Research on Amendment of Env. Pro. Law of PRC (1989): Retrospect and Prospect

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Natural Resources Law Institute
School of Law
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Environmental Law: SJTU and PACE Since 1999

• The Founding and First Annual Conference of the Chinese Society of Environmental and Resources Law, Wuhan, 1999
• The Founding and First Colloquium of IUCN Academy of Environmental Law, Shanghai, 2003
• MOU on Sino-American Center for Environmental and Legal Education, Shanghai, 2005
• Tele-video Conference on American environmental law, Shanghai, New York, etc. 2007
• Round Table Meeting on Environmental Law in USA and PRC, Shanghai, 2009
• Graduate students exchanges
• Visiting scholars
• Joint research projects (Amendment of Env. Prot. Law of PRC, 2007-2014)
• Joint writing (article in Pace Environmental Law Review, 2014)
Shanghai, Cypress Hotel, Nov. 2003
Shanghai, Nov. 2003
Shanghai Jiao Tong University. Nov. 2005
Shanghai Jiao Tong University. Nov. 2005
In front of Wang Xi’s Office, Oct. 2008
In Wang Xi’s Office, Shanghai, Oct. 2008
1. History of the Research


3. The Results of the Research

4. Future Research and Teaching
1. History of the Research

1.2 Growing (2007-2010)
1.3 Harvests (2011-2014)
### 1.2 Growing (2007-2010) (Case studies and research reports)

#### Cases

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Outlines of the two reports

Report on the design of the new EPL

Report on experiences of other counties
An Intermediate Report

Report on breaking though point
An Interim report and its table of contents
REPORT AND RESPONSE TO AREAS OF STUDY FROM THE AMERICAN TEAM


A. The role of the environmental law in the legal system of US

Steve Volckan notes that in the U.S. system, our 50 states have united to form a national government. These states, like Vermont, Virginia, and California, are a unit of government somewhat similar to provinces in China. When the states united to form the United States, they retained all authorities except for authorities explicitly designated as national authorities in our Constitution.

Nevertheless, since pollution does not respect borders, and since our Constitution provides the national government authority to regulate interstate commerce, we have enacted strong environmental laws that provide a role for government at both the national and state levels. (The two other roles that emerge is the discussion of the reasons for a strong federal role, such as strong technical capacity at the federal level and relative independence of the federal law.)

Both the national government and our 50 states have important roles to play in implementing the law. Each of our states has an environmental agency. States are often called upon to translate national standards into specific limits, such as limits on emissions to air or discharge to water for each individual facility. This is often done through permitting systems - another important issue to discuss in relation to the federalism question, but not fully addressed here - perhaps we should elaborate on this later.

This system relies on shared responsibility, and the rules generally divided to strike a balance between leadership and standard-setting at the national level and implementation and follow-through at the state and local level. It is a dynamic system where each level relies on - and can influence - the other.

B. The framework of the environmental law system

Steve Volckan also notes that the Federalist system relies on shared responsibility, with the roles generally divided to strike a balance between leadership and standard-setting at the national level and implementation and follow-through at the state and local level. It is a dynamic system where each level relies on - and can influence - the other.

One of the critical aspects of this issue is responsibility of state environmental agencies to national environmental laws and institutions.
Award to Wang Xi by China Academy of Engineering and Ministry of Environmental Protection, 2010
1.3 Harvests (2011-2014) (Legislation Proposals)

Proposal on the Amendment reported to the Congress and Ministry of Environmental Protection, 2011

Proposal on the Amendment reported to the Congress and Ministry of Environmental Protection, 2013
1.3 Harvests (2011-2014)(Academic Achievements)

王曦、唐瑭：《新法授予环保部门哪些权责？》，《中华环境》，2014年7月号，P64~65。

王曦、卢锟：《规范和制约有关环境的政府行为：理论思考和制度设计》，《上海交通大学学报 哲学社会科学版》，2014/2，第22卷第2期，P43~57。

王曦：《论“环保法” 的特殊功能及其提升》，《上海交通大学学报 哲学社会科学版》，2014/2，第22卷第2期，P29~42。

王曦、谢海波：《论环境权法定化在美国的冷遇及其原因》，《上海交通大学学报 哲学社会科学版》，2014/4，第22卷第4期，P22~33。

王曦：《新“环境保护法” 的制度创新：规范和制约有关环境的政府行为》，《环境保护》，2014年第10期，P40~43。

王曦、谢海波：《论环境权法定化在美国的冷遇及其原因》，《上海交通大学学报 哲学社会科学版》，2014/4，第22卷第4期，P22~33。

王曦：《从“统一监督管理”到“综合协调”——＜中华人民共和国环境保护法＞第7条评析》，《经济法学、劳动法学》，2012年第3期，P9~16；《吉林大学社会科学学报》，2011/6，P85~92。

王曦，邓旸：《从“统一监督管理”到“综合协调”——＜中华人民共和国环境保护法＞第7条评析》，《经济法学、劳动法学》，2012年第3期，P9~16；《吉林大学社会科学学报》，2011/6，P85~92。

上海交通大学环境资源法研究所《环保法分》修订联合研究组：《＜环境保护法＞修法的具体建议》，《改革内参》，2012年12月21日出版，P8~13。

王曦，邓旸：《“环保事业基础法”：让特殊的＜环保法特殊起来！》，《绿叶》，2011年第1期，P9~19。

王曦：《论新时期完善我国环境法制的战略突破口》，《上海交通大学学报 哲学社会科学版》，2009/2，第17卷第2期。
The Academic Core of the Research

Interactions of Parties in Process of Environmental Protection (IPPEP): A Model for Observing Environmental Governance

The Third Parties
Supervisors (Congress, Citizen, NGO, Court)

Supervisory interaction 1

Supervisory interaction 2

Government
(Regulator, Supervisee)

Regulatory interaction

Enterprises
(Regulatee, Supervisee)

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A Formula Expression of the IPPEP Model

1. \(( R) + (-E) = G\)

2. \((- R) + (- E) = (- G)\)

3. \((- R) + (- E) + (NGO, changing \ R) = G\)

4. \((- R) + (- E) + (NGO + J, changing \ R) = G\)

5. \((- R) + (- E) + (- NGO) + (- J) = -G\)

6. \((- R) + (- E) + NGO + C (changing \ R or law) = G\)

---

R: Strong environmental regulator
- R: Weak environmental regulator
- E: Polluting enterprise
J: Court in favor of environment
- J: Court not in favor of environment
- NGO: Ineffective NGO participation or no NGOs at all
G: Good environmental governance
- G: Poor environmental governance
C: Environmental Congress

2.1 Why
2.1.1 The Reason of Environmental Law

- **Market**: Division of labor, commodity exchange rules
  - Market Failure: Imperfect competition
    - Public goods externality
  - Results: Serious negative externality, social injustice, non-sustainability
  - Government (Gov.) Intervention: Regulation
    - Gov. Failure: Slack off, reckless actions
      - Results: Serious negative externality
      - Causes: Defects in week enforcement, wrong in idea on development and incentives law
      - Countermeasures: Strengthening rules
        - Improve education
        - Improve laws

- **Maximization of individual utility**: "Invisible hand"
- **Increase of national wealth**: Ethic law
2.1.2 The Problems of the “Old” EPL (1989)

- Lag behind of time (25 years old v. fast economic and political reform)
  
- “Governmental failure” in environmental protection
  - Week of enforcement of environmental law
  - Lack of control on environmental behavior of local governments

- “Hollowed” text of the EPL (1979, 1989)
Case study demonstrate “governmental failure” in environmental protection

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“Hollowed” text of the EPL (1979, 1989)

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<td>Article on Desertification</td>
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2.2 How

Varous suggestions

• Abolish
• Up-grade
• Minor Change
• Transform (my suggestion)
Major Suggestions

1. Taking the opportunity seriously.

2. The Objective: To transform the law from a law of regulating industry to a law of both regulating industry and restricting government.

3. How to do it
   3.1 To identify, preserve, and enhance its peculiar functions
   3.2 To delete the duplicated functions and related provisions from the law
The Peculiar Functions of EPL

1. To laying down a legal foundation for environmental protection, including,
   • To stipulate basic elements of legal system for environmental protection;
   • To stipulate general environmental regulatory measures;
   • To provide legal basis for using market measures for environmental protection

2. To normalize and restrict environment related governmental behavior, including,
   • To normalize environment related government decisions;
   • To establish a supervision system for environment related governmental behavior
3. The Results of the Research

3.1 Proposals on the Amendment
3.2 Academic Achievements
3.1 Proposals on the Amendment
Major Suggestions and How They Are Reflected by the New EPL (2014)

1. Changing the structure of the law, adding a new chapter on restricting environment related governmental behavior.

2. Restricting environment related governmental behavior (red color covered articles are identical or similar with my proposal).


4. Laying down legal basis for application of market measures.

5. Declaring the responsibilities of all the major actors in environmental protection.

6. Encouraging and facilitating public participation

7. Deleting duplicated articles
1. Changing the structure of the law, adding a new chapter on restricting environment related governmental behavior

   Old law, six chapters; New law, seven chapters. The title of the new chapter is “Information Disclosure and Public Participation”.
2. Restricting environment related governmental behavior (red color covered articles reflected the ideas in my proposal).

   Article 6-2 Local government’s environmental responsibility
   Article 13-4 Local environmental protection plans shall align with the planning on main functional zones, overall land use, and urban and rural development.
   Article 14 EIA for local economic and technical policies
   Article 19 EIA for development plans
   Article 26 Environmental protection target accountability and performance evaluation system for local governments.
   Article 27 Report on work of environmental protection to Local People’s Congress.
   Article 28-2 Local people's governments of key regions and river basins that fail to meet national environmental quality standards shall formulate plans to reach relevant standards within a prescribed time period, and take measures to achieve the compliance target on time.
   Article 29 Strict protection of key ecological functional zones, areas of sensitive and fragile ecological environment.
   Article 44-2 Suspending EIA approval for regions that fail to fulfill the total emission control quota or achieve the environmental quality targets
   Article 53-2 on disclose environmental information, improve public participation procedures, and facilitate citizens, legal persons and other organizations to participate in, and supervise, environmental protection work.
   Article 54, 55, etc. on disclosure of information on monitoring of major discharging sources, environmental quality, environmental pollution accidents, administrative permits, administrative penalty, pollutants discharge fees, etc.
   Article 67 On strengthening supervision and inspection over the environmental protection work of the people's governments at lower levels and their relevant departments, and administrative sanctions up to resign.
3. Strengthening regulation

Article 55 on disclosure of information on pollutants discharge

Article 59 on a fine consecutively on a daily basis according to the original amount of the fine, starting from the second day of the date of ordered correction.
4. Laying down legal basis for application of market measures.

   Article 22 on encouraging application of market based measures. (fiscal assistance, taxation, prices, government procurement, etc.)
   Article 31 on ecological protection compensation mechanism.
   Article 36 on encouraging using environmental-friendly products and recycled products.
   Article 52 on environment pollution liability insurance.
5. Declaring the responsibilities of all the major actors in environmental protection.

Article 6 on environmental obligations of all major actors (government, enterprise, citizen and citizen groups)
6. Encouraging and facilitating public participation

Article 57 Citizens, legal persons and other organizations shall be entitled to report and complain environmental pollution and ecological damage activities of any units and individuals to competent environmental protection administrations or other departments with environmental supervision responsibilities. In the event the local people’s government and its environmental protection administrations or any other relevant departments fail to fulfill their responsibilities in accordance with the law, any citizen, legal person or other organizations have the right to report it to the competent higher level governments or the supervisory department according to law. The authorities receiving the report shall keep confidential the relevant information of the informant, and protect the legitimate rights and interests of the informant.

Article 58 For activities that cause environmental pollution, ecological damage and public interest harm, social organizations that meet the following conditions may file litigation to the people’s courts: (1) Have their registration at the civil affair departments of people’s governments at or above municipal level with sub-districts in accordance with the law; (2) Specialize in environmental protection public interest activities for five 13 consecutive years or more, and have no law violation records. Courts shall accept the litigations filed by social organizations that meet the above criteria The social organizations that file the litigation shall not seek economic benefits from the litigation.

Article 9-3 News media shall carry out the publicity of environmental protection laws, regulations and knowledge, and facilitate the exercise of public supervision on environmental violation activities.
7. Deleting duplicated articles

Only 2 articles remain un-touched.

All the duplicated articles are deleted. So the problem of “Hollowed” text is solved.

Old law, 47 articles; New law, 70 articles.
4. Future Research and Teaching
The Reason of Environmental Law

- Market
  - Division of labor, commodity, exchange rules
  - "Invisible hand"
  - Maximization of individual utility
  - Increase of national wealth

- Market Failure
  - Imperfect competition
  - Public goods
  - Externality

- Results
  - Serious neg. externality
  - Social injustice
  - Non-sustainability

- Gov. Intervention
  - Regulation

- Gov. Failure
  - Slack off
  - Reckless actions

- Results
  - Serious neg. externality
  - Social injustice
  - Non-sustainability

- Causes
  - Defects in law
  - Weak enf.
  - Wrong in idea on development and incentives

- Countermeasures
  - Strengthening Rules
    - Improve education
    - Improve laws
第三方主体
（监督者——人大、公民、公民团体、法院等）

政府
（管制者、被监督者）

企业
（被管制者、被监督者）

监督互动
管制互动
监督互动
My Major Academic Position

- Seeking truth from facts
- Understanding the government, enterprises, and the third parties,
- Exploring principles and methods on legal protection of good interactions among all the major players in the cause of environmental
The End

Thank You!

Comments and Questions are welcome.