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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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**GREEN ACCESS PROJECT II**

**Osaka University**

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

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Environmental Law: Towards Establishing International Collaboration in Pursuit of  
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## 1. Introduction

Public participation in environmental protection is an important sign of whether a nation values and protects the rights of the public or not. It usually connects closely with political democratization. On April 24, 2014, the Standing Committee of NPC issued the revised *Environmental Protection Law* (EPL), which entered into force on 1 February, 2015. The biggest highlight of this law is the establishment of a special chapter named “*Information Disclosure and Public Participation*” for the first time.<sup>1</sup>

This paper will explain the process of establishing the public participation article in the *EPL* and its main content on the basis of reviewing the development of public participation principle in China. Besides, this paper will study the problems existing in the performance of public participation in Chinese environmental protection practice.

## 2. The Establishment of Public Participation in China

In China, the word of “*public participation*” was brought in from overseas. Though China did not have the concept of public participation, China stipulated a principle of environmental protection work in Article 4 of the *EPL (for trial implementation)* in 1979, that is “*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*”.

Since the researches on the democratization of polity, regime, ruling power, etc, in the science of law and social sciences have been strictly restricted by the ruling party, the laws in China did not directly copy the concepts of public participation from the western countries. The Chinese corresponding expression was “*reliance upon the masses with everybody taking part in the protection of the environment for the benefit of the people*”, which mainly concerned the public participation in public-welfare environmental protection activities rather than in the work of decision-making by the government such as exploiting environmental resources. This provision was regarded as a reflection of the democratic principle established in the Chinese constitution. Since this guideline was too abstract to be carried out, *EPL (for trial implementation)* in 1979 also made specific regulations in Article 8 that “*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*”.

However, the researches of natural sciences on environmental management

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<sup>1</sup> Chapter 5 named “*Information Disclosure and Public Participation*” of the *EPL* (April 24, 2014) includes 6 articles, which separately stipulate the right of the public to be informed of environmental information and its safeguard mechanism, the obligation to disclose information by the government and enterprises, supplement rules of public participation in EIA on construction projects, the rights and process of the public to report the behaviors of polluting and damaging the environment, environmental public interest litigation, etc.

didn't have such concerns.<sup>2</sup> In 1983, a Chinese natural science magazine, *Underground Space*, issued the translation of "A plan of public participation in the management of radioactive waste"<sup>3</sup>, which introduced the concept of public participation into the environmental protection area first through the introduction of cooperative method between the American government and the public in the process of building nuclear waste storage depot in the 1980s. Thereafter, a lot of natural science and management magazines always used the word "*public participation*" when introducing foreign environmental impact assessment (EIA).<sup>4</sup>

In the early 1990s, in view of the deepening of Chinese reform and opening-up and the increasing of the proportion of foreign investment year by year, using the loan from international financial organizations to raise construction fund and develop the economy had been an important part of Chinese economic development. One of the clear requirements in the environmental protection of construction projects supported by the loans offered by these international financial organizations, such as World Bank and Asia Development Bank, was the EIA Statement of loan projects, which was regarded as one of the necessary documents in handling loan formalities. However, the work of EIA needed public participation. As a result, 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*, which required public participation in the process of EIA on the construction project that were loaned by international financial organizations, and "*the establishment of 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*". This was the first time that Chinese government put the word of "*public participation*" into government documents.

However, the *Notice* defined "*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*", and it was the "*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*"<sup>5</sup>. That was to say, the public whose

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<sup>2</sup> Since 1950s, there has been the introduction about the concept of public participation in the articles about western countries' political institutions. For example, the article named "*The Athenian Constitution*" wrote by H·Rackham in 1935 and translated by Liye and Rizhi and published in No.2 of *Journal of Northeast Normal University* in 1957 is such a case.

<sup>3</sup> See Katherine Montague, Peter Montague, Wang Ping translated, A plan of public participation in the management of radioactive waste, *Underground Space*, No. 5, 1983.

<sup>4</sup> Such as the translation of "*A brief talk of EIA*" translated and edited by Qu Li published in *Environmental Protection of Xinjiang*, No.2, 1985, and the paper named "*EIA of resource plans*" wrote by Xi Zhilong and Liu Zhiwan published in *World Environment*, No.2, 1985.

<sup>5</sup> See the *Notice of Enhancing the Management Work of Environmental Impact Assessment on the Construction Project that are Loaned by International Financial Organizations*, which was jointly issued by State Environmental Protection Administration, State Planning Commission, Ministry of Finance and the people's Bank of China on June 21, 1993.

interest was substantively affected were not entitled to give advice to constructors who were directly involved in the loan projects. On the contrary, only when officially recognized institutions and representatives solicited opinions from the public in the affected areas, could the public put forward opinions and suggestions.<sup>6</sup>

Before that, there was no such a saying as “*public participation*” in Chinese authorities’ decision-making activities. However, there was a similar formulation to public participation, that is, “*the principle of democratic centralism*” proposed after the CPC came into power. Democratic centralism is a system that “*integrates centralism on the basis of democracy with democracy under the guidance of centralism*”.<sup>7</sup> Different from western constitutional theory of “*separation of the three powers*”, the CPC establishes the principle of united power and democratic centralism by the *Constitution*. This principle was created by Paris Commune and concreted in later socialist national political systems. It is theoretically confirmed that state power cannot be separated. People’s representative organs exercise state power in a unified way in practice, and the principle of democratic centralism is used as a power balance mechanism.

Article 2 of *Constitution* in 1954 stipulated that “*National People’s Congress, the local people’s congresses and other organs of state practice democratic centralism.*” Article 17 of the same law stipulated that “*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.*”

Article 17 in *Constitution* was revised in 1978 as “*The state upholds democratic principles of socialism, guarantees people to participate in the management of state, various economic and cultural establishments, and supervises state organs and staffs.*” Article 2 in *Constitution* was then revised in 1982 as “*The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.*”

Although the *Constitution* made the above-mentioned principle provisions, there was no explicit legal stipulations in China about the specific methods of how people administer the nation and conduct supervision over state personnel. Considering that the power to supervise over environmental illegal activities was one of the functions and powers by environmental administrative authorities, Article 6 in the *EPL* revised in 1989 stipulated that “*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.*”

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<sup>6</sup> The way of public participation in the passage is dubbed “*being represented*” in China today, which means representatives designated by official institutions only solicit public opinions in accordance with official rules and declare that they are people’s representatives in public. However, what opinions and suggestions these representatives on earth report to the official agency in the end is unknown to the public. What’s worse, sometimes representatives may falsify public opinion from “*cons*” to “*pros*”.

<sup>7</sup> This passage was proposed by Mao Zedong in his report during the Meeting of the Seventh National Congress of the Communist Party of China on April 24, 1945, which was then regarded as the basic meaning of “*democratic centralism*”.

In this context, the concept of “*public participation*” initiated by the western countries was actually replaced by the notion of “*democratic centralism*” put forward by China’s ruling party, practically reflected in the running process of the regime established by the *Constitution* and laws, and was firmly in control of public authorities. Therefore, it is not difficult to understand why the subject of public participation was limited to “*NPC deputies, CPPCC members, mass groups, academic groups or the representatives of neighborhood committees and village committees*” in the *Notice of Enhancing the Management Work of Environmental Impact Assessment on the Construction Project that are Loaned by International Financial Organizations* in 1993.

In July 1996, the State Council held the fourth National Conference on Environmental Protection. The conference mainly deployed the objectives, tasks and measures for environmental protection work of the 21st century, and passed the *Decision on Several Issues Concerning Environmental Protection* (released on August 3 the same year). In the tenth part of the *Decision* by the State Council named “*strengthening publicity and education, raising public awareness of the environment*”, it was the first time to put forward “*to establish 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 of environmental laws and regulations*”.

In order to generalize the experience of environmental impact evaluation and public participation carried out in construction projects loaned by international financial organizations since 1993, Clause 4 of Article 13 in *Water Pollution Prevention and Control Law* revised in 1996 and passed by the Standing Committee of the National People’s Congress on May 15 the same year stated: “*An environmental impact statement shall contain comments and suggestions of the units and residents in the place where the construction project is located.*” The exactly same provision could also be seen in Clause 3 of Article 13 in *Law on Prevention and Control of Pollution From Environmental Noise* enacted by the Standing Committee of the National People’s Congress on October 29, 1993. These provisions on public participation in EIA were later reflected in Article 15 of an administrative regulation named *Regulations on the Administration of Construction Project Environmental Protection* passed by the State Council on November 18, 1998, which 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.*”

Since then, the principle of public participation in environmental protection was officially established in China. However, different from the method of public participation in EIA implemented in foreign countries, Chinese EIA system relies mainly on the environmental protection department approving the environmental impact statement of construction projects. If there is only declaratory provisions without substantive procedural arrangements in the law, the public still cannot participate in the decision-making activities of EIA by the environmental protection department.

In April 2000, Chairman Li Peng of the NPC Standing Committee at that time

made a speech requiring to enact the *Law on Assessment of Environment Impacts*<sup>8</sup>, which was adopted by the NPC Standing Committee in October 2002 and went into effect on September 1, 2003. Provisions on public participation in the law are as follows:

**Article 5** *The state encourages relevant entities, experts and the general public to participate in the assessment of the environmental impacts in appropriate ways.*

**Article 11** *In case a planning may cause unfavorable environmental impacts or directly involve **the environmental interests of the general public**,<sup>9</sup> the organ that works out the special planning shall, prior to submitting the draft of the planning for examination and approval, seek the opinions of the relevant entities, experts and the general public about the draft of the statement about the environmental impacts by holding demonstration meetings or hearings or by any other means, except it is provided by the state that it shall be kept confidential.*

*The drafting organ shall take the opinions of the relevant entities, experts and the general public about the draft statement of environmental impacts into careful consideration, and shall attach a remark whether the opinions are adopted or refused to the statement of environmental impacts to be submitted for examination and approval.*

**Article 21** *Unless it is provided by the state that it is necessary to keep confidential, for the construction projects which may impose significant environmental impacts and for which it is necessary to work out a statement of environmental impacts, the construction entity shall, before submitting the construction project for examination and approval, seek the opinions of relevant entities, experts and the general public by holding demonstration meetings, hearings or by any other means.*

*The statement of environmental impacts submitted by the construction entity for examination and approval shall include an explanation of why the opinions of relevant entities, experts and the general public is accepted or rejected.*

At the same time, the NPC passed the *Administrative License Law* in August 2003 (going into effect on July 1, 2004), and provisions about the principle of public access to government information and detailed rules for hearings during the implementation of administrative license by the administrative organs in the law are as follows:

**Article 5** *The principle of publicity, fairness and impartiality shall be abided by in the establishment and implementation of an administrative license.*

*The relevant regulations on an administrative license shall be announced to the public; those undisclosed shall not be the basis for the implementation of the administrative license. The implementation of the administrative license and the results thereof, except for those that concern the state secrets, commercial secrets*

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<sup>8</sup> See the bill on *Law of the People's Republic of China on Assessment of Environment Impacts (Draft)*, which was proposed by NPC Environmental and Resources Protection Committee on November 29, 2000.

<sup>9</sup> According to the legislative information, "the environmental interests of the general public" replaced "the interests of the general public" in the draft articles of *Law of the People's Republic of China on Assessment of Environment Impacts*, due to the oversizing of the scope and lack of clarity of the interests of the general public.

or individual privacy, shall be disclosed.

The applicants who meet the legal conditions and standards are entitled to obtain the equal right under an administrative license, the administrative organs shall not discriminate against any of them.

**Article 46** For a hearing as provided for the implementation of administrative license in any law, regulation or rule, or for any other licensing matters of great importance to the public interests that the administrative organ considers it necessary to hold a hearing, the administrative organ shall announce it to the public and hold a hearing.

**Article 47** Where an administrative license is of direct significance to the interests of the applicant or others, before the administrative organ makes a decision about the administrative license, it shall inform the applicant or the interested party of the right to request for a hearing. Where the applicant or interested party applies for a hearing within 5 days from the day when it is informed of such right, the administrative organ shall organize a hearing within 20 days.

The applicant and interested party shall not pay for the expenses arising from the administrative organ's organization of the hearing.

The *Law on Assessment of Environment Impacts* implemented in 2003 and the *Administrative License Law* implemented in 2004 marked the arrival of the public participating in all aspects and periods of environmental protection in China.<sup>10</sup>

In February 2006, the former State Environmental Protection Administration issued the *Interim Measures on Public Participation in Environmental Impact*

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<sup>10</sup> Besides, the *Law of the People's Republic of China on Promoting Clean Production* enacted by the Standing Committee of the National People's Congress in 2002 and amended in 2012 prescribes as follow:

Clause 2 of Article 6 *The state encourages social organizations and the general public to participate in cleaner production publicity, education, promotion, implementation, and supervision.*

Article 17 *The general coordination department for cleaner production and the environmental protection department of the people's government of a province, autonomous region, or municipality directly under the Central Government shall, as needed for cleaner production promotion, publish a list of enterprises which fail to reach the energy consumption control indicators or the major pollutant discharge control indicators on local major media to provide a basis for the general public to oversee the implementation of cleaner production by enterprises. Enterprises on the list mentioned in the preceding paragraph shall disclose information on their energy consumption or generation and discharge of major pollutants as required by the general coordination department for cleaner production and the environmental protection department of the State Council to receive oversight by the general public.*

Clause 4 of Article 27 *An enterprise subject to compulsory cleaner production examination shall report the examination results to the general coordination department for cleaner production and the environmental protection department of the local people's government at or above the county level and disclose the examination results on local major media to receive oversight by the general public, except where trade secrets are involved.*

The *Circular Economy Promotion Law of the People's Republic of China* enacted by the Standing Committee of the National People's Congress in 2008 prescribes as follow:

Article 3 *Developing circular economy is an important strategy for the economic and social development of the state. It requires making overall plans, making reasonable layouts, adjusting measures to local conditions and focusing on actual effect. The development of a circular economy shall be propelled by the government, led by the market, effected by enterprises and participated in by the public.*

Clause 1 of Article 17 *The state shall set up a circular economy statistical system, strengthen the statistical management of resource consumption, comprehensive utilization and waste production, and publish the major statistical indicators to the public on a regular basis.*



*Assessment*, in which the disclosure of environmental information by the construction unit, seeking for public comments on the environmental impact statement, the organizational form of public participation, the method of public participation in EIA of planning and the technical specifications of the public participation in EIA were stipulated.

In January 2007, the State Council passed the *Regulation on the Disclosure of Government Information*, which laid the foundation for citizens, legal persons and other organizations obtaining government information in accordance with the law; in February the same year, the former State Environmental Protection Administration (SEPA, now the Ministry of Environmental Protection, MEP) issued the *Measures for the Disclosure of Environmental Information (for Trial Implementation)*, which for the first time provided the range of government and enterprise environmental information that should be disclosed, the methods and procedures of disclosing these information.

China's newly-revised *EPL* was enacted on April 24, 2014. The law adheres to public participation as the basic principle of China's environmental protection cause. In addition, a specialized chapter "*Information Disclosure and Public Participation*" was established hereby to stipulate for guaranteeing the rights of public participation, information disclosure mechanism, the contents which the government and enterprises make known to public, full disclosure of the EIA statement and judicial relief.

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 EPL**

It is the first time that "*public participation*" is treated as one of the basic principles of environmental protection by the newly-revised *EPL*, which, in the form of legislation, makes the following provisions 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.*"

However, there were no provisions about public participation principle and a specialized chapter of "*Information Disclosure and Public Participation*" other than subjoining a new article about disclosing environmental information in *The First Review of Draft Amendment of EPL*, which was deliberated by the Standing Committee of National People's Congress in September 2012. Considering this,

the NPC Standing Committee proposed that environmental protection needed the whole society's participation and an orderly public participation mechanisms should be established.

Through the research, the Law Committee of National People's Congress recommended adding terms of the principle of public participation to *The Second Review of Draft Amendment of EPL*, and formulated the disclosure of environmental information and public participation as a special chapter:

First, defining the public's rights to know, to participate and to supervise, stipulating that citizens, legal persons, and other organizations shall, according to the law, have the rights to obtain environmental information and participate in and oversee environmental protection. The environmental protection administrative department and other departments with environmental protection supervision and administration functions of the people's governments at all levels shall, according to the law, disclose environmental information, and improve the procedures for public participation, to facilitate the participation in and oversight of environmental protection by citizens, legal persons, and other organizations.

Second, explicating that key pollutant-discharging units should take the initiative to disclose environmental information including the names of their major pollutants, the discharge methods, the concentration and total volume of pollutants discharged, and any discharge beyond the approved quota. And corresponding legal responsibilities are stipulated.

Third, improving the public participation of EIA in construction projects. For a construction project for which an environmental impact statement is required by the law, when preparing such a EIA statement, the construction employer shall provide an explanation for the public that may be affected, and fully solicit their opinions. After receiving the environmental impact statement for a construction project, the department approving the environmental impact assessment documents for construction projects shall disclose the full text of the statement, except for the part involving any state secret or trade secret; and if it discovers that public opinions have not been fully solicited regarding the project, the department shall order the construction employer to solicit public opinions.<sup>11</sup>

Compared with the public participation in environmental protection provisions of *Aarhus Convention*, the newly-revised *EPL* specifically provides the right of the public to obtain environmental information and participate in environmental decision-making. As for the public's right to appeal, legally recognized social organizations may initiate environmental public interest litigation and the provisions of the *Administrative Procedure Law* also endue the public judicial protection.

Hereafter, I will give a brief introduction on the public participation system established by the *EPL*.

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<sup>11</sup> See Chen Liping, "Key pollutant-discharging units discloses environmental information", accessed at the website of National People's Congress, [http://www.npc.gov.cn/npc/xinwen/lfgz/2013-06/27/content\\_1798711.htm](http://www.npc.gov.cn/npc/xinwen/lfgz/2013-06/27/content_1798711.htm) on February 8, 2015.

### **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.*

This Article makes a general definition of the scope of the public, that is, "citizens, legal persons and other organizations"<sup>12</sup>. In addition, the term "environmental information" in this Article and the corresponding provision in Term 3, Article 2 of the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention, passed in 1998)* share the same meaning.

In May 2014, the MEP published the *Guidance on Promoting Public Participation in Environmental Protection*, and put forward the primary missions, priority areas, and safeguard measures on promoting public participation in environmental protection. Currently, the MEP accelerates drawing up the *Rules on Public Participation in Environmental Protection*, as the detailed rules of the *EPL*, so as to further detail the content and procedure of public participation.

In order to protect the public right to be informed of the open government information, Supreme People's Court (SPC) proclaimed the *Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Cases about Government Information Disclosure*, which requires that People's Courts shall accept such a lawsuit where anyone deems that specific administrative acts related to government information disclosure has infringed upon the legal rights and interests.

### **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*

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<sup>12</sup> In legal documents in China, "other organizations" generally refers to the organizations, which are legally constituted, with a certain degree of organization and property, but not qualified as legal person personality. The author notes.

*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;*

...

In February 2007, the former SEPA (MEP) released the *Measures for the Disclosure of Environmental Information (for Trial Implementation)*, which detailed the scope, methods and procedures of the disclosure of information. However, compared with the environmental protection department, other departments responsible for the supervision and administration of environmental protection made few regulations in the area of environmental information disclosure.

### **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 MEP released the *Measures for the Disclosure of Environmental Information by Enterprises and Public Institutions*, and clarified the specific scope and methods of the information that key pollutant-discharging units shall make public.

### **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.

As mentioned before, the *Law on Assessment of Environment Impacts* adopted by National People's Congress (NPC) in 2002 has made principle rules of public participation in environmental impact assessment regulations. However, with no specific rules on how the public participates and on how the information keeps open, the failure of newly-built enterprises to ask for public comments in their EIA has occurred in practice, which leads to a larger occurrence of environmental group dispute incident. For this reason, on the basis of the *Law on Assessment of Environment Impacts*, the newly –revised *EPL* stipulates that at the time of the preparation of the environmental impact statement, the report shall be open to public comment, and that before environmental impact statement is approved, the statement should also be fully disclosed.

### **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.

In the newly-revised *EPL*, the “prosecution” and “sue”<sup>13</sup>provisions of the

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<sup>13</sup> In Chinese law, the term “prosecution” and “sue” particularly refers to the right of the public to report crime to the public security organ, the procuratorial organ and other organs in criminal law. Administrative legislation for environmental violations using the words is not appropriate.

public on the environmental violations in other environmental laws in the past are revised to a more workable method, namely “report”, so that the public’s right to report environmental violations to the environmental protection departments is easier to be fulfilled .

### **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.*

To guarantee community organizations to bring environmental public interest litigation to the court, the Supreme People’s Court, Ministry of Civil Affairs, MEP jointly issued the *Notice on Implementing the Environmental Civil Public Interest Litigation System* on December 26, 2014, making provisions on the coordination of the executive power and the judicial power on environmental civil public interest litigation. The Supreme People’s Court released and implemented the *Interpretation of the Supreme People’s Court on Several Questions on the Application of Law in Trial of Environmental Civil Public Interest Litigation Cases* on January 7, 2015, making provisions on what community organizations can bring environmental civil public interest litigation, on that the jurisdiction of the environmental civil public interest litigation cases can cross administrative divisions, on what evidential materials in public interest litigation is applicable in private litigation of the same action on pollution of the environment, on how to reduce the litigation cost burden of the plaintiff and so on. The Supreme People’s Court released and implemented the *Interpretation I of the Supreme People’s Court on Several Issues concerning the Application of the Civil Procedure Law of the People’s Republic of China* on January 30, 2015, making specific provisions on the court how to accept public interest litigation cases. On February 9, 2015, the Supreme People’s Court issued the *Interpretation of the Supreme People’s Court on Several Issues concerning the Application of Law in the Trial of Environmental Tort Cases* (not yet released and implemented).

In summary, in accordance with the provisions of existing laws and regulations, the main areas of public participation in environmental protection in China are as the following:

Formulating local regulations and local government regulations on environmental protection; formulating local regulations and local government

regulations on ecological environmental protection; formulating the exploitation and utilization planning which may have adverse impact on the environment; formulating the economic and technological policies which may have adverse impact on the environment; defining or adjusting the scope of nature reserve or ecological function region; formulating or modifying environmental standard, defining or adjusting the scope of environmental function zone; compiling or approving and reviewing the environmental impact assessment documents of the planning or construction projects; accepting environmental protection facilities when the construction projects completed; key industrial pollution control and ecological management; major cases on environmental administrative penalties; dealing with environmental pollution and ecological damage events which may harm the legitimate interests of the public and other environmental public interest; administrative mediation of environmental disputes; oversight of environmental violations; suggestions on environmental protection to relevant government departments; environmental public interest litigation; other matters stipulated by laws, regulations or rules.

#### **4. Problems of Public Participation in Environmental Protection**

In recent years, the public participation in environmental protection in China is increasing, and environmental NGOs have made certain achievements both in quality and quantity. However, multiple group events caused by environmental problems and NIMBY movements are on the rise, showing that there still exist many problems of public participation in environmental protection.

First, the compulsory provisions imposing on the government and its departments in national laws and regulations are neither practical nor operational, which fall behind the new development since the adoption of the *EPL* in 2014.

Local laws and regulations also do not include the detail procedures and relief provisions concerning public participation in environmental protection. By examining the environmental group events recently happened in Kunming, Hangzhou and other places, laws and local regulations on public participation in environmental protection were seldom applied in practice. The phenomenon of infringement on public environmental rights and interests is still happening.

Second, the laws and regulations authorize the environmental protection department many obligations and responsibilities, while many key powers involving environmental impact, such as the planning of development and utilization of environmental resources and examination and approval of major projects, are belonged to other departments, not the environmental protection department. What makes worse, these authorities refuse to disclose decision-making information which affect the environment, regarding them as non-environmental information.

In addition, the information the public really concerned is not consistent with that government/department disclose. The range of public participation is limited,

only confined to powers of environmental protection department. The authorities cannot respond to public opinions quickly and completely, which means the government does not always pursue environmental violations of enterprises.

Third, the public participation is mechanical and simplified, and deceptive EIA phenomenon is involved, which take the following forms: 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.

What's more, because of public participation in environmental protection may hinder the investment in construction projects which may pollute the environment, and injure the interest of environmental protection departments when reviewing previous environmental decisions, local governments and environmental protection departments hold a negative attitude towards public participation in practice, taking various reasons to refuse to disclose environmental information, or acting in a perfunctory manner.

Fourth, there are still a lack of relief and security provisions in laws and administrative regulations. 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 still exist.

Referring to judicial protection, the local people's court refusing to accept the environmental public interest litigation is still a major problem to guarantee public participation in environmental protection.

## **5. Conclusion**

The *EPL* revised in 2014 has made great progress in the disclosure of environmental information and public participation. The provisions not only establish that the public has right to acquire environmental information from the government and enterprises, to participate in the government environmental administrative decision-making and supervise the government and enterprises to comply with environmental laws, but also set up the environmental public interest litigation system.

However, 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.