

CSR Implications of China's New Environmental Act

AmCham Shanghai's Business Council for Sustainability and Responsibility (BCSR) examines how companies can employ CSR strategies to help the government tackle environmental challenges in China. In an effort to provide members with more insight on these issues, the BCSR presents the following paper based on its recent meeting on "CSR Strategies for Environmental Challenges". Key insights from the meeting were:

- Three elements of China's New Environmental Protection Law suggest that enforcement will be an increasing trend:
 - Increased penalties for environmental violations
 - Increased information disclosure about violations
 - Increased public participation in monitoring and enforcement
- The new law has garnered mixed reviews. Government officials have voiced optimism, while NGOs remain skeptical.
- Public discourse and reporting on the environment are rising via:
 - MEP's hotline number 12369
 - IPE's pollution map app Blue Sky (*Weilan ditu*).

A new Environmental Protection Law, enacted on January 1, 2015, appears to be boosting provincial-level enforcement of China's environmental regulations. In conjunction with higher levels of public interest and engagement, as exemplified by Chai Jing's recent video *Under the Dome*, the new legal environment is viewed by some as a harbinger of greater corporate accountability. At the same time, for those who focus on sustainability as a business strategy, the changes hint at opportunity. AmCham Shanghai's Business Council for Sustainability and Responsibility (BCSR) hosted a roundtable discussion on April 15 with Dr. Guo Peiyuan, Co-Founder & General Manager of SynTao, about implications of the new legal and social environments for crafting a CSR strategy.

China's New Environmental Protection Law

Although China's 11th and 12th Five Year Plans both advocate for environmental protection and the government has consequently launched or revised numerous environmental protection laws, enforcement of those laws has always been sporadic. The Environmental Protection Law enacted at the beginning of this year, however, has already started to change things. Three elements of the law in particular suggest that enforcement is an increasing trend:

Increased penalties

In the past, small fines and penalties made it financially appealing for polluting firms to continue illicit activity rather than invest in new technologies and processes for pollution prevention. Under the new law, financial penalties accumulate on a daily basis until problems are resolved. No consistent information regarding the costs of the fines has yet been disclosed, but in principle the penalties for environmental violations can increase.

Increased information disclosure

Several articles of the new law seek to boost transparency on environmental issues. Pollution prevention is reinforced by requiring public disclosure of Environmental Impact Assessment reports for new projects under consideration. Pollution accountability is bolstered by requiring that violations of environmental law be publicized. In some cases, specific information about the type and quantity of emissions and the control facilities of the polluting firm must also be announced.

Increased public participation

A significant change from the past is that NGO's can act on the newly disclosed information to raise lawsuits against offenders. It is estimated that at least 300, and maybe as many as 700 China-registered NGO's are currently qualified under government guidelines to act this way on behalf of the public. To date, 4 lawsuits have appeared from two different NGO's: All-China Environment Federation (ACEF) and Friends of Nature (FON).

Impact of the New Law: Lawsuits and Government Fines

The new law has garnered mixed reviews. Government officials have voiced optimism, given that public bodies now have authority as well as the means to hold firms accountable for environmental performance. New Minister of Environmental Protection, Chen Jining, intends that the law become a "weapon with steel teeth" rather than merely a "paper tiger"¹. But others have expressed doubt about the law's effectiveness, noting that enforcement resides at the local level and, thus, hinges on the willingness of local courts to accept a case for review.

A count of actual interventions realized in January and February 2015, compiled by SynTao and China CSR Map (CCM), shows an increase in daily fines, sealing of facilities and detentions of responsible persons within the initial 2-month interval.

¹ Jack Chang, Associated Press, March 14, 2015 as cited by usnews.com

立案时间 Date	原告 Plaintiff	被告 Defendant	事由 Violation
1月1日 Jan-1	自然之友和福建绿家园 FON(Friends of Nature),etc.	李名掣等人	林地毁坏 Deforest
1月13日 Jan-13	中华环保联合会 ACEF(All-China Environment Federation)	浙江新安化工集团股份 有限公司及2名自然人	将危险废物交给未获得资质的自然 人处置 Hazardous wastes
1月13日 Jan-13	中华环保联合会 ACEF(All-China Environment Federation)	东营市津瑞联电子材料 有限公司及1名自然人	废气、废水等有毒物质未经处理 直接排放到附近的空气、农田中 Air and water pollution
3月20日 Mar-20	中华环保联合会 ACEF(All-China Environment Federation)	山东德州晶华集团振华 有限公司	违法排放，大气污染 Air pollution

Although fewer facilities were closed in February than in January, the overall level remained close to 100 per month. The generally rising levels of enforcement activity signal that local officials are becoming more active as their awareness and understanding of the law increases and as the number of case histories expands. Recent comments from NGO's to journalists confirm the trend by noting that local officials are increasingly willing to engage in discussion, share information, and accept lawsuits.²

Indeed, SynTao/CCM research documents the launch of four NGO lawsuits in the first three months of 2015 in comparison to the 10-year window required to view the same number of cases from the past. Violations include deforestation, hazardous waste handling, and air and water pollution. Most active in bringing the suits was the government organized NGO ACEF and international NGO FON. In addition to launching its own initiatives, FON has established a fund to support other NGO's who may wish to sue but lack the necessary resources.

SynTao/CCM research reveals variation in how the law is enacted across China's diverse provinces. Henan shows the highest level of imposed fines. Zhejiang, in contrast, shows the highest number of cases in which facilities were sealed or closed and for which individuals were detained. It appears that officials in Zhejiang are more active than others in enforcing the laws and, furthermore, that they recognize a limited potential for financial penalties to drive compliance within one of China's wealthiest regions. Such tailoring of enforcement activity to local conditions is an encouraging sign of China's growing sophistication in implementing environmental protection.

² Ibid

The Rise of Public Discourse on the Environment

The new law brings the Chinese government into alignment with broader trends of public engagement on environmental issues. Newspapers document a rising tide of NIMBY (“not-in-my-backyard”) protests whenever planned manufacturing facilities raise pollution fears among local community members. A pharmaceutical factory in Chongqing, for example, was forced to close down on March 10th of this year because of protests. Local residents also closely monitor air quality indices and raise an outcry whenever an index soars but local officials are slow to take corrective action. The general government tolerance for this type of disclosure in recent years is now codified into law, raising expectations that transparency will continue to grow.

One of the most visible public acts in recent years was the release of journalist Chai Jing’s documentary *Under the Dome*. The video, which illustrates China’s problems of air pollution, was viewed more than 170 million times in just two days, and ultimately reached hundreds of millions more before it was removed from the web. People from all regions and all walks of life suddenly found themselves participating in a public debate of China’s environmental challenges. Moreover, the video raised public awareness of two specific ways to continue their engagement:

- ✓ Report environmental violations to MEP’s hotline number 12369;
- ✓ Report environmental violations to the IPE’s pollution map app *Blue Sky (Weilan ditu)*. Those two networks were inundated with contacts in the weeks following the video’s broadcast.



Implications for CSR Strategy

In such a rapidly changing environment, how can firms leverage the trends to their advantage? Harvard professor Christopher Marquis and colleagues have argued that gaps between regulation and enforcement of environmental protection create uncertainties that benefit those who are innovative and who know how to strategize around shifting government priorities³.

³ Christopher Marquis, JianJun Zhang, and YanHua Zhou, “Regulatory Uncertainty and Corporate Responses to Environmental Protection in China”, *California Management Review*, 54(1), Fall 2011.

Both National and Local Levels Need Monitoring

Guo Peiyuan notes that priorities should be monitored at both national and local levels. North China, for example, will feel more pressure to improve air pollution than water pollution because the region's water is increasingly supplied from outside. It is China's eastern and southern regions that will have to assure the quality of water. As such, firms are well advised to build bridges to local governments and other stakeholders in regions most critical to their business, whether that is for risk control or for opportunity identification.

The China Greentech Initiative (CGTI)

Independent organizations such as the China Greentech Initiative (CGTI), which does research and offers advisory services to facilitate collaboration in solving China's environmental problems, can help firms to quickly learn about and act upon local priorities. CGTI experience indicates that local governments need solutions in order to meet new environmental targets that are part of officials' performance evaluation. International firms that bring greentech solutions are often welcomed in this new environment.

NIMBY and NGO Activities Require Monitoring

SynTao research indicates that, although NIMBY and NGO activities require monitoring, and that their pace of activity is increasing, firms still have time to act. Along with innovative product and service solutions, firms should take time to build trust among Chinese citizens and stakeholders. February's BCSR roundtable discussion with Tony Tao of Edelman China offered concrete suggestions for how to achieve that⁴. Overall, the new environment is rich with opportunities to change a firm's image from problem maker to solution provider. Solutions that help China's citizens to lead better lives, save energy and have happier families all play into China's new national drive for "green" development. With green taking a seat alongside "new industrialization, urbanization, informationalization, and modernized agriculture" in Beijing's development priorities, there is much opportunity to be gained.

⁴ Austin Leung, Veomayoury Baccam and Daisy Lu, "CSR and Building Trust in Brands", AmCham Shanghai, 2015

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About AmCham Shanghai's Business Council for Sustainability and Responsibility

AmCham Shanghai's Business Council for Sustainability and Responsibility (BCSR) is a strategic platform bringing together key CSR stakeholders to share best practices develop partnerships and drive thought leadership to promote capacity building and sustainable practices in China. The BCSR is now open for AmCham Shanghai members to join. We encourage participation from all those with relevant experience and leadership in the field of CSR from companies, large and small, non-governmental and non-profit organizations, think tanks and academia. For more information, you can contact Daisy Lu at daisy.lu@amcham-shanghai.org.