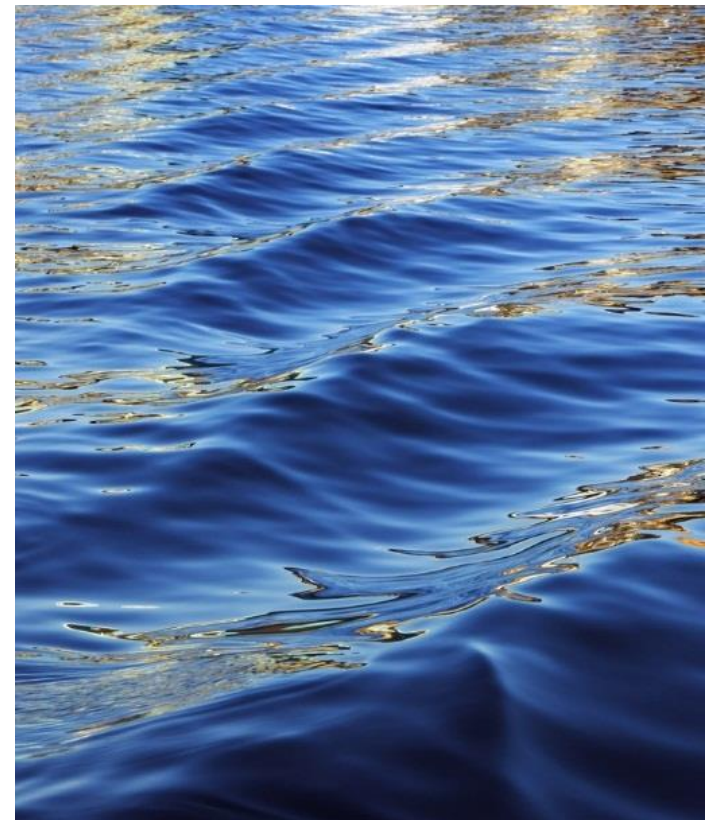


# The New changes on Environmental Impact Assessment of China

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# 1. Recent system innovations of environmental impact assessment in China

# Recent system innovations of environmental impact assessment in China

- 1. Amendments to the ***Environmental Protection Law of the People's Republic of China*** (January 1, 2015)
- The addition of Article 19 in the "Supervisory Management" section stipulates that environmental impact assessment must be carried out for the preparation of planning and construction projects.
- The special regulation stipulates the content of environmental information disclosure and public participation .
- Meanwhile, the legal liability for violating the basic requirements of environmental impact assessment is specified in the chapter "Legal Liability".
- 2. Amendments to the ***Law of the People's Republic of China on Environmental Impact Assessment*** (September 1, 2016)
- 3. ***Mechanism Program of Information Disclosure for Project Environmental Impact Assessment*** (December 2015)
- 4. ***Regulations on Environmental Protection Management of Construction Projects*** (July 16, 2017)

## law and regulations

# Regulations on Environmental Protection Management of Construction Projects (July 16, 2017)

- In this regulation, the more representative revisions is:

The relevant items of administrative review and approval have been deleted but the Post-event supervision has been strengthened. Linking up environmental impact assessment system with the emission permit system.

*The completion and acceptance of the environmental protection facilities of the construction project will be changed from the acceptance of the environmental protection department to the self-acceptance of the construction unit.*

5. On December 25, 2017, the former Ministry of Environmental Protection reviewed and approved the *Technical Guidelines for the Eco-protection Red Line, Environmental Quality Bottom Line, Resource Utilization and Environmental Access Negative List* (Trial).





## 2. New change in the practices: Supervision for Environmental Protection

- a Chinese major environmental protection system innovation, with the core of improving environmental quality.

- **Supervision for Environmental Protection is the most important institutional change in the field of environmental assessment in China. Other specific operations in practice are based on the strict law enforcement environment created by this system.**

departments, neglecting the environmental responsibility of party committees.

- **Purpose:** to strengthen the bottom line of the conservative law and improve the environmental quality by strengthening the main responsibility of the local government and enterprises. The central government and provincial governments go to local places to inspect environmental law enforcement and prevent local protectionism.

As an important system,

environmental supervision is reflected in the effectiveness of changing the

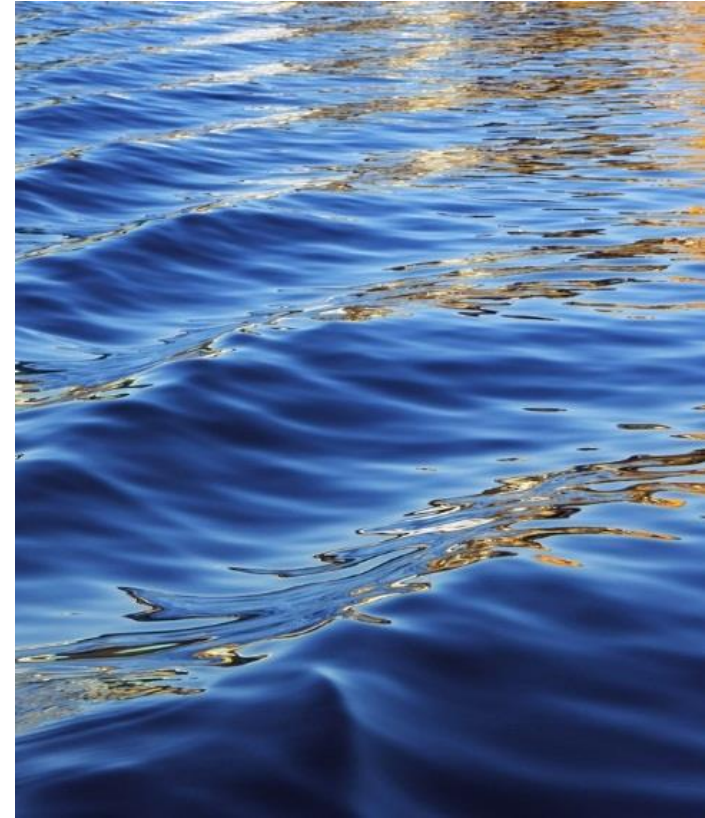
#### Achievement:

From the end of 2015 to the end of 2017, China has completed the first round of central environmental protection inspections, effectively promoted local environmental protection work and solved a large number of outstanding environmental problems. In 2018, environmental protection will be strictly investigated for three years. In addition to the Beijing-Tianjin-Hebei region and the surrounding areas and the Yangtze River Delta region, Xi'an and Xianyang in Shanxi and Shaanxi Province will be included in the key areas of air pollution control for the first time.

With the continuous improvement of relevant systems and the vigorous implementation in practice, the environmental impact assessment system is becoming more and more important in China's theoretical and practical realms, but there are still some theoretical or practical problems. Here is just one example to illustrate.



### 3. Case Study



# Basic facts



- In October 2013, Wang Chun and others to the court of first instance stated that the Ministry of Environmental Protection made the specific administrative action of No. 83 “Reply on the Environmental Impact Report of the Project from Mengji to Chengde Section of Daguang Highway” on March 23, 2010. The land for the construction project in the approval involves the collectively owned land of the Balizhuang Village where the plaintiff is located, which involves both the arable land contracted by the plaintiff and the river arable for farmland irrigation. The river dam and the canal are also involved, so the plaintiff has a legal interest in the specific administrative act.
- Courts think that the environmental impact assessment refers to the analysis, prediction and evaluation of the environmental impacts that may be caused after the implementation of the construction projects, the countermeasures should be put forward to prevent or mitigate the adverse environmental impacts, then use some methods and systems to track and monitor.



# Basic facts

- In this case, the environmental impact assessment after the implementation of the construction project, will not be related to the land or housing related rights within the scope of the demolition or expropriation before the construction project is implemented. The rights and obligations of the demolition or the person being expropriated will not be impacted.
- In view of the arable land contracted by Wang Chun, the river huts, river dams and canals used for irrigation of farmland are within the scope of land acquisition of the project involved, there is no legal interest in the approval of the environmental impact assessment. Accordingly, the courts ruled that Wang Chun and others' claims should be denied.

- Wang Chun and others applied to the court for retrial.
- The facts and reasons for the retrial are: the approval of the environmental impact assessment of the prosecution is an essential precondition for the approval of the construction project, and determines whether the construction project is approved and whether land acquisition can proceed. The approval directly infringes on the legal rights of the applicant's land use rights, so the applicant has a direct interest in this.



## Basic facts

# Basic facts

- The respondent's Ministry of Environmental Protection submitted an opinion saying that the impact of construction projects on the legitimate rights and interests of units and individuals is based on the environment. The environmental impact report and its approval are for the assessment of environmental impacts after the implementation of the construction project. The scope of the environmental impact assessment is within the farthest distance from which the construction project may have environmental impacts, and the area outside the scope of construction project land. Units and individuals within the scope of construction project land will be relocated before the implementation of the project. **The environmental impact assessment will not consider the impact of the construction project on the units and individuals within the scope of the project land, and will not listed their interest as the goal of environmental protection.** It will not affect the rights and obligations of land use rights holders within the scope of construction project land. The reason for the retrial of the claimant's claim that his land is within the scope of the project involved and the infringement of his land use rights is not valid.

# Verdict of Court

- The court held that the legislative objectives of the environmental impact assessment system are focused on the analysis, prediction and evaluation of the impacts on the environment after the completion of construction projects; the compensation for land acquisition of construction projects is generally not within the scope of environmental impact assessment.
- Although the approval of the complaint may be a prerequisite for the establishment, planning, and land acquisition of the construction project, the land use rights of the land users are not the rights that the environmental protection department should consider and protect according to law when making environmental assessment approvals. If the land used by the plaintiff was levied due to the implementation of the construction project, and the corresponding compensation behavior was not satisfied, the relevant lawsuit should be selected, such as prosecute the collection of compensation for administrative actions.



# Main related article

- Article 11 of the Environmental Impact Assessment Law stipulates that
- *"In case a program may cause unfavorable environmental impacts or directly involve the environmental interests of the general public, the organ that works out the special programs shall, prior to submitting the draft of the programs for examination and approval, seek the opinions of the relevant entities, experts and the general public about the draft of the report 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."*

# Our findings :

- From the original intention of the design of the environmental impact assessment system, a very important purpose is to provide a communication procedure for the expression of public opinions, so that the government can consider the opinions of all parties when making decisions concerning the environment.
- 1<sup>st</sup>: “the rights that the environmental impact assessment should consider” has been mentioned in the judgment but it is not clear that what kind of rights should be contained. **Do we need to consider the rights and interests of land users within the scope of construction projects when making environmental impact assessment approvals?**
- 2<sup>nd</sup>: How to define the scope of “the environmental interests of the general public” ? According to the judgment, the court thought that it could not be involved in the environmental interest, but it seems worthy of consideration.

Thank you

