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Enhancing China's Environmental Governance: Challenges and Opportunities

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INTRODUCTION

China's economic and social development has had severe environmental impacts: from land and water resource deterioration to becoming the world's largest greenhouse gas emitter, pollution has resulted in total losses equivalent to 3.05 percent of China's Gross Domestic Product (GDP).¹

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1. This estimate is based on the results of the Green GDP Project of China's State Environmental Protection Administration. See Chinese Academy for Environmental Planning, *Green GDP Accounting Study Report 2004 Issued*, GOV.CN, Sept. 11, 2006, available at http://www.gov.cn/english/2006-09/11/content_384596.htm.

Under a strategic plan to pursue a sustainable development path, China has passed a plethora of environmental laws, standards, and regulations in recent years, and adopted ambitious targets aiming at reducing major pollutants by ten percent and improving GDP energy efficiency by twenty percent in its Eleventh Five Year Plan (2006-2010).² These ambitious goals were set despite clear evidence that China's environmental governance system has struggled with enforcement, especially at the local level. Due to a lack of enforcement, less than one percent of China's urban residents live in cities that meet World Health Organization air quality standards.³ Failure to enforce environmental regulations has also contributed to rapid motorization and the growth of polluting and energy-intensive industries, undermining GHG mitigation achievements made in other countries of the world.

A breakthrough in dealing with the problems of China's high speed growth occurred in March 2008. In recognition of the economic and humanitarian need to improve environmental governance, the National People's Congress upgraded the vice-cabinet level State Environmental Protection Administration (SEPA) to the cabinet level Ministry of Environmental Protection (MEP).⁴ This promotion establishes a basis for building environmental governance capacity through increasing staffing and budgets; increases attention paid to environmental and energy policy integration at all levels of government; and continues efforts to internalize the economic impacts on human health and environmental externalities caused by traditional fuels combustion. This paper discusses institutions which are responsible for environmental governance in China and opportunities to restructure these institutions to integrate environmental concerns into China's national policy-making process and increase enforcement and compliance.

I. CHALLENGES TO CHINA'S ENVIRONMENTAL GOVERNANCE CAPACITY

Numerous studies by international organizations and domestic think tanks have confirmed that weaknesses in environmental management—a lack of a robust system of clear and detailed environmental laws, insufficient law enforcement capacity, and failure to properly punish illegal acts in the case of enforcement—are largely responsible for the extent of environmental damage in China. Six leading reports on China's environmental performance and

2. Under the Plan, two pollutants have established mandatory reduction target: sulfur dioxide for air pollution and chemical oxygen demand for water pollution. See *The Nat'l Eleventh Five-Year Plan for Env'tl. Prot. (2006-2010)*,] MINISTRY OF ENVTL. PROT. Nov. 22, 2007, at 2, available at http://english.mep.gov.cn/Plans_Reports/11th_five_year_plan/200803/t20080305_119001_2.htm.

3. Yao Yijiang et al., *Chengshi hui mai tian nian duo ming san shi wan zhuan jia xu yan fang wu dou jie nan zhong yan* [Cityscape Pollutant Mix Steals 30,000 Years, Experts Warn of the Plunder of Smog] NAN FANG ZHOU MOU (SOUTHERN WEEKEND NEWSPAPER), Apr. 2, 2008, available at <http://www.infzm.com/content/5584/0>.

4. MINISTRY OF ENVTL. PROT., *Zhong Hua Ren Min He Guo huan jing bao hu bu zheng shi gua pai* [The People's Republic of China Ministry of Env'tl. Prot. Officially Created] MINISTRY OF ENVTL. PROT. WEBSITE, Mar. 27, 2008, available at http://www.zhb.gov.cn/news/zy/200803/t20080327_119695.htm.

capacity evince the following major challenges to environmental legislation, institutions, compliance and enforcement:⁵

1. Environmental protection institutions lack the capacity and tools to coordinate with other departments and incorporate environmental concerns into economic policy and decision making;
2. The central government lacks the capacity to supervise environmental law enforcement work by local governments, and the environmental governance responsibilities of various levels of government are not adequately defined;
3. Environmental regulations have not been fully utilized (e.g. the environmental impact assessment system should be more effective);
4. The reliability of the environmental monitoring and statistics compilation system needs to be improved;
5. There is an over-reliance on command-and-control measures;
6. Legal provisions are ambiguous and the authority of legislative bodies, law enforcement agencies and judicial bodies is inconsistent;
7. The public has limited opportunities to participate in decision-making and to obtain environmental information.

II. PRIORITY AREAS TO STRENGTHEN CHINA'S ENVIRONMENTAL GOVERNANCE CAPACITY

Solving the severe environment problems of the current stage of economic and social development will require a long-term, society-wide effort; improvement of government supervision measures, market-oriented policies, and environmental monitoring requires systematic social reform including increasing opportunities for society-wide participation. However, as far as state administrative capacity-building is concerned, several areas which should be prioritized are identified below.

5. OECD, ENVIRONMENTAL PERFORMANCE REVIEW: CHINA,, (EXECUTIVE SUMMARY – CONCLUSIONS AND RECOMMENDATIONS) 15-29 (2006), *available at* <http://www.efchina.org/csepupfiles/report/200812095029729.8523773582758.pdf/Environmental%20Performance%20Review%20-%20China%2007-23-07.pdf>; NATURAL RESOURCES DEFENSE COUNCIL, ENVIRONMENTAL GOVERNANCE IN CHINA: RECOMMENDATIONS FOR REFORM FROM INTERNATIONAL EXPERIENCE (2007), *available at* http://www.efchina.org/csepupfiles/report/200812095157292.75528685870404.pdf/NRDC_EN.pdf; ASIAN DEVELOPMENT BANK (ADB), COUNTRY ENVIRONMENTAL ANALYSIS FOR THE PEOPLE'S REPUBLIC OF CHINA, EXECUTIVE SUMMARY xi-xxix (2007), *available at* <http://www.efchina.org/csepupfiles/report/200812093711215.23402194021708.pdf/ADB%2039079-PRC-DPTA.pdf>; CHINA COUNCIL FOR INTERNATIONAL COOPERATION ON ENVIRONMENT AND DEVELOPMENT, TASK FORCE REPORT: ENVIRONMENTAL GOVERNANCE IN CHINA (2006), *available at* http://www.efchina.org/csepupfiles/report/200812094638232.51974782841995.pdf/Environmental%20Governance_CCICED_EN.pdf; CHINA SUSTAINABLE ENERGY PROGRAM, POLICY RECOMMENDATIONS FOR THE NINTH SENIOR POLICY ADVISORY COUNCIL MEETING: III. PROMOTING ENVIRONMENTAL REGULATORY SYSTEM REFORM, ENERGY SAVINGS, AND ENVIRONMENTAL PROTECTION 20-27 (2006), *available at* http://www.efchina.org/csepupfiles/report/200812094440836.8349265966453.pdf/CSEP_Policy%20Recommendations%20EN.pdf; WORLD BANK, NOTES: CHINA'S ENVIRONMENT: NEXT STEPS IN ADMINISTRATIVE REFORM (2002), *available at* http://www.efchina.org/csepupfiles/report/200812095426435.7361917032687.pdf/WB_Env%20Admin%20%20Final%20Policy%20Note%20121902%20as%20sent%20to%20governmenten.pdf.

A. Clarifying Lines of Authority between Central and Local Governments

The central government has announced a diverse array of mandatory environmental protection programs for local administrations, but implementation by local government has been rare due to political and capacity-related barriers. Higher-level environmental protection departments have had difficulties supervising the performance of lower level officials in all areas of environmental governance, and information transmission has often been problematic and has led to frequent and sudden environment accidents. However, centralization of authority may not be the right answer for China.

An international trend in environmental governance is the decentralization of authority for enforcement, using financial incentives and penalties to spur local governments to comply with central regulatory mandates. It is necessary to reform China's current suboptimal horizontal bureaucratic system, whereby SEPA has no authority to punish local Environmental Protection Bureaus (EPBs) for bad performance; however, replacing this system with a wholly vertical environmental governance system directly connecting the national level with local level authorities might not be most effective means of improving local level environmental governance.

Rather than full vertical integration of local levels with the national level, establishing a vertical environmental governance system below the provincial level is recommended. Under this system, a central environmental agency would allocate full responsibility for enforcement of national laws to local governments and the EPBs, to be monitored and evaluated by the provincial level EPB. However, unlike the current system whereby EPB leaders are hired by local governments, under this new system the power to make local EPB leadership staff decisions should be placed at the national level. Additionally, the national environmental agency should increase its currently-nominal financial control over local governments and EPBs and more-closely supervise the environmental performance of local governments.

B. Focusing Resources on Enhancing the Authority of Central Environmental Agencies

While the recent establishment of MEP has spurred the clarification of ministerial responsibilities over resource and environmental governance, the more pressing task is to optimize administrative responsibilities and operations within MEP. Making the best use of MEP's currently relatively limited labor and equipment resources requires job prioritization.

Internationally, environmental agencies tend to focus on environmental legislation, environmental impact assessment (EIA), environmental permits, standards-setting, and the collecting and dissemination of environmental statistics. Compliance and enforcement are also important, however the most important of these responsibilities may be the first one: the ability to guide state environmental policy through legislative efforts. The more effort the central

environmental agency puts into developing practical, specific, forward-thinking laws, the better long-term compliance and enforcement, and the better the overall strength of the environmental protection institutions.

In addition to weak enforcement, implementation failures are also caused by regulations that are not rational, practical, or stringent enough, and are often developed without stakeholder involvement. Priorities for the new MEP include reviewing macro-level economic and social policy to ensure that environmental concerns are addressed; modifying current legislation to reflect MEP's authority; updating environmental standards; refining EIA procedures; improving the permit system; and establishing a reliable monitoring, statistics gathering, and information dissemination system.

Within the task of legislation reform, the highest priority is to develop specific policy mechanisms for addressing environmental concerns within the development-oriented macro-socioeconomic policy making process. Specifically, the use of EIAs for policy, planning, and regulatory analysis would be a positive improvement both economically and environmentally given EIA policy success internationally in diminishing wasted resources. Also, a series of "Green Economic Policies," including green credits, green insurance, and green IPO requirements, would be a positive step, as these policies create new market activity.

C. Increasing the National Environmental Governance Budget

Environmental investment by the public sector is generally below three percent of any nation's GDP, with a negative correlation between a nation's level of economic development and the proportion of GNP invested in environmental improvement. A correlation also exists between a nation's level of development and the type of environmental investment. The most expensive first phase of investment is in creating an adequate infrastructure to handle water, sewage and waste. While undergoing this process, countries spend three percent or more of GNP per year; nations that have moved on to the second phase of regulating industrial activity spend proportionately less, more on the order of one half percent of GNP annually.⁶ China is still experiencing the first phase by building infrastructure construction for wastewater and water purification systems. However, China's environmental budget during the Eleventh Five-year Plan is predicted to account for 1.35 percent of GDP, which is close to that of OECD members (1.3 percent). There is consensus that it should be at least two percent of GDP as suggested by Asia Development Bank's report.⁷

Finally, funding for increased environmental governance spending should come from a diverse portfolio of financing channels, including fiscal budgets,

6. Catherine Witherspoon, *International Experiences on Structural, Personal and Financial Capacity of Environmental Agencies' Organizations System 1* (forthcoming Nov. 2008).

7. ASIAN DEVELOPMENT BANK, COUNTRY ENVIRONMENTAL ANALYSIS FOR THE PEOPLE'S REPUBLIC OF CHINA, *supra* at xxiv.

bonds, commercial bank loans, private sectors and international financial institutions. Also, the private sector should be increasingly encouraged to invest in sound environmental governance through environment taxes and penalties and environment funds and ecological compensation funds established with the revenue from these taxes and penalties.

D. Rebuilding the Environmental Permit System

Pollution permits have been widely used for decades, but have had little success in China. An improved permitting system would increase sound environmental governance based on four major characteristics: the completeness of application data; governmental capacity to review, issue, and enforce permit conditions; determination of best available control technologies (BACTs); and specificity of requirements.

First, it is essential that the permit application be complete at the start of the application process. The technical burden should rest on the permit applicant, leaving government engineers to focus on the review process itself. Though there is constant pressure to streamline permitting operations, governments should resist demands to rush approval. A permit conveys the legal right to operate, and must be issued with all necessary environmental conditions. The second major beneficial characteristic of permitting systems is their correlation with institutional capacity development to handle permit applications, with concurrently increasing needs to hire qualified engineers and enforcement staff to conduct regular follow-up inspections. Third, the determination of BACTs in permitting schemes improves environmental governance because there is only one opportunity to “build it right” and this information allows builders access to better market information.

E. Establishing a Vertically-Managed Environmental Monitoring and Statistics System

Sufficient and accurate environmental statistics are the basis of scientific policy making, and full public access to environmental data facilitates supervision. Environmental monitoring, and the collecting and release of data, should be the key responsibility of the new MEP. Currently, China's environmental monitoring system consists of independent bodies tied to, but not directly run by, local government bodies. These groups each report to SEPA or EPBs at various local levels; due to their reliance upon government connections for work, these firms often report statistics with a favorable bias towards local government. In short, the lack of vertical integration of these monitoring bodies with higher levels of government has resulted in fraudulent data and information asymmetries.

Adopting a system of vertical management of environmental monitoring from the national to the regional, provincial, and local levels, seems essential. At the national level, MEP should provide funding and staff to monitoring

centers at all levels; expand the monitoring network to more sites with concurrent expansion in technology upgrade and staff skill building; and, most crucially, improve information transmission mechanisms. There is a lack of environmental dissemination mechanisms in China's current environmental governance structure, while the U.S. and E.U. countries accept such information system development and maintenance as a core responsibility of governments. Making collected environmental quality data and information public will dramatically improve public environmental governance participation.

F. Building up Guidelines and Approaches for Public Participation

The lack of opportunities for the public to apply pressure for better environmental protection in China is one of the factors causing present enforcement weakness. In China, the public often needs more knowledge and expertise than is currently available to effectively determine and voice their environmental quality preferences. SEPA has put much effort into increasing the openness of information and engaging the public in environmental quality assessment.⁸

In addition, information disclosure concerning the environmental impacts of specific projects is a precondition for public participation in individual permitting decisions. Until environmental impact assessment reports are fully available to the public, legislation for public participation in environmental protection needs to specify what information must be made public, how it is to be publicized, how the public can receive the information, who disseminates the information, how to cover the cost of government departments' information disclosure practices, and procedures for addressing failure to disclose or falsifying information.

In addition to sufficient access to information, the effectiveness of public participation in environmental decision-making and supervision depends on procedural professionalism and degree of organizational oversight. NGOs are an efficient, low-cost way to increase public organization and professionalism. Action that the government can take immediately to create a more favorable policy environment for NGOs includes decreasing the difficulty for NGOs to meet with officials and to participate in government and political affairs.

G. Increasing Capacity to Handle Newly-Emerging Global Environmental Issues

The Eleventh Five-year Plan of National Environmental Protection released by the State Council "requires enhanced monitoring and statistical

8. One prominent example of these efforts is Huan jing xin xi gong kai ban fa (shi xing) [Trial Regulation on Means to Publicly Disclose Environmental Information] (promulgated by the State Env'tl Prot. Admin., Apr. 11, 2007, effective May 1, 2007), available at http://www.gov.cn/flfg/2007-04/20/content_589673.htm.

analysis of greenhouse gas emissions, clarification of the tasks and measures to control the emission of greenhouse gases, and efforts to reduce the emission of greenhouse gases such as carbon dioxide, to improve China's ability of adapting to climate change."⁹ It is widely accepted internationally that mitigating global climate change is an increasingly important regulation priority of environmental agencies. In order to mitigate carbon dioxide emissions, a powerful, specialized institution is needed to guide unified decision-making and supervision of policies and implementation. The organ responsible for pollution control under SEPA must bear the primary responsibility in the new MEP, and this capacity should be developed as soon as possible.

CONCLUSION

China confronts dual environmental challenges from cleaning up the local environment and global warming. Environmental governance in China lags behind policymaking and has been a major obstacle to achieve its national environmental targets and hence meet its domestic and global environmental responsibilities. It takes a long-term commitment to enhance China's environmental management capacity. Nevertheless, current steps in the right direction now will have a long-term impact on the planet and the health of China as a nation. With the establishment of MEP, China is moving in the right direction; undoubtedly, much work will still need to be done.

9. State Environmental Protection Administration/ Ministry of Environmental Protection, *Zhong du ling yu he zhu yao ren wu* [Priority Issues and Principal Responsibilities (of the State Environmental Protection Administration)] MINISTRY OF ENVIRONMENTAL PROTECTION OF THE PEOPLE'S REPUBLIC OF CHINA WEBSITE (Jan. 18, 2008) (translation by authors), available at http://www.zhb.gov.cn/plan/hjgh/sywgh/gjsywgh/200801/t20080118_116456.htm