

Environmental Public Interest Litigation in China


History, Recent Developments, and Implications
for Ensuring Environmental Justice

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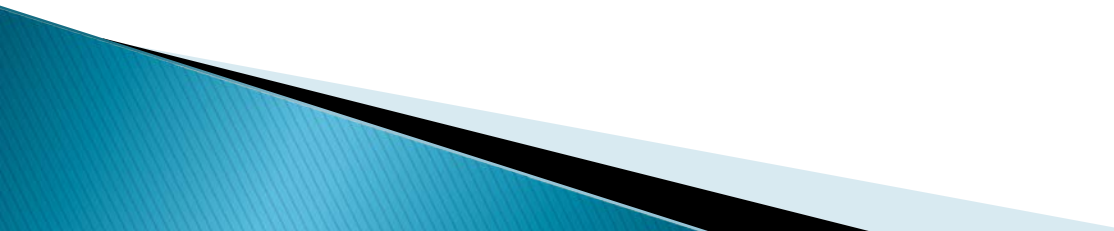
Roadmap

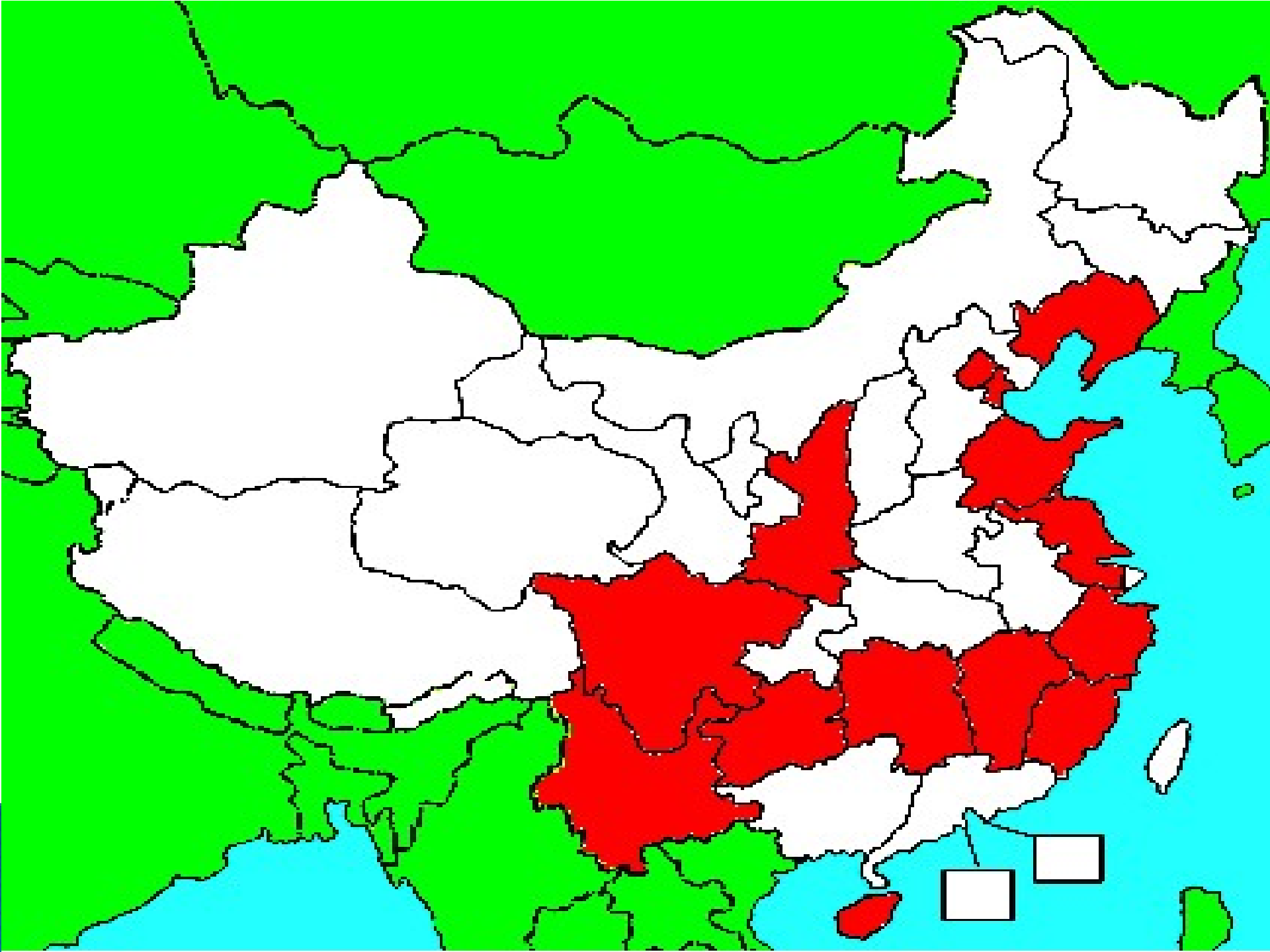
- ▶ China's Environmental Governance Challenges
- ▶ Why Has Environmental Public Interest Litigation Become A Hot Topic?
- ▶ Three Specific Cases: Innovations & Limitations
 - 1) ACEF & Guiyang Public Environmental Education Center v. Dingpa Paper Mill of Wudang District, Guiyang City (2010)
 - 2) Kunming EPB v. Kunming Sannong Agriculture and Animal Husbandry Company and Kunming Yangpu United Animal Husbandry Company (2010)
 - 3) ACEF v. Xiuwen County EPB of Guizhou Province (2012)

China's Environmental Governance Challenges

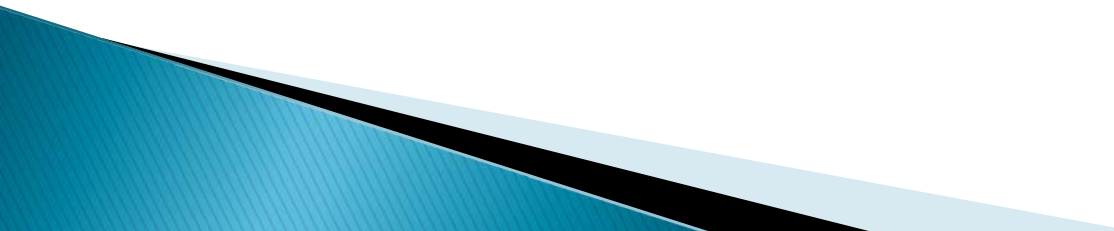
- ▶ A relatively comprehensive set of environmental laws
 - ▶ Many environmental statutes were drafted without implementation in mind
 - ▶ Significant gaps exist between law on the book and enforcement on the ground
 - ▶ Court as a new venue to address the public's desire for a clean environment
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Emergence of Environmental Public Interest Litigation in China

- ▶ Problems with traditional environmental tort lawsuits
 - ▶ Acceptance and support of environmental public interest litigation by academics, NGO activists, the government, and the judiciary
 - ▶ Development of specialized environmental courts and tribunals provides platform for experiment
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Three Case Studies

- ▶ What is environmental public interest litigation? Non-criminal litigations brought against polluters or environmental agencies that do not perform their statutorily mandated obligations , depending on the status of the defendant (e.g., government or polluter).
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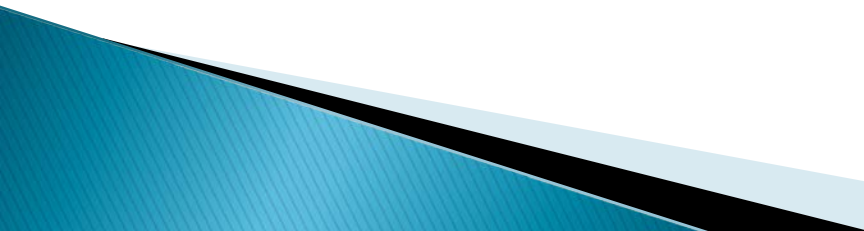
Three Case Studies

- ▶ Civil environmental public interest litigation refers to civil lawsuits brought by NGOs, gov't agencies as well as the procuratorates against polluters for the interests of the public, as compared to for the private interests in an environmental tort lawsuit – “citizen suit” + “env't civil enforcement action by DOJ ENRD + 94 U.S. attorneys offices located across the U.S.”

ACEF & Guiyang Public Environmental Education Center v. Dingpa Paper Mill of Wudang District, Guiyang City (2010)

- ▶ Oct. 2010, paper mill discharged waste water, in violation of its permit (SO₂ & dust only, no waste water), to Nanming River, water quality graded less than V near the paper mill's discharge pipe
- ▶ Nov. 2010, joint plaintiffs brought public interest litigation at Qingzhen Environmental Court:
 - 1) Injunction, including a preliminary injunction prior to final judgment;
 - 2) Pay for 10,000 RMB of attorney's fee; and,
 - 3) Cover relevant litigation expenses
- ▶ Dec.2010: the court ruled in favor for the plaintiff

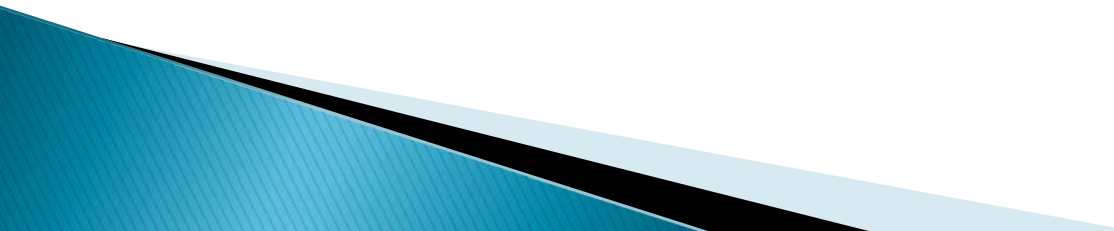
Innovations and Limitations

- ▶ Evidence preservation
 - ▶ Preliminary injunction
 - ▶ Appraisal fee covered by a foundation
 - ▶ Suggestions from an environmental expert consultation committee
 - ▶ Losing party paid for attorney fees
 - ▶ Defendant as a small plant
 - ▶ Clean-up costs
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Kunming Municipal EPB v. Kunming Sannong Agriculture and Animal Husbandry Company and Kunming Yangpu United Animal Husbandry Company (2010)

- ▶ 1) injunction, 2) pay over 4 million RMB for pollution treatment of local drinking water source, 3) pay for relevant litigation expenses
- ▶ The first env't public interest case in Yunnan Province
- ▶ The largest award of civil compensation ever in a single env't public interest case, paid to Kunming Env't Public Interest Litigation Special Fund
- ▶ “Selective judicial enforcement”: Yang Zong Hai Power Plant v. two pig farms

ACEF v. Xiuwen County EPB of Guizhou Province (2012)

- ▶ A lawsuit against a local EPB for failure to disclose the information of a polluter
 - ▶ “Disclosure of environmental information should be the general rule, while non-disclosure should be the exception”
 - ▶ “A victory of the people”
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Ongoing Challenges

- ▶ How to work the new civil procedure law that permits environmental public interest litigation?
- ▶ Lack of a trained environmental bar
- ▶ Continuing need to improve judicial competency
- ▶ Limited precedent-setting, landscape-changing cases: important breakthrough of the Qijing chromium pollution case