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**Significance of China's Newly-revised
Environmental Protection Law in 2014 and
The Provisions Pertinent to Public Participation**

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1. Introduction

- On April 24, 2014, the Standing Committee of NPC issued the revised ***Environmental Protection Law(EPL)***
 - *Article 5* Environmental protection shall adhere to the principles of giving priority to protection, focusing on prevention, conducting comprehensive treatment, **engaging the public in protecting the environment**, and enforcing accountability for damage.
 - The biggest highlight of this law is the establishment of a special chapter named “Information Disclosure and Public Participation” for the first time.

• Chapter 5 Information Disclosure and Public Participation

- Article 53 The right to be informed and the obligation of disclosing information
- Article 54 Disclosure of government information
- Article 55 Disclosure of information by key pollutant-discharging units
- Article 56 Disclosure of the environmental impact statement of construction projects by the construction unit and competent departments for examination and approval and soliciting opinions
- Article 57 The report right of the public on environmental violations
- Article 58 Environmental public interest litigation

2. The Establishment of Public Participation in China

- 2.1 The word of “public participation” was brought in from overseas
 - China’s *Constitution* from 1954 to 1982
 - China’s Constitution in 1954
 - Article 2 stipulated, “National People’s Congress, the local people’s congresses and other organs of state practice democratic centralism.”
 - Article 17 stipulated, “All organs of state must rely on the masses of the people, constantly maintain close contact with them, heed their opinions and accept their supervision.”

- China's Constitution in 1982
 - Article 2 stipulated, “The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.”

- 2.2 The provisions on public participation in environmental legislation since 1979
 - *Environmental Protection Law* (for trial implementation) enacted in 1979
 - Article 4 stipulated, “Overall planning, rational layout, comprehensive utilization, conversion of the harmful into the useful, and **reliance upon the masses with everybody taking part** in the protection of the environment for the benefit of the people”.
 - Article 8 stipulated, “all citizens have the right to **supervise, accuse and bring a suit against** the unit or the individual who has caused pollution and damage to the environment”.
 - *Environmental Protection Law* revised in 1989
 - Article 6 stipulated, “All units and individuals shall have the obligation to protect the environment and shall have the right to **report on or file charges against** units or individuals that cause pollution or damage to the environment.”

- In June 1993, the former State Environmental Protection Administration, the former State Planning Commission, the Ministry of Finance and the People's Bank of China jointly issued the *Notice of Enhancing the Management Work of Environmental Impact Assessment on the Construction Project that are Loaned by International Financial Organizations*
 - Public participation in the process of EIA on the construction project that were loaned by international financial organizations.
 - Established a special chapter to express in the EIA Statement, in order to consider and compensate the interests of the potentially concerned public and social organizations.
 - The work of public participation could be in the stage of preparing and reviewing of the Study Plan and the reviewing of the Statement.

- To define “**the public**” who have the right to propose opinions and suggestions as “**NPC deputies, CPPCC members, mass groups, academic groups or the representatives of neighborhood committees and village committees at the place (district or county) where loan projects are located**”.
- It was “NPC deputies, CPPCC members and mass groups at the place (district or county) where loan projects are located that consult the public’s opinions whose interest will be affected”.

- In July 1996, the State Council held the fourth National Conference on Environmental Protection
 - Deployed the objectives, tasks and measures for environmental protection work of the 21st century.
 - Adopted the *Decision on Several Issues Concerning Environmental Protection*.
 - Established the mechanism for public participation, to play the role of social organizations, to encourage public participation in environmental protection work, and to report and expose all kinds of violations against environmental laws and regulations.

- The *Water Pollution Prevention and Control Law* revised and adopted on May 15 in 1996 and the *Law on Prevention and Control of Pollution From Environmental Noise* enacted on October 29, 1996 stated,
 - “An environmental impact statement shall contain comments and suggestions of the units and residents in the place where the construction project is located.”
- Article 15 of an administrative regulation named the *Regulations on the Administration of Construction Project Environmental Protection* passed by the State Council on November 18, 1998 stipulated,
 - When compiling the environmental impact statement, the construction unit shall seek for comments and suggestions of the units and residents in the place where the construction project is located in accordance with relevant laws and regulations.

- The *Law on EIA* was adopted by the NPC Standing Committee in October 2002 and went into effect on September 1, 2003. Relatively detailed provisions on public participation in this law are as follows:
 - The principle of public participation was established.
 - The public participation in EIA on planning was stipulated.
 - The public participation in EIA on construction projects was stipulated.
- The *Administrative License Law* adopted by the NPC Standing Committee in 2003 explicitly stipulated the general procedure of the hearing and provided that the administrative license involving the interests of the others shall solicit the opinions from the third party
 - Greatly promoted the public participation in environmental protection.

- In February 2006, the former SEPA issued the *Interim Measures on Public Participation in Environmental Impact Assessment*
- In January 2007, the State Council adopted the *Regulation on the Disclosure of Government Information*
 - In February the same year, the former SEPA (now the MEP) issued the *Measures for the Disclosure of Environmental Information* (for Trial Implementation).
- Apart from legal documents enacted by the state and central government, some local authorities such as Shanxi Province, Shenyang and Kunming have also formulated local regulations of public participation in environmental protection since 2005

- On December 2014, the Standing Committee of People's Congress in Hebei Province also adopted the local regulation *Ordinance on Public Participation in Environmental Protection in Hebei Province*.
- At present, the Chinese government is ready to accede to the *Aarhus Convention*, the primary work of which is to analyze, and demonstrate the pros and cons after China's accession

3. Main Contents Relevant to “Public Participation” Clause in Environmental Protection Law

- “Public participation” is treated as one of the basic principles of environmental protection in Article 5
 - Environmental protection shall adhere to the principles of giving priority to protection, focusing on prevention, conducting comprehensive treatment, **engaging the general public in protecting the environment**, and enforcing accountability for damage.

- 3.1 Establishing the public's right to be informed of environmental information, the right to participate in and supervise over environmental protection and the guarantee duty of the government

- *Article 53* Citizens, legal persons and other organizations shall be entitled to access environmental information, and participate in, and supervise, environmental protection in accordance with the law.

The competent departments for environmental protection and other departments with duties for supervision and administration over environmental protection of the people's governments at all levels shall disclose environmental information pursuant to the law, improve the public participation process, and provide facilitation to the citizens, legal persons and other organizations for their participation in, and supervision over, environmental protection.

- In May 2014, the Ministry of Environmental Protection published the *Guidance on Promoting Public Participation in Environmental Protection*

- 3.2 Clearly defining the scope and contents of the environmental information that different levels of governments and the competent authorities should disclose

- *Article 54* The competent department for environmental protection of the State Council shall uniformly **release national environmental quality information, information on the monitoring of major pollution sources and other material environmental information**. Competent departments for environmental protection of the people's governments at or above the provincial level shall regularly publish press communiqués on environmental conditions.

The competent departments for environmental protection and other departments with duties for supervision and administration over environmental protection of the people's governments at or above the county level shall **disclose information on environmental quality, environment monitoring, environmental emergencies, environmental administrative licensing, administrative punishments, the collection and use of pollutant discharge fees and other relevant information**.

The competent departments for environmental protection and other departments with duties for supervision and administration over environmental protection of the local people's governments at or above the county level shall **record the information on the environment-related violations of laws committed by any enterprises, public institutions and other producers and business operators in the social credit archives and make the list of violators public in a timely manner.**

- *Article 68* Where any of the local people's governments at all levels and the competent departments for environmental protection and other departments with duties for supervision and administration over environmental protection of the people's governments at or above the county level **commits any of the following acts**, the persons in charge thereof who are directly responsible and other personnel thereof who are directly liable shall be given a demerit, a serious demerit or be demoted; where grave consequences are caused, the foregoing persons shall be removed from office or be dismissed, and the primary persons in charge of the relevant departments shall resign from office:

...

(7) Where it fails to disclose environmental information that should be disclosed in accordance with the law;

...

- 3.3 Clearly defining the contents of environmental information that key pollutant-discharging units shall disclose
 - *Article 55* A key pollutant-discharging unit shall make public the names of its major pollutants, the ways of emission, the emission concentration and total volume, whether the emission exceeds relevant limits, as well as the construction and operation of pollution prevention and control facilities and accept social supervision.
 - *Article 62* Where a key pollutant-discharging unit, in violation of this Law, fails to disclose or fails to truthfully disclose environment information, the competent department for environmental protection of the local people's government at or above the county level shall order it make the disclosure, impose a fine on it and make an announcement thereof.
- In December 2014, the Ministry of Environmental Protection released the *Measures for the Disclosure of Environmental Information by Enterprises and Public Institutions*

- 3.4 Making additional provisions on public participation in environmental impact assessment of the construction projects

- *Article 56* The project unit of a construction project for which an environmental impact statement is required pursuant to the law shall **explain relevant situations to the public when preparing the environmental impact statement**, and solicit public opinions sufficiently.

Competent departments for examination and approval of the environmental impact assessment documents for construction projects shall **make public the full text of the environmental impact statements of construction projects** upon receipt thereof, except for matters involving state secrets and commercial secrets. Where they discover that public opinions have not been sufficiently solicited for certain construction projects, they shall order the project owners concerned to solicit public opinions.

- 3.5 Clearly defining the report right of the public on environmental violations and its exercise approach

- *Article 57* Citizens, legal persons and other organizations shall be entitled to report and complain against entities and individuals that cause environmental pollution and ecological damage to the competent departments for environmental protection or other departments with duties for supervision and administration over environmental protection.

Citizens, legal persons and other organizations that discover the failure of certain local people's governments at any level or any of the competent departments for environmental protection and other departments with duties for supervision and administration over environmental protection of the people's governments at or above the county level to perform environmental supervision and administration duties in accordance with the law, may report the situations to the authorities at higher level or supervisory authorities.

The departments receiving the reporting shall keep confidential the relevant information of the reporters and protect the legitimate rights and interests of the reporters.

- 3.6 Explicitly stipulating that environmental protection organizations have the right to bring environmental public interest litigation

- *Article 58* Any of the social organizations satisfying the following conditions may file lawsuits with the people's courts against acts that pollute the environment, cause ecological damage and harm public interests:

- (1) Registered with the civil affairs department of the people's government at or above the level of city with districts in accordance with the law; and

- (2) Engaging specially in the public service activities in environmental protection for five consecutive years without any record of violation of laws.

Where a social organization satisfying the provisions in the preceding paragraph files a lawsuit with the people's court, the people's court shall accept the lawsuit in accordance with the law.

The social organization that files a lawsuit shall not make use of the lawsuit to seek economic benefits.

4. Problems of Public Participation in Environmental Protection

- 4.1 The compulsory provisions imposing on the government and its departments in national laws and regulations fall behind the new development since the adoption of the *Environmental Protection Law* in 2014
 - The laws emphasize the obligations of enterprises and the responsibilities of the government over the environmental rights and interests of citizens, and the latter are embodied passively through providing the former

- There is a lack of specific and workable substantial and procedural provisions, the public is incapable of participating in accordance with the laws.
 - “In accordance with the laws” could be interpreted arbitrarily by the executive departments, and there is little room for judicial review.
- In practice, the public participation on environmental protection is strictly controlled by the ruling party and the government

- 4.2 The laws and regulations authorize the environmental protection department many obligations and responsibilities, while dealing little with other departments in charge of the planning and examination and approval of major projects involving environmental impact
 - The range of public participation is limited, only confined to powers of environmental protection department
 - Environmental issues are just the consequence caused by various factors, but the participation from the very beginning is not enough, while the responsibilities of the departments are inconsistent. Therefore, the public participation is just of no avail.
 - Department regulations and local laws and regulations only stipulate relevant decisions and the oversight over law enforcement by environmental departments, which are inconsistent with public participation in the scope.

- The information the public really concerned is not consistent with what the government/department investigate and establish
 - There is little information disclosure; however, there is less information the public really concerned.
 - The items relating to public environmental rights and interests are not the object of EIA.
- The phenomenon of NIMBY is on the rise, while the government's response is obviously insufficient

- 4.3 The public participation is mechanical and simplified, deceptive EIA phenomenon is involved, and there is fraud in government and enterprise environmental information
 - Few scientific and effective participation methods, few selective methods to choose
 - The participants are artificially arranged, inadequacy in interest representative
 - Serious fraud happened in EIA statement and other documents
 - The disclosure of information by the government is inconsistent with the feelings of the public
 - Fraud in environment monitoring by enterprises

- 4.4 There are still a lack of administrative relief and security provisions
 - There are no specific ways for the public to report, appeal and bring problems
 - Normal public gatherings and demonstrations are not approved, thus leading to abnormal walk
 - Public-expressed dissatisfaction are treated roughly and simply, and more serious political inclination arises
 - Deficiencies in administrative litigation and the system of environmental public interest litigation

- 4.5 Referring to judicial protection, the local people's court refusing to accept the environmental public interest litigation filed by citizens, the public or environmental groups is still a major problem to guarantee public participation in environmental protection.

5. Conclusion

- The *Environmental Protection Law* revised in 2014 has made great progress in the disclosure of environmental information and public participation, which in general not only establishes that the public has right to acquire environmental information from the government and enterprises, to participate in the government environmental administrative policy-making and supervise the government and enterprises to comply with environmental laws, but also sets up the environmental public interest litigation system.
- Due to China's long-term lack of public participation on cultural, political and legal basis, relying on the public participation provisions in the environmental laws cannot wholly guarantee the public environmental rights and interests, which can only be achieved through a comprehensive legal system arrangement in the process of the political system reform.

Thank You



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