

The slide features abstract green geometric shapes. On the left, a long, thin green triangle points downwards. On the right, a complex arrangement of overlapping green triangles and polygons in various shades of green and yellow-green forms a large, abstract shape. The main title is centered in a green serif font.

Development and Trend of EIA Litigation in Taiwan

Thomas S.K. Chan


Deputy Minister

Taiwan Environmental Protection Administration (EPA)

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1. A more diverse environmental movement

- 1.1 Despite prosperous economy and increased national income in Taiwan, environmental pollution has become increasingly serious.
- 1.2 As people's lives improved and their knowledge increased, they also gained greater civic awareness.
- 1.3 Taiwan's political transition from authoritarian rule to democratization was accompanied by anti-pollution protests.



1.4 When the environmental impact assessment (EIA) system was introduced to Taiwan, the environmental movement went from the streets to governmental administrative procedures before turning to judicial relief, following the participants' acquisition of greater professional knowledge.

1.5 Although citizens' participation in administrative procedures has been limited, the action of seeking judicial relief has been fruitful, which not only prompted administrative procedures to be adjusted, but even led the government to decide to comprehensively review and revise the EIA system.

2. Qualitative changes of the EIA introduced to Taiwan

2.1 Prototype from the U.S.: Federal agencies assess how and to what extent their decisions affect the environment.

2.2 Qualitative changes in Taiwan

2.2.1 Review how and to what extent the development activities of the development organization affect the environment.

2.2.2 Submit all to the EPA (committee) for review.

3. Development of EIA litigation

- 3.1 Traditional revocation litigation: revocation of EIA conclusions (subjective litigation) = limited to persons or interested parties subject to administrative action (administrative disposition)
- 3.2 Emerging citizen suits: The people or public interest groups through litigation (judicial decisions) prompt a negligent government agency to perform its duties.
- 3.3 The above two types of litigation have resulted in excellent accomplishments in the context of Taiwan's dynamic civil society and heightened environmental awareness.

4. Achievements in the development of litigation over the revocation of EIA—a breakthrough in three barriers

4.1 Barrier 1: Is an EIA conclusion litigious?

4.1.1 Taiwan's first administrative relief against the EIA of the Linnei incinerator BOO project in Yunlin County was initiated by local residents.

4.1.2 The 2001 Nos. 1869 and 1904 rulings by the EPA and Kaohsiung High Administrative Court indicated that an EIA conclusion was merely an internal reference for the government agency to issue development licenses, rather than an independent administrative disposition.

4.1.3 But the 2003 No. 519 ruling issued by the Supreme Administrative Court indicated that an EIA conclusion has a certain legal effect and should be an administrative disposition.

4.1.4 In other words, Taiwan's Supreme Administrative Court recognized that EIA is litigious.

4.2 Barrier 2: Do local residents at the place where development activities occurred being not those subject to administrative disposition meet the proper requirements for the parties involved?

4.2.1 The 2007 No. 1601 judgment issued by the Supreme Administrative Court indicated that the rights and interests that might be infringed were not enough to constitute a basis for obtaining the right of action; but the fact that "the rights and interests have been prejudiced."

4.2.2 After the unremitting efforts of local residents in many cases, the high administrative courts and the supreme administrative courts nation-wide have relaxed the eligibility requirements for the parties involved and reached a consensus that EIA is a preventive mechanism of environmental risk and that pursuant to Subparagraph 2, Article 4; Paragraph 1, Article 5; and Articles 7 and 8 of the Environmental Impact Assessment Act, a normative content that safeguards local residents such as the right to life (including health), the right to work, and the right to property against significant adverse effects, shall be the norm for the protection of local residents. To this end, local residents claim that the review conclusion by the competent authority of EIA shall be subject to the litigation rights of interested parties, "when it may cause adverse or significant impact on their rights or interests." (per the 2013 No. 70 judgment).



4.3 Barrier 3: The discretion of administrative agencies in the EIA and the intensity of judicial review

4.3.1 The EIA system is highly technical in nature and is reviewed by a committee that includes non-governmental experts. In accordance with the principle of administrative law, administrative agencies can have greater discretion, but can the judiciary be involved to review it? And at what intensity?

4.3.2 The 2005 Nos. 944 and 2466 judgments issued by the Taipei High Administrative Court indicated that the adoption or non-adoption based on comprehensive EIA information falls within the scope of the EIA committee's professional judgment. The court shall respect and not investigate the professional and independent judgment by the expert members.

4.4 The 2009 No. 475 judgment, 2010 No. 30 judgment, 2014 Nos. 66, 272, and 704 judgments, and 2015 No. 272 judgment, and 2016 No. 483 judgment issued by the Supreme Administrative Court all reiterated that the scope of judicial review of administrative disposition with professional judgment, such as the EIA conclusion, is as follows:

- 4.4.1 Whether the judgment made by the administrative authority is based on wrong fact-finding or incomplete information;
- 4.4.2 Whether there is any obvious mistake in subsumption when the concept of law involves the factual relationship;
- 4.4.3 Whether the interpretation of legal concepts clearly violates the law of interpretation or contradicts an existing law of higher rank;

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- 4.4.4 Whether the judgment by administrative agencies goes against the generally accepted standard of value judgment;
 - 4.4.5 Whether the judgment by administrative agencies violates the principle of prohibition of improper connection due to irrelevant considerations;
 - 4.4.6 Whether the judgment by administrative agencies violates the legal due process;
 - 4.4.7 Whether the administrative agency making judgement is legitimate and has the power of judgement;
 - 4.4.8 Whether the judgment by administrative agencies breaches the principles that relevant countries under the rule of law should abide by, such as the principle of equality and the principle of public welfare.

4.5 Another point worth noting in particular is the Supreme Administrative Court 2007 No. 1601 judgment of the EIA of the Linnei incinerator project in Yunlin County. The judgment indicated that the construction cost of the contractor should not be directly linked to public interest, that if an administrative injunction was illegal, it should be revoked rather than legalized, and that the possibility of state compensation was another matter and should not be confused with it. Less than five months after the decision, the first case of the revocation of the EIA occurred in Taiwan's history of environmental litigation and judicial history. On January 31, 2008, the EIA of the Phase 3 development project of Central Taiwan Science Park (CTSP) at Chihsing Farm (Phase 3 CTSP Development Project) was revoked by the Taipei High Administrative Court's 2007 No. 1117 judgment.



4.6 Domino effect

- 4.6.1 After the EIA of the Phase 3 CTSP Development Project was revoked, the EIAs of the development of the Miramar Resort Village at Shanyuan beach in Taitung, and general industrial waste landfills in New Taipei City and Hsinchu County were also cancelled in succession like a domino effect.
- 4.6.2 In the lawsuit over the revocation of EIA of the Phase 3 CTSP Development Project, the Supreme Administrative Court on January 21, 2010 dismissed the EPA's appeal with the 2010 No. 30 judgement, with the case closed.
- 4.6.3 At that time, the licensing authority refused to order the Central Taiwan Science Park Bureau responsible for the implementation of the project to stop work. As a result, local residents filed a petition for a provisional injunction to cease development activities and injunction to stop the execution of permitted development, which were approved by the Supreme Administrative Court. The ruling set a precedent for future motions for temporary rights protection in the EIA lawsuit in the public interest.

5. EIA in the eyes of the judiciary—Achievements in the development of lawsuits over the revocation of EIA

5.1 More than a year after each of the three difficulties were solved, the Supreme Administrative Court passed five consecutive judgments in favor of the residents and the environment on the EIA case—the 2009 Nos. 475, 708, and 772 judgments and the 2010 Nos. 30 and 709 judgments—with its legal opinion increasingly consistent in EIA.

5.2 Taiwan's judicial assessment of EIA following localization and qualitative changes is as follows:

5.2.1 The conclusion of the EIA review after the announcement belongs to an administrative injunction. As to the highly technical and professional judgment, the judiciary should respect the discretion of the administrative agencies, but if the judgment made by an administrative agency is arbitrarily and illegally abused, the judiciary still may revoke or modify it.

5.2.2 The first stage of EIA in Taiwan is only a written review of predictive analysis proposed by the development organization, a screening mechanism by nature, assessing whether the development activities have significant environmental implications.



5.2.3 The second phase of the EIA deals with substantive issues, and it is a more prudent process that requires public participation.

6. Development of citizen suits against EIA

- 6.1 The "citizen suit" clause is a feature of US environmental law. Almost all of environmental protection laws in Taiwan have been introduced from the U.S., and the citizen suit system is no exception.
- 6.2 The U.S. citizen litigation clause empowers individuals to file lawsuits in court, exposing corporate violations of legal environmental obligations or urging authorities to enforce the law strictly. The purpose of the legislation, on the one hand, is to use the pressure of litigation to remind enterprises not to take chances or the competent authority not to be negligent; on the other hand, to provide the public with a channel of participation within the system, so as not to stage a street protest every time they cannot find a way to lodge an appeal.

6.3 The legislative evolution of Taiwan citizen suits is as follows:

- 6.3.1 According to amended Article 9 of the Administrative Litigation Act promulgated on October 28, 1998, to safeguard public welfare, persons may file an administrative lawsuit against the administrative agency for illegal acts that are not related to their rights or legal interests; provided, however, that the law provides otherwise. For legislative reasons, this article was added to maintain public welfare by referencing the provisions of Articles 5 and 42 of the Japanese Administrative Litigation Act concerning civil litigation.
- 6.3.2 According to Paragraph 1, Article 34 of the Basic Environment Act promulgated on December 21, 2002, "if a government entity at any level is negligent in enforcement, persons or public interest groups may, in accordance with laws and regulations, name said competent authority as a defendant and directly file a lawsuit with the Administrative Court.
- 6.3.3 The above two legal provisions are declaratory in nature. In essence, there must be specific provisions of individual laws to give the power of prosecution, so that the citizen suit system can truly operate.

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- 6.3.4 The US's citizen suit system was introduced to Taiwan over time into various laws: the Air Pollution Control Act as amended and promulgated on January 20, 1999 (Article 74 at the time was amended and then moved to Article 81, and now to Article 93), followed by the Waste Disposal Act (Article 72), the Water Pollution Control Act (Article 72), the Soil and Groundwater Pollution Remediation Act Chinese (Article 54), and the Marine Pollution Control Act (Article 59). The Environmental Impact Assessment Act as amended and promulgated on January 8, 2003 also followed suit and made amendments (Paragraphs 8 and 9, Article 23 thereof).
- 6.3.5 These clauses are under the provisos of Article 9 of the Administrative Litigation Act and Article 34 of the Basic Environment Act.
- 6.3.6 The most recent legislation in Taiwan was the Spatial Planning Act passed by Taiwan's legislature on December 18, 2015. The formulated citizen suits provisions apply to where the land authority is found negligent in cracking down on the illegal use of land following the implementation of spatial planning in Taiwan in the years to come.

6.4 Qualitative changes after reintroduction

6.4.1 In the U.S., the citizen suits fall into two categories: One is to prosecute private enterprises discharging pollutants for breach of their statutory obligations to prevent and control pollution; and the other is to prosecute the administrator of the EPA for negligence in fulfilling his/her statutory obligations.

6.4.2 However, the above provisions in Taiwan introduced from the U.S. citizen suit system only apply to the lawsuits against environmental authorities for failing to enforce their legal obligations.

6.4.3 Such qualitative change undermines the good intention of the citizen suit system.

6.5 Taiwan's society is driven by civil forces. With legal provisions, citizens and public interest groups have been making good use of them and launching into legal battles, resulting in several successful cases of citizen suits, which are listed as follows:

Legal basis	Air Pollution Control Act	Water Pollution Control Act	Waste Disposal Act	Environmental Impact Assessment Act	Article 9 of the Administrative Litigation Act	Basic Environment Act
Plaintiff status						
Public interest groups (including cases brought together with victims)	-	-	Won: 1 Lost: 1	Won: 1 Lost: 6	Won: 0 Lost: 2	-
Only victims	Won: 0 Lost: 1	Won: 0 Lost: 1	Won: 0 Lost: 3	Won: 1 Lost: 10	-	Won: 0 Lost: 1
Total (cases)	1	1	5	18	2	1

6.6 The essentials of Taiwan's citizen suits—take the provisions of Paragraphs 8 and 9, Article 23 of the Environmental Impact Assessment Act for example

- 6.6.1 The development organization must violate the Environmental Impact Assessment Act or relevant orders thereunder.
- 6.6.2 The competent authority must be negligent in enforcing legal obligations.
- 6.6.3 The victims or public interest groups shall notify the competent authority in writing, stating its specific negligent behavior, but it still fails to fulfill its duties more than 60 days after receipt of the written notification.

6.6.4 The victims or public interest groups may name the competent authority at issue as a defendant and directly file a lawsuit with an administrative court in order to seek a ruling ordering the competent authority to carry out implementation.

6.6.4.1 Who are the "victims"?

The subjects of a citizen's lawsuit changed from "any individual or group" to "the victims or public interest groups."

6.6.4.2 What are public interest groups?

- The law does not expressly provide for that
- Article 35 of the Administrative Litigation Act
- “Public interest groups” = “Non-profit organizations”
- Do they need to be related to the articles of association or other items?

6.7 Case explanation

6.7.1 Miramar Resort Village

6.7.2 Hsinchu County Hukou trash transfer

6.7.3 Taoyuan Airport runway number three

The development project of the Miramar Resort Village at Shanyuan beach in Taitung, Taiwan







7. Conclusions

7.1 At present, the EIA litigation in Taiwan is mainly centered on the “action over the revocation of the EIA review conclusion” and “citizen suits.” In the lawsuit over the revocation of the conclusion of the EIA review, not only has the administrative injunction restriction been lifted, but the scope of the eligibility requirements for the parties involved has also been relaxed, which has contributed a lot in rectifying the violation of the EIA law. In the citizen suit, the law stipulates that only “the victims or public interest groups” can initiate lawsuits. Although the scope of public interest litigation has been limited, there are still three wins to warn the competent authorities to perform their duties in a responsible manner.

7.2 In the case of the Miramar Resort Village project, the company circumvented the EIA first and after a hasty EIA, underwent a citizen suit and a lawsuit over the revocation of the EIA. The case is the first in Taiwan in which the ruling was in favor of the plaintiff in a citizen suit and the only case in Taiwan where a second EIA was revoked by the court. It became a classic example of environmental litigation in Taiwan. Another example is the Phase 3 CTSP Development Project. It was the first case in Taiwan where the EIA was cancelled by the court. The final result of the case is that the Ministry of Science and Technology, which is responsible for the development of Taiwan's high-tech industry, must agree to a donation of NT\$50 million from the Central Taiwan Science Park Bureau to set up an environmental protection foundation and give two-thirds of its board's seats to citizens and public interest groups. This means the foundation is funded by the government but run by the people. The two cases are examples of Taiwan's environmental movement's transformation from simple street protests to greater diversity.

7.3 How to redesign a new system that combines credibility and efficiency through teamwork between the public and private sectors with non-governmental forces so as to increase citizen supervision and reduce unnecessary EIA disputes will be the most important new issue in Taiwan's current EIA system.



✂ Thanks for your attention
✂ Q & A session