



IVL Swedish Environmental
Research Institute



贵州省环境保护国际合作中心
Guizhou International Cooperation Centre
for Environmental Protection



Policy Input to NPC and SPC – questions and answers EU-China Environmental Governance Programme

关于人大和最高法提及问题的回复
中欧环境治理项目-贵州项目

EGP-Guizhou Province
环境治理项目-贵州项目

Improving access to environmental justice
to protect people's environmental rights
in Guizhou province

推动贵州环境司法发展维护贵州公众环境权益

A Local Partnership Project within the
EU-China Environmental Governance Programme
(EU-China EGP)

中欧环境治理项目--地方伙伴项目

This project is funded by the European Union

该项目由欧盟资助

1. Several Issues Regarding Administrative Public Interest Litigation:

1.1. Who may lodge an administrative public interest litigation?

It is suggested that an administrative public interest litigation should be lodged by either:

- (I) Representatives of the NPC in the jurisdiction where such damage occurred or where is so affected. The reason is that the responsibility of representatives of the NPC should be expanded, as in view of the role of representatives of the NPC, to protect the public interest is also their responsibility; or
- (II) NGOs. Of course, some restrictions may be imposed on the qualification of NGO through legislation.

1.2. In addition to environment protection, what else are covered by administrative public interest litigations?

It is suggested that administrative public interest litigations also cover administrative actions impairing human health and life interests, and with wide influence within a certain region, such as actions in the realms of medical and medicine, foods, and production and living supplies.

1.3. Is there any prerequisite for lodging an administrative public interest litigation, such as all administrative means have already been tried but in vain?

It is suggested that there should not be any prerequisite other than the administrative review prior to litigation as required by laws so as to facilitate supervision on the lawful enforcement of administrative authorities.

1.4. May claims be made against either action or inaction of administrative authorities?

Claims can be made against either action or omission of administrative authorities on account that administrative authorities should administer lawfully, without crossing their lines or neglecting their duties, according to the requirements of building government ruled by law.

The current practice is focusing more on the inaction of administrative authorities.

- 1.5. Is it true that an administrative public interest litigation can only be lodged under the circumstance that the public interest is "severely infringed"?

It is suggested that an administrative public interest litigation must be lodged not only under the circumstance that the public interest is "severely infringed", but also under the circumstance that the public interest is likely to be "materially impaired". However, some restrictions should be imposed on such "likely to be". The reasons are that:

- (I) The hearing system by which the public express their opinions on significant administrative decisions and actions should be supervised so that it will not be a mere formality; and
- (II) Wrong application of legal basis for significant administrative decisions and actions will lead to the application of legal relief under the circumstance that the public interest is "materially impaired".

2. Issues Regarding Judicial Enforcement on Environment:

- 2.1. How do EU member states judge whether an environment NGO is "specially dedicated to public interest of environment protection" or "without record of law violation" in practice?
- 2.2. Can any other NGOs apply for participating in an litigation lodged by a NGO against an action? Can other NGOs lodge a litigation again against an action on which there is a valid judgment?

An NGO lodging a public interest litigation is the representative of the public interest, but it is not the exclusive and sole representative. For any on-going public litigation, other qualified NGOs may also apply for participating in, but time period should be limited, such as prior to the expiry of time limit of defense or for adducing evidence.

If there is a valid judgment, other NGOs may not lodge the same litigation against the same fact and pollution. The purpose of public interest litigation is to protect environment and the valid judgment is

a form of judicial protection on polluted environment. If there is a valid judgment, it only involves its enforcement. If other NGOs lodge the same litigation against the same fact and pollution again, it conflicts with the fundamental principle of "non bis in idem" of the Civil Procedural Law.

- 2.3. If an enterprise discharges pollutant up to standard and pays pollution discharge fees, but still causes environment contamination, should it be still responsible for repairing the impairment on public interest? Should the government be responsible for doing so? Is there any legislation to exempt and/or reduce the enterprise's responsibilities?

(I) Article 42 of the *Environment Protection Law* reads as follows: "enterprises, entities, and institutions, as well as other producers discharging pollutant shall take measures for preventing and controlling the pollution and impairment of waste gas, waste water, and waste residues, medical wastes, dust, malodorous gas, radioactive materials, noise, vibration, optical radiation, and electromagnetic radiation generated from production and construction and other activities on environment". Article 64 reads as follows: "In the case of any impairment caused by environment pollution and ecological damage, tort liabilities shall be assumed in accordance with relevant provisions set forth in the *Tort Liability Law of the People's Republic of China*". **Article 65** of the *Tort Liability Law of the People's Republic of China* reads as follows: "Polluters shall be imposed of tort liabilities for impairment caused by environment pollution." Paragraph 2, Article 12 of the *Administrative Regulations of the State Council on the Collection and Use of Pollution Discharge Fees* reads as follows: "Payment of pollution discharge fees shall not exempt pollution dischargers from the liabilities of preventing and controlling pollution, indemnifying impairment caused by pollution, and other liabilities specified by laws and administrative regulations". Discharging pollutant up to standard is one of the statutory conditions and no pollutant may be discharged if it does not meet the standard.

Therefore, the polluter's tort liabilities will not be exempted by payment of pollution discharge fees and discharging pollutant up to standard and the polluter other than the government should be liable for restoration.

(II) **A few.** Only **Paragraph 1, Article 15** of the *Administrative Regulations of the State Council on the Collection and Use of Pollution Discharge Fees* reads as follows: "Polluter suffering material economic loss due to force majeure may apply for halving or exempting the pollution discharge fee".

2.4. Can a court order the defendant to pay the environment restoration fees and indemnify the loss of ecological environment? If yes, how to manage and use such fees?

There are no such regulations in the existing laws. The current environment protection laws of China only covers the polluters' obligation of treatment on environmental pollution and environmental restoration to its original condition, as well as some rules about the non-performance, or bad performance of polluters in the aspect.

Concerning the payment for the environment restoration and ecological loss by the defendant, new legislation in this regard is suggested to be made first as the legal proof for the court to bring a verdict.

It is also suggested that Environment Protection Fund at local levels may be founded, and the funds allocation or how to use the fund should, at the same time, be carefully considered.

——Environment and Resources Tribunal
of the Supreme People's Court

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