New Progress on PRC Environmental Protection Law and Key Management Issues regarding Environmental Compliance of Foreign Enterprises in the PRC

The PRC legalization of environmental protection was launched upon the promulgation of first PRC environmental protection law (i.e. the *Environmental Protection Law (For Trial Implementation)*) in 1979, and has lasted for more than 30 years since then. However, with the rapid growth of the Chinese economy, Chinese environmental pollution has become more and more serious over the past 30 years, especially air, water and soil pollution, which attracted extensive attention from Chinese citizens, government and aroused widespread concern at home and abroad. Since the 18th Chinese Communist Party (the “CPC”) National Congress, the Central Committee of the CPC and Chinese government has paid unprecedented attention to the work of environmental protection. Mr. Xi Jinping, President of the PRC and General Secretary of the CPC, has made more than 200 comments and instructions on ecological protection. Mr. Li Keqiang, Prime Minister of the State Council, has made important comments on environmental protection on many occasions and expressly stated to “firmly fight against pollution”. In other words, the CPC and the State Council have demonstrated their determination and action in resolving the current outstanding environmental problems (including air pollution), the intensity and degree of which are unprecedented.

From 2013 to 2016, a series of environmental protection laws and regulations have been revised and updated, especially the promulgation of the so-called the strictest “Environmental Protection Law” in 2013, which led to tremendous changes of Chinese legal regime on environmental law. Consequently, the pollutant emission enterprises’ cost of violation of laws rose sharply, and the regulatory department’s supervision and punishment intensity significantly increased. In 2016, the Executive Meetings of the State Council passed the “Ecological and Environmental Protection Plan for the 13th Five Year Plan”, proposed that aim for environmental protection is to improve the overall quality of the ecological environment by 2020. To achieve this goal, the PRC government is intensifying its supervision on the environment and will keep intensifying the same in the foreseeable future. For the multinational companies operating in China, the abovementioned changes of law convey a clear signal that environmental protection has become a priority task or even a political task for the PRC government and the era of stricter environmental regulation has come. In view of the earlier case of GlaxoSmithKline, foreign invested companies shall not take chance with the new Environmental Protection Law. On the contrary, foreign invested companies in the PRC shall be prepared in advance to avoid becoming the a experimental target for law enforcement under the new Environmental Protection Law.

In view of the above, this article intends to give an overview introduction of the latest developments in Chinese legislature and law enforcement of environmental protection, and remind the companies on the environmental legal risks under the new situation, as well as key management issues for environmental compliance, so as to help foreign invested enterprises in China to adapt to the new changes to the PRC environmental

---

1 http://www.cc.cn/zt/2016/1017/20161017331697.shtml (Mr. Chen Jining, the Minister of the Ministry of Environmental Protection accepted the media interview.)
I. Legislation and Law Enforcement Progress on Chinese Environmental Protection

1. New Environmental Protection Law

The new *PRC Environmental Protection Law* was promulgated on April 24, 2014 and has been implemented since January 1, 2015. This was the first revision on PRC environmental protection law since the promulgation of the first *PRC Environmental Protection Law* in 1989. The new Environmental Protection Law is known to be the strictest environmental protection law ever. It focuses on solving the issues arising from the past weak implementation; strengthening enterprises’ responsibilities for environmental pollution prevention; intensifying the punishment for enterprises’ violation of environmental law and establishing a regime of environmental public interest lawsuit.

The following key revisions of the new Environmental Protection Law is worth noting:

(1) Strengthening Enterprises’ Responsibilities for Environmental Protection:

A. Environmental Impact Assessment: The new Environmental Protection Law expands the scope of projects that require environmental protection assessment. All plannings on development and utilization as well as construction projects that imposes adverse effect on the environment shall undergo environmental impact assessment\(^2\). Without environmental impact assessment, the plannings are not allowed to be implemented, the construction projects are not allowed to start\(^3\), otherwise, the construction may be ordered to be suspended, a fine may be imposed and the construction unit may be ordered to restore the construction to the original condition.\(^4\)

Meanwhile, for those construction projects that are required to formulate environmental impact assessment report, the new Environmental Protection Law further clarifies the requirements and methods for public participation. The construction unit shall, in the course of formulating the environmental impact assessment report, explain the situation to the public who may be affected and fully solicit their opinions. The department responsible for approving the environmental impact assessment report shall publish the full text of such report. Where the construction unit has not fully solicited public opinions, the construction unit shall be ordered to solicit public opinions.\(^5\)

B. Enterprise Environmental Protection Accountability System: The new Environmental Protection Law provides that pollutant emission enterprises and

---

\(^2\) Section 1 of Article 19 of the Environmental Protection Law

\(^3\) Section 2 of Article 19 of the Environmental Protection Law

\(^4\) Article 61 of the Environmental Protection Law

\(^5\) Article 56 of the Environmental Protection Law
institutional organizations shall establish environmental protection accountability system and specify the responsibilities of the person(s) in charge and relevant personnel. Key pollutant emission enterprises shall install and ensure normal use and operation of monitoring equipment, and keep the original records of monitoring.\(^6\)

C. Total Emission Quantity Control System for Key Pollutants: The new Environmental Protection Law provides that enterprises shall, in the course of implementing national and local pollutant emission standards, comply with the total discharge quantity control indicators of key pollutants applicable to the enterprise.\(^7\)

D. Pollutant Emission Administration System: The new Environmental Protection Law explicitly enforced the “Pollutant Emission Administration System”\(^8\). At the end of 2016, the General Office of the State Council issued the “Implementation Plan for Controlling Pollutant Emission Permit System”\(^9\) and the Ministry of Environmental Protection also issued the *Interim Provisions on the Administration of Pollutant Emission Permit*.\(^10\)

The new Environmental Protection Law treats pollutant emission permit as the core of the environmental management of fixed pollutant source, and connects environmental assessment system, incorporates the total quantity control system for pollutant emission and provides unified pollutant emission statistics for pollutant emission fee, environmental statistics, pollutant emission right trading and so forth.\(^11\) Pollutant emission permit is the main legal instrument for enterprise and institutional organization’s acceptance of environmental supervision during production and operation period and environmental protection department’s implementation of supervision, which requires enterprises to make own declarations, discharge pollutant based on the pollutant emission permit, carry out self-monitoring, establish book of accounts, report regularly and disclose information to the public\(^12\). Pollutant emission permit implements the administration of “comprehensive license with one certificate”, makes unified standards on enterprise and institutional organization’s discharge of air, water and other kinds of pollutants. The authority responsible for issuing the pollutant emission permit shall reasonably determine the type, concentration and emission volume of the pollutants according to pollutant emission standards, total quantity control indicators, environmental impact assessment documents, requirements of the approval and so forth.\(^13\). Currently, the pollutant emission permit concentrates on air pollutants and water pollutants, and will gradually include into the noise, solid waste,

---

\(^6\) Article 42 of the Environmental Protection Law  
\(^7\) Article 44 of the Environmental Protection Law  
\(^8\) Article 45 of the Environmental Protection Law  
\(^10\) HuanShuiTi[2016] No.186 (issued by the Ministry of Environmental Protection on December 23, 2016)  
\(^11\) “Strengthening corporate responsibilities of enterprise and promoting refinement management of environment” - The Vice Minister of the Ministry of Environmental Protection explained the “Implementation Plan for Controlling Pollutant Discharge Permit System” (http://www.nxep.gov.cn/info/1445/53803.htm)  
\(^12\) Article 11 and 33 of the Interim Provisions on the Administration of Pollutant Discharge Permit  
\(^13\) Article 6 and 10 of the Interim Provisions on the Administration of Pollutant Discharge Permit
hazardous waste and etc.\textsuperscript{14}

E. Establishment of Relevant Information Disclosure System: The new Environmental Protection Law includes a special chapter on information disclosure and public participation, which explicitly requires that key pollutant emission enterprises shall truly publish to the public, the name of its key pollutants, emission method, concentration and total quantity of pollutant emission, information on excessive emission as well as construction and operation of pollution prevention facilities, and accept supervision from the public.\textsuperscript{15}

(2) Intensifying the punishment for violation of environmental law:

The new Environmental Protection Law introduced key punishment measures on enterprises:

A. Seizure and Detention: The new Environmental Protection Law provides that with respect to the enterprise that illegally discharged pollutants, the environmental protection department may seize and detain facilities and equipment that discharge pollutants.\textsuperscript{16}

B. Suspension and Limitation of Production: The new Environmental Protection Law provides that with respect to the enterprise whose emission of pollutants exceeds the pollutant emission standards or the key pollutants total discharge quantity control indicators, it may be ordered by the environmental protection department to limit production or suspend production for rectification; in serious cases, the pollutant discharge enterprise may, upon the decision by the people’s government with approval authority, be ordered to suspend operation or shut down.\textsuperscript{17} The old Environmental Protection Law provides that only those enterprises who fail to complete the task of rectification within the time limit set by the government may be decided by the people’s government to suspend operation and shut down.\textsuperscript{18} The new Environmental Law has obviously intensified the punishment.

C. Consecutive Penalty Aggregated on Daily Basis: Where an enterprise is subject to a fine and is ordered to make rectification due to illegal emission of pollutants is

\textsuperscript{14} “Strengthening corporate responsibilities of enterprise and promoting refinement management of environment”

——The Vice Minister of the Ministry of Environmental Protection explained the “Implementation Plan for Controlling Pollutant Discharge Permit System” (http://www.nxep.gov.cn/info/1445/53803.htm)

\textsuperscript{15} Article 55 of the Environmental Protection Law

\textsuperscript{16} Article 25 of the Environmental Protection Law

\textsuperscript{17} Article 60 of the Environmental Protection Law

\textsuperscript{18} Article 39 of the old Environmental Protection Law provides that if an enterprise or institutional organization fails to complete the task of rectification within a specified period, in addition to collecting pollution discharge excess fees, a fine can be imposed or it can be ordered to suspend or cease operations, depending on the degree of damage caused. Environmental protection administrative departments shall determine the amount of fines imposed pursuant to the provisions of the previous paragraph. The people's government which decided the length of the rectification period to be undertaken by a certain unit shall decide whether or not to order the unit to suspend or cease operations. State Council approval must be obtained if ordering an enterprise or institution under the direct jurisdiction of the central authorities to suspend or cease operations.
subject, but refuses to do so, the environmental protection department may impose consecutive daily fines based on the original penalty amount, starting from the day following the order of rectification. The amount of penalty shall be determined in accordance with the operational costs of pollution prevention facilities, direct losses caused by the illegal act, illegal gains and other factors. In view of the above, the penalty imposed for enterprise’s illegal emission of pollutants may be unlimited, which significantly increases the cost of violation of law by enterprise.

D. Recording Information on Environmental Law Violation into Social Credit Archives: Environmental protection department shall record an enterprise’s environmental law violations into the social credit archives and timely publish to the public the list of law violator.

(3) The person in charge of the enterprise is faced with severe personal liabilities:

A. Detention: The new Environmental Protection Law provides that under the following circumstances where the serious environmental violation by the enterprise does not constitute a crime, the person directly in charge of the enterprise and other directly accountable persons may be ordered for detention for a period between 5 days and 15 days:

i) Failure to carry out an environmental impact assessment and refuse to suspend construction when being ordered to do so;

ii) Discharging pollutants without obtaining a pollutant emission permit and refusing to cease discharging pollutants when being ordered to do so;

iii) Illegal emission of pollutants through underground pipes, seepage walls, pits, perfusion, alteration or forgery of monitoring data, circumvention of regulation such as abnormal operation of pollution prevention facilities etc; and

iv) Manufacturing and using of pesticides for which manufacturing and use are prohibited by the state expressly, and refuse to make correction when being ordered to do so.

B. Criminal liability: Article 338 of the Criminal Law provides for the crime of environmental pollution. The Supreme People’s Court and the Supreme People’s Procuratorate jointly issued the Interpretations on Several Issues Concerning the Application of Law to the Handling of Criminal Cases Involving Environmental

---

19 Article 59 of the Environmental Protection Law
20 Section 2 of Article 54 of the Environmental Protection Law
21 Article 63 of the Environmental Protection Law
22 Article 338 of the Criminal Law provides that whoever, in violation of the national regulations, discharges, dumps or disposes of any radioactive waste, any waste containing pathogens of any infectious disease, any poisonous substance or any other hazardous substance, which has caused serious environmental pollution, shall be sentenced to imprisonment of not more than three years or criminal detention and/or a fine; or if there are especially serious consequences, be sentenced to imprisonment of not less than three years but not more than seven years and a fine.
Pollution\textsuperscript{23} at the end of 2016, which specifically provided on determination of environmental pollution crime. Based on the aforementioned provisions, where an enterprise commits the crime of environmental pollution, the person directly in charge and other directly accountable persons shall be convicted and the enterprise shall be imposed a fine, i.e. the person directly in charge of the enterprise may be sentenced to fixed-term imprisonment of less than three years or criminal detention. If there are especially serious consequences, the person directly in charge of the enterprise may be sentenced to fixed-term imprisonment of less than seven years but more than three years and be imposed a fine.

(4) The public is encouraged to carry out supervision on environmental violations: The new Environmental Protection Law provides that citizens, legal persons and other organizations that discover environmental pollution and ecological destruction by any organization or individual are entitled to report such violations to the environmental protection department. Where the environmental protection department fails to perform its responsibilities, citizens, legal persons and other organizations are entitled to report such non-performance to their superior authorities or the supervision authorities.\textsuperscript{24} The Ministry of Environmental Protection has issued the \textit{Administrative Measures on Environmental Protection Complaint Hotline}\textsuperscript{25} and has activated “12369” environmental protection complaint hotline and online complaint platform, so as to accept public complaints on environmental violations. According to the circular issued by the Ministry of Environmental Protection in December 2016, there are a total of 32480 various complaints on environmental violations received by environmental protection departments at all levels across the nation. The public supervision on environmental violations significantly increased\textsuperscript{26}.

(5) Environmental public interest lawsuit: The new Environmental Protection Law established the environmental public interest lawsuit regime. With respect to the actions that pollute the environment and harm the public interests, competent social organization may bring a lawsuit to the court. The specific conditions for social organization to bring a public interest lawsuit are 1) such social organization shall be legally registered with the civil affairs department subordinated to a people’s government above the level of municipality; and 2) such social organization shall specialize in environmental protection public interests activities without the record of violation of law for five consecutive years\textsuperscript{27}. It is estimated that the number of the social organizations meeting the conditions so far are approximately 700\textsuperscript{28}. In addition to the local environmental protection associations, social organizations which have national influence include China Environmental Protection Federation, Friends of Nature Foundation and so forth.

\textsuperscript{23} FaShi[2016]No.29 (issued by the Supreme People’s Court and the Supreme People’s Procuratorate on December 23, 2016 and being implemented since January 1, 2017)
\textsuperscript{24} Article 57 of the Environmental Protection Law
\textsuperscript{25} No. 15 Order by the Ministry of Environmental Protection (effective since March 1, 2011)
\textsuperscript{26} The Ministry of Environmental Protection reported the handling situation for 12369 environmental complaints around the nation in December, 2016. (http://www.zhb.gov.cn/gkml/hbb/qt/201701/t20170125_395297.htm)
\textsuperscript{27} Article 58 of the Environmental Protection Law
\textsuperscript{28} “Big Data Report on Environmental Public Interest Lawsuit” made by Jiang Dan and Ma Weiqiu (http://www.360doc.com/content/15/1228/18/29793782_523747147.shtml)
At the end of 2015, the General Office of the CPC and the General Office of the State Council issued the *Pilot Scheme for the Reform of the System of Compensation for Ecological Environment Damage*[^29^], proposing that some provinces will be selected to carry out the reform of the system of compensation for ecological environment damage from 2015 to 2017, and the system of compensation for ecological environment damage will be implemented for trial around the nation starting from 2018. The scheme strives to preliminarily establish the system of compensation for ecological environment damage with clear responsibilities, smooth ways, technical specifications, enforceable protection, proper compensation and effective restoration around the nation by 2020. In the middle of 2016, Jilin, Jiangsu, Shandong, Hunan, Chongqing, Guizhou and Yunnan provinces have carried out the system of compensation for ecological environment damage[^30^].

At the end of 2014, the Supreme People’s Court, Ministry of Civil Affairs and Ministry of Environmental Protection jointly issued the *Notice on Implementing the Environmental Civil Public Interest Lawsuit System*[^31^]. Meanwhile, the Supreme People’s Court also issued the *Interpretation of the Supreme People’s Court on Several Issues Relating to Laws Applicable for Trial of Environmental Civil Public Interest Cases*[^32^]. If certain damage is caused by environmental pollution, the damaging party shall bear the tort liability in accordance with the provisions of the *Tort Law*. The plaintiff may request the defendant to bear the civil liability of cessation of damage, elimination of obstruction, elimination of danger, restoration of original condition, compensation for losses, apologize and so forth. After accepting environmental civil public interest lawsuit, the court shall notify the competent environmental protection department, which may carry out verification based on the case findings. In case the defendant’s behavior constitutes an environmental administrative offense, the competent environmental protection department shall handle the offense pursuant to the law and notify the court thereof. The court may rule that the defendant shall restore the ecological environment and may entrust a third party to restore ecological environment, and if necessary, may also consult and request the competent environmental protection department with supervision responsibilities to jointly organize the restoration of ecological environment. The court may entrust an evaluation institution to evaluate the restoration result and consult and request the competent environmental protection department to assist for examination. Institution of environmental civil public interest lawsuit will not affect the tort action separately brought by the citizen, legal person and other organization that are affected by the same act of environmental pollution and ecological destruction and suffered personal and property damage thereof. The facts that have been recognized by an effective court judgment for environmental civil public interest lawsuit are not required to be proved in such civil proceedings.

To match with the new Environmental Protection Law, the Ministry of Environmental Protection issued a series of supporting documents solely or jointly with related

[^29^]: Issued by the General Offices of the CPS and State Council and take effect on December 3, 2015
[^31^]: Issued by the Supreme People’s Court, the Ministry of Civil Affairs and the Ministry of Environmental Protection and take effect on December 26, 2014
departments and judiciary authorities, including *Rules for Environmental Administrations in Levying Fines Accumulating on Daily Basis*[^33], *Measures for Imposition of Attachment and Detention by Competent Environmental Protection Departments*[^34], *Measures for Environmental Administrations in Limiting or Halting Pollution-causing Production*[^35], *Rules on Environment Information Disclosure of Enterprises and Public Institutions*[^36], *Catalogue for Classified Administration of Environmental Impact Assessment on Construction Projects*[^37], *Measures for Public Participating in Environmental Protection*[^38], *Emergency Management Measures for Abrupt Environment Incidents*[^39], *Temporary Provisions on Management for Pollutant Emission Permit*[^40], *Administrative Measures for Filing of the Environmental Impact Registration Form of Construction Projects*[^41], and *Administrative Measures for the Environmental Impact Post-Assessment of Construction Projects (for Trial Implementation)*[^42], etc.

2. Other Environmental Laws and Regulations

Apart from the new Environmental Protection Law, other laws and regulations related to environmental protection were amended in the corresponding period. These laws and regulations, together with the new Environmental Protection Law constitute the general framework and system of China’s environmental protection laws in the new age, which mainly includes:

(1) The newly amended *Law of the People's Republic of China on Prevention and Control of Atmospheric Pollution*, effective from January 1, 2016;

(2) The newly amended *Environmental Impact Assessment Law of the People's Republic of China* effective from September 1, 2016;

(3) The newly amended *Law of the People's Republic of China on the Prevention and Control of Environmental Pollution caused by Solid Waste* effective from November 7, 2016;


(5) The newly amended *Regulations on the Prevention and Control of Vessel-induced Pollution to the Marine Environment* effective from March 1, 2017;

(6) On December 27, 2016, the State Council announced the *Amendment to Law of the People's Republic of China on the Prevention and Control of Water Pollution*

[^33]: Issued by the Ministry of Environmental Protection on December 19, 2014; implemented from January 1, 2015.
[^34]: Issued by the Ministry of Environmental Protection on December 19, 2014; implemented from January 1, 2015.
[^35]: Issued by the Ministry of Environmental Protection on December 19, 2014; implemented from January 1, 2015.
[^36]: Issued by the Ministry of Environmental Protection on December 19, 2014; implemented from January 1, 2015.
[^37]: Issued by the Ministry of Environmental Protection on December 19, 2014; implemented from January 1, 2015.
[^38]: Issued by the Ministry of Environmental Protection on December 19, 2014; implemented from January 1, 2015.
[^39]: Issued by the Ministry of Environmental Protection on April 16, 2015; implemented from June 5, 2015.
[^40]: Issued and implemented by the Ministry of Environmental Protection on December 23, 2016.
[^41]: Issued by the Ministry of Environmental Protection on November 16, 2016; implemented from January 1, 2017.
[^42]: Issued by the Ministry of Environmental Protection on December 20, 2015; implemented from January 1, 2016.
(Draft), and sought for public opinion. The period for seeking public opinion ended on January 26, 2017;

(7) The Standing Committee of the National People’s Congress announced Environmental Protection Tax Law of the People's Republic of China on December 25, 2016, which will be implemented on January 1, 2018.

II. The Recent Continuous Reinforcement on Law and Judicial Enforcement regarding Environmental Protection in China

After the implementation of the new Environmental Protection Law, the Ministry of Environmental Protection has held “Environmental Law Implementation Year” for two consecutive years. According to the disclosed data, the supervisory and enforcement force on environmental protection in China has been increasingly reinforced.

1. The administrative penalty situation for environmental protection in the latest three years

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of accepted cases re violation of environmental laws (ten thousand)</th>
<th>Increase year on year</th>
<th>Numbers of administrative penalty decisions (ten thousand)</th>
<th>Increase year on year</th>
<th>Amount of the fine (hundred million)</th>
<th>Increase year on year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>7.3</td>
<td>10.5%</td>
<td>8.3</td>
<td>25.5%</td>
<td>31.7</td>
<td>34.4%</td>
</tr>
<tr>
<td>2015</td>
<td>10.3</td>
<td>41%</td>
<td>9.7</td>
<td>17%</td>
<td>42.5</td>
<td>34%</td>
</tr>
<tr>
<td>2016</td>
<td>13.8</td>
<td>34%</td>
<td>12.4</td>
<td>28%</td>
<td>66.3</td>
<td>56%</td>
</tr>
</tbody>
</table>

2. Supervision and Examination Situation of the Ministry of Environmental Protection

According to the past Environmental State Bulletin issued by the Ministry of Environmental Protection, in 2014, the Ministry of Environmental Protection carried out environmental comprehensive inspection in 25 cities, where persons-in-charge from 6 cities were publically interviewed, and 2177 cases were listed for supervision and examination. In 2015, the Ministry of Environmental Protection carried out comprehensive inspection in 33 cities (districts), where persons-in-charge of 15 municipal governments were publically interviewed. 163 cities across the country carried out comprehensive inspection, where 31 cities were publically interviewed; limit approval

---

43 Data comes from China Environmental State Bulletin issued over the years by the Ministry of Environmental Protection.
44 2014 China Environmental State Bulletin
for regional environmental impact assessment were implemented in 20 cities and counties; and 176 issues were listed for supervision and examination. In 2015, the environmental protection inspection were carried out, where 1.77 million enterprises were inspected across the country, 191,000 illegal enterprises of various kinds were investigated and punished, 20,000 enterprises were ordered to shut down or to be banned, 34,000 were forced to halt production, and 89,000 were ordered to make rectification within a time limit. The government enabled Wechat reporting platform, where more than 13,000 reporting clues across the country were received and handled\textsuperscript{45}.

In 2016, the Ministry of Environmental Protection listed 27 significant environmental law violation cases for supervision and examination, organized investigation and prohibition on 2,465 “ten mini” enterprises (i.e. papermaking, leather making, printing and dyeing, dye, coking, smelting sulfur, smelting arsenic, oil refining, electroplating, and pesticide enterprises of small size which fail to comply with the industrial policies of the country)\textsuperscript{46}.

3. Attachment, Detention, Production Restriction and Suspension, Daily-Compounded Fine and Transferring for Criminal Investigation.

In 2014, various local Environmental Protection Administrations transferred 2180 environmental law violation cases to Public Security Organizations, which tripled the amount of 2013, and doubled the total amount of the past ten years\textsuperscript{47}. The Public Security Organizations accepted 2080 cases, which is 1443 more than 2013; the acceptance rate of which is 95.4%\textsuperscript{48}.

New measures such as attachment and detention, production restriction and suspension, daily-compounded fine and transferring for criminal investigation stipulated in the new Environmental Protection Law came into operation in 2015. In 2015, there were more than 8,000 cases where attachment and detention, production restriction and suspension, or daily-compounded fine were imposed, and around 3,800 cases were transferred for administrative detention and involved in environmental pollution crime\textsuperscript{49}.

In 2016, the Environmental Protection Administrations enforced 9,976 cases of attachment and detention, 5,673 cases of production restriction and suspension, 1,017 cases of daily-compounded fine, which increased by 138%, 83%, and 42% respectively compared to 2015; 4,041 cases were transferred for administrative detention, which increased by 94% on year-on-year basis; 2,023 cases were transferred for criminal investigation for environmental pollution crime, which increased by 20% on year-on-year basis\textsuperscript{50}.

Currently, this tendency is continuing. In the first quarter of 2017, there are a total of

\textsuperscript{45} 2015 China Environmental State Bulletin
\textsuperscript{46} 2016 China Environmental State Bulletin
\textsuperscript{47} 2014 China Environmental State Bulletin
\textsuperscript{48} http://www.fzyshcn.com/html/fazhi/18298.html
\textsuperscript{49} 2015 China Environmental State Bulletin
\textsuperscript{50} http://field.10jqka.com.cn/20170427/c598268334.shtml
4,987 cases applying the new Environmental Protection Law and its supplemental regulations, among which, 224 cases imposed daily-compounded fine showing an increase of 54% on year-on-year basis with a total penalty amount of RMB 263,750,000; 2,190 cases imposed measures of attachment and detention showing an increase of 229% on year-on-year basis; 1,228 cases imposed measures of production restriction and suspension showing an increase of 308% on year-on-year basis; 958 cases were transferred for administrative detention showing an increase of 206% on year-on-year basis; and 387 cases were transferred to the Public Security Organization for crime investigation showing an increase of 46% on year-on-year basis\(^{51}\).

4. Strengthening of environmental law enforcement and judicial contingent

According to Guiding Opinions Regarding Pilot Work on the Reform of Vertical Management System for Monitoring Enforcement of Environmental Protection Institutions under Provincial Level\(^{52}\) issued by the General Office of CPC Central Committee and General Office of the State Council, the focus of environment law enforcement is moving down to cities and counties, to enhance the construction of enforcement contingent on primary level, and strengthen territorial environment law enforcement. The environment law enforcement institutions are legally entitled with the condition and methods to conduct on-site inspection, administrative penalty, and administrative arbitrariness. The environment law enforcement institutions are listed as government law-enforcing department, equipped with investigation and evidence collection, and mobile law enforcement. The government unified the uniforms of the environment law enforcement officers, and took measures to ensure availability of the motor vehicles for environmental law enforcement.

The Public Security Organization specially issued Standards for Equipments of Environmental Safety Security Department of Public Security (for trial implementation)\(^{53}\) to promote team construction and practice construction of investigation for environmental pollution crime around China. At present, 9 provinces including Beijing, Shanxi and etc. have organized environmental police team.

With respect to the court, the Supreme People’s Court established environment resources adjudication division. Till the end of 2016, 192 environment resources adjudication divisions were established in around three thousand courts of four levels across the nation\(^{54}\). The environmental law enforcement and judiciary power has been dramatically enhanced.

5. Public Interest Lawsuit

The year 2015 was regarded as the beginning year of China’s environmental public interest lawsuit. According to the media report, from 2015 to 2016, environmental public interest lawsuits accepted by the courts across the country exceeded 100\(^{55}\),

---

\(^{51}\) http://field.10jqka.com.cn/20170427/c598268334.shtml  
\(^{52}\) Zhong Ban Fa [2016] No. 63  
\(^{53}\) Minister of the Ministry of Environmental Protection Ji Chen’s answer reporter’s request, http://www.sohu.com/a/128544462_159833  
\(^{54}\) Dongsheng Bi of the Supreme People's Court explains big data and new practice of nationwide environmental resources judgment http://www.360doc.com/content/16/1113/12/719224_606179047.shtml  
\(^{55}\) http://news.163.com/16/0727/19/BT0LUB6D00014SEH.html
among which, in 2015, the environmental protection organizations and procuratorial organs, as the plaintiff, filed 44 environmental public interest lawsuits. Territory-wise, the majority of environmental public interest lawsuits occurred in Jiangsu Province, and mostly centered in Jiangsu, Ningxia, Guizhou, Beijing, Shangdong, Fujian, and etc. The industries of such lawsuits mainly involve chemical industry, food and medical, garbage or sewage disposal, livestock breeding, mining, real estate, traveling, and hydroelectric development, etc., among which, the chemical industry accounts for the majority of the cases.

It is worth mentioning the case of Jiangsu Taizhou Environment Federation vs. Taixing Jinhui Chemical Co., Ltd., a water pollution civil public interest lawsuit known as a “top price” environment public interest lawsuit. On January 21, 2016, this case was closed by the Supreme People’s court rejecting the retrial application of Jinhui Company. From January 2012 to February 2013, Jinhui Company and other five companies, the defendant, sold hazardous wastes, waste hydrochloric acid and waste sulfuric acid generated in productive process to relevant companies without hazardous waste treatment qualification at prices ranging from RMB20 per ton to RMB 100 per ton, the total amount of which reached 25 thousand ton. Those wastes were furtively discharged into Rutai canal in Taixing and the ancient maicon river in Gaogang Taizhou, resulting in serious water pollution. Taizhou Environment Federation requested the court to rule that the defendants, i.e. the six companies, to compensate RMB160 million for environmental rehabilitation, and RMB100,000 for valuation costs. The case was judged in the first instance by Jiangsu Taizhou intermediate People’s Court, second instance by Jiangsu Superior People’s Court, and retrialed of the Supreme People’s Court. The courts believed that Taizhou Environment Federation has the legal standing as the plaintiff and had the right to file environment public interest lawsuit, and also confirmed that the action of disposal of acid byproduct of these six defendant enterprises had the causation for the severe pollution in ancient maicon river and Rutai canal. Therefore, the defendants shall take the liability for damage for environmental restoration. Based on the environmental restoration identified by expert conclusion and the opinion of expert witness, the courts judged that the six enterprises shall compensate for environmental restoration, the compensation amount reached more than RMB 160 million.

III. Major Environmental Law Risk Factors Faced by Foreign Invested Enterprises and Key Compliance Management Issues under the New Environmental Protection Law

Under the new Environmental Protection Law and its supplemental regulations, enterprises, especially foreign invested enterprises operated in China, are faced with environmental law risks throughout the whole operation period from the earlier stage of project construction, to the construction period and after the construction. Such risks are summarized as follows:

56 http://www.ce.cn/xwzx/shgj/gdxw/201612/19/t20161219_18839929.shtml
59 http://www.chinacourt.org/article/detail/2017/03/id/2574322.shtml
1. At the earlier stage of project construction. Enterprises shall make sure that the construction project complies with requirements of environmental impact assessment for planning and construction project. Enterprises shall take strict precautions against the act of construction without approval. According to provisions of the new Environmental Protection Law and Environmental Impact Assessment Law, were a construction unit commenced construction without approval, or enterprises started construction without authorization, departments in charge of environmental protection supervision and administration shall order it to stop the construction, impose a fine of 1% to 5% of the overall investment amount for such construction project, and order it to restore to the original state. Where the construction unit refuses to carry out the order, the person-in-charge and responsible personnel of the construction project will face administrative detention. Moreover, enterprises shall correctly determine the type of documents applicable for the environmental impact assessment. Where a construction union lowers the level of environmental impact assessment without authorization, and applies for environmental impact registration form filing, once discovered, the obtained filing will be invalidated by the environmental protection administration, and the construction unit will be punished in the same way of construction without prior approval.

2. During construction period of the construction project. When significant change occurs in the construction project, the construction unit shall submit the environmental impact assessment documents again without any delay. If the project starts construction after five years upon the issuance of the environmental impact assessment approval, the environmental impact assessment documents shall be re-approved by the original examination and approval department. Enterprises shall strictly obey the policy of “three simultaneous” during the project construction period, namely facilities for preventing and controlling pollution and the main construction shall be designed simultaneously, constructed simultaneously, and put into use simultaneously. It is worth noticing that examination of the environmental protection administration regarding trial production of the construction project and relevant

---

60 Article 31 of Environmental Impact Assessment Law stipulates Where a construction unit commenced construction prior to submission of the environmental impact report and environmental impact statement of the construction project or prior to resubmission of the environmental impact report and environmental impact statement in accordance with provisions of Article 24 of this Law, the environmental protection department at the county level or above shall order it to stop the construction, impose a fine of not less than 1% but not more than 5% of the overall investment amount for such construction project according to the seriousness and consequences of such violations, and order it to restore to the original state; and the person-in-charge and responsible personnel of the construction project shall be liable to administrative sanctions in accordance with laws.

61 Article 20 of Administrative Measures for Filing the Environmental Impact Registration Form for Construction Projects stipulates that Where the construction units, without authorization, make bold to reduce the environmental impact assessment rating, fill in the environmental impact registration form and go through the formalities of filing the construction projects that require preparation of the environmental impact report or the report form as stipulated in the Catalog of the Classified Management of the Environmental Impact Assessment of Construction Projects, which is in violation of the provisions of these Measures, the environmental protection departments at the county level shall, upon verification, render the filing obtained by the construction units invalid, publicize such invalidity to the general public and deal with cases according to the following provisions:
1. Those that fail to legally apply for the filing of the environmental impact report or report form and start construction without authorization shall be punished in accordance with the provisions of Article 61 of the Environmental Protection Law and Paragraph 1, Article 31 of the Law on Environmental Impact Assessment.
2. Those that fail to legally apply for the filing of the environmental impact report or report form and start production and operation without authorization shall be punished respectively in accordance with the provisions of Paragraph 1, Article 31 of the Law on Environmental Impact Assessment and the Administrative Regulations on the Environmental Protection of Construction Projects.

62 Article 24 of Environmental Impact Assessment Law
approval for completion acceptance has been cancelled\textsuperscript{63}. Therefore, enterprises shall voluntarily organize acceptance for environmental protection of the completed project, and bear relevant liability by itself, based on the conclusion of the environmental impact assessment documents of the construction project and the official pinion of the environmental protection administration.

3. Production and operation period. Enterprises shall apply for sewage discharge permission according to law before formal operation of the project. Enterprises without sewage discharge permission are not allowed to discharge pollutants. Enterprises shall discharge pollutants within the index of national and local pollutants discharging standard and total key pollutants discharge amount allocated to the enterprise\textsuperscript{64}. With regard to projects requiring environmental impact assessment report, enterprises shall conduct construction project environmental impact post-assessment, and compile environmental impact post-assessment documents and submit to competent environmental protection administration for filing\textsuperscript{65}. Upon formal operation of the project, enterprises shall initiate environmental monitoring without any delay, and guarantee normal operation of pollution prevention facilities. Key pollutants emission units monitored by the national and local administrations shall install and use monitoring facilities in accordance with relevant regulations and monitoring rules of the country, guarantee normal operation of the monitoring facilities, and keep original monitoring records\textsuperscript{66}. Various key pollutant emission units which discharge industrial waste gas and industrial wastewater shall install and use automatic monitoring facilities for pollutant discharging, build network with the monitoring facilities of the environmental protection administration, guarantee normal operation of the monitoring facilities, and publicize discharging information according to law\textsuperscript{67}.

To sum up, foreign invested enterprises operated in China shall have all-around and sufficient cognition for the new situation of China’s environment laws and environmental protection law risks to enterprises. Moreover, from now on, foreign invested enterprises in China shall strengthen compliance management for environmental protection of themselves. During the whole corporate life cycle from prior project construction to production operation period, compliance management for environmental protection shall become one of the key points of enterprises’ compliance management. Once the compliance risk of environmental protection actually occurred (i.e. when enterprises are faced with administrative investigation or administrative punishment from the environmental protection administration), enterprises shall not make light of it or take changes, instead enterprises shall engage experienced professional attorneys at very beginning to assist the enterprise to solve the administrative punishment issues, so as to control relevant legal risks within the minimum or acceptable scope.

\textsuperscript{63} Item 25 of Decision of the State Council on Canceling the First Batch of 62 Items Subject to Administrative Examination and Approval of Local Governments Designated by the Central Government issued by the State Council on October 11, 2015
\textsuperscript{64} Article 44 of Environmental Protection Law
\textsuperscript{65} Article 6 of Administrative Measures for the Environmental Impact Post-Assessment of Construction Projects (for Trial Implementation)
\textsuperscript{66} Item 3 of Article 42 of Environmental Protection Law
\textsuperscript{67} Article 24 of Prevention and Control of Atmospheric Pollution; Article 23 of Prevention and Control of Water Pollution