kmhbj/75157117316628480/20081106/11030.html>. See also Yunnan issues "trial guide" for environmental cases, ruling on reforestation can be made if there is deforestation, XINHUANET, May 14, 2009, <http://news.xinhuanet.com/legal/2009->

2008, the Intermediate Court, Environmental Protection Bureau, People's Procuratorate, and Public Security Bureau of Kunming Municipality jointly issued the *Implementation Opinions Regarding Implementation of a Coordinated Environmental Protection Enforcement System*.<sup>32</sup> This document, among other things, established standing to sue for the procuratorate, environmental agencies and environmental NGOs; clarified the reversal of burden of proof in environmental public interest cases; authorized the use of injunctions where enterprise activities "could cause harm to the ecological environment;" and established plaintiff-favorable fee provisions. In May 2009, the Yunnan Provincial High Court officially issued a document on province-wide rules for environmental courts and adjudication of environmental cases. As of this writing, this is the highest level official document (province-level) regarding environmental courts and environmental public interest litigation in China. The document, among other things, clarified standing for registered environmental NGOs to bring environmental public interest lawsuits, provided for injunctions to prevent environmental harm, and suggested the use of natural resource damage considerations in forestry-related cases.

In practice, however, the Yunnan courts have not utilized the most innovative provisions set forth in the official documentation at either the provincial or intermediate court level. In contrast to the Guiyang and Wuxi environmental courts, the Yunnan courts have not yet accepted any environmental public interest actions.

### **Strengths and Weaknesses of Environmental Courts**

Environmental courts have a number of potential benefits: promotion of greater consistency in application of the law; improved proficiency of environmental judges; increased societal and government awareness of environmental protection; greater deterrence against environmental violations, and heightened enforcement. Furthermore, these courts serve as laboratories for innovations in environmental public interest litigation.

However, questions remain about the effectiveness of the

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05/14/content\_11372002.htm.

32. <关于建立环境保护执法协调机制的实施意见>, 昆环保【2008】520号, <http://www.kmepb.gov.cn/kmhbj/75157117316628480/20081106/11030.html>.

environmental courts. Given that the environmental courts were created in response to major local environmental incidents, there is a question as to whether the courts were meant as symbolic demonstrations of the local government's resolve to fix these problems, rather than genuine efforts at judicial reform. There also remains an unresolved question as to whether the courts will have sufficient caseloads to justify their existence. Moreover, while the courts have served as laboratories for innovations, the various innovative rules or practices have not been regularly used. One commentator at a 2009 conference on environmental public interest litigation in China noted that government officials sometimes are granted "innovation points" in their bureaucratic job evaluations, and receive no further credit for additional uses of the same practice. Therefore, there may not be a further incentive to implement a given innovation more than once. Finally, the courts have not yet proven that the new structures and rules will lead to more effective environmental enforcement — that is, although the environmental courts represent a change in form and procedure, do they actually deter environmental violations and strengthen enforcement of environmental laws?

### **The Vitality of Environmental Courts**

It is still too early to pass judgment on the environmental courts discussed here. Furthermore, several courts established in 2010, such as the Qingdao and Zhangzhou Environmental Courts, are providing new data for analysis. Yet, there is preliminary evidence suggesting that the concerns about the efficacy of the courts are unwarranted.

For example, insufficient caseload is not likely to be a problem given that environmental caseloads in general are increasing and the environmental courts have already seen significant increases in caseloads since their establishment. Before the establishment of environmental courts, the relevant divisions of the Qingzhen courts only handled seven environmental cases in 2006. Within one year of the establishment of the environmental court, 110 cases were filed.<sup>33</sup> In

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33. These two data points are not entirely comparable for two reasons: first, the data on the number of cases in the year after the establishment of the Qingzhen Environmental Court is for a 13-month period (from November 20, 2007 to December 20, 2008). The 2006 data, on the other hand, is for a 12-month period. Second, the 110 cases for the 13-month period after the creation of the Qingzhen

Wuxi, two levels of courts handled a total of 302 environmental cases during the three years from 2005 to 2007. In its first year of operation, the Wuxi Environmental Court received more than 300 cases.

More importantly, the environmental courts have shown initial signs of improving the effectiveness of environmental protection. A number of cases in the environmental courts have led to actions that prevented pollution, rather than only compensating for past harms. The *Tianfeng Chemical Factory* case is an example of a public interest lawsuit leading to injunctive action against a polluter. It was also an instance in which court action helped to achieve enforcement against a polluting enterprise that had not responded to environmental officials' orders to comply with environmental laws. The Qingzhen Land and Resources Management Bureau case was another example in which court action helped spur the defendant agency to perform its duty to properly manage a water source protection area, a duty the agency had failed to perform for fifteen years. Moreover, a number of the public interest cases discussed above effectively lowered the evidentiary burden on plaintiffs by requiring only a showing that environmental standards or laws were violated. In traditional environmental tort cases, it is necessary to demonstrate harm, such as to human health, crops or other resources, which can be substantially more difficult to prove. But the decision in the Tianfeng case relied on evidence that the factory had violated water quality standards. While these cases have no precedential value, practices piloted at the local level that are identified by central-level lawmakers as worthy of broader dissemination can be incorporated into subsequent laws and regulations.

It is still too early to render a verdict on the Chinese environmental courts. Further research is needed to determine whether other factors not now readily apparent are motivating the implementation of the new practices seen in the environmental courts. One study of courts and environmental protection bureaus in Hubei Province, for example, suggested that incentives to generate higher caseloads and court fees motivated the creation of environmental "circuit" courts, and that the circuit courts did not ultimately

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court include cases from both the Guiyang Environmental Court and the Qingzhen Environmental Court. The 2006 data only includes cases from the Qingzhen Basic Court. Data regarding the number of environmental cases in the Guiyang Intermediate Court in 2006 was not available.

contribute to a deterrence of environmental violations or reduced pollution.<sup>34</sup> Whether aims other than the strengthening of environmental enforcement are the impetus behind the developments in the environmental courts described in this article is a question requiring further examination.

Yet there are sufficient indications that the environmental courts are improving environmental enforcement to warrant further examination. Weak environmental enforcement is a perennial problem in China and these environmental court experiments hold the promise of making real, lasting improvements to China's environmental governance and rule of law.

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34. Zhang, *supra* note 4, at 105-6.