

Water crisis, can environmental laws and litigation solve it?

Director of Litigation, Center for Legal Assistance to
Pollution Victims, Beijing

Public Policy Scholar, Woodrow Wilson Center
Yale World Fellow 2008

张兢兢 ZHANG, Jingjing

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Tuo river, a branch of Yangzi River, Sichuan, 2004

the ammonia nitrogen emissions exceeded allowed
standards 50 time







人人关心环境质量

2004 10 14





2004 10 1

Guo river, a branch of Hui River AnHui Province, 2004,

COD, BOD exceeded allowed water quality standard





2005 6 27





Mining-caused water pollution & Cancer Villages Pearl River, Guangdong 2006





Contaminated rice field (heavy metal pollution)





CNN visited a Cancer Village in Guangdong Province 2007



Address social problems— understand the problem



Civil Litigation

Good laws, hard to implement

- ▣ No-Fault Liability: conflict among laws:
 - ▣ Environmental Protection Law Article 41 (1989)
 - ▣ Water Pollution Control Law (2008)
 - ▣
- ▣ Shifting burden of proof
 - ▣ Civil Procedure Evidence Rule Article 4(3) (2002)
 - ▣ Water Pollution Control Law (2008)
- ▣ Class Action
 - ▣ Civil Procedure Law Article 55 (1991, 2008)
 - ▣ Water Pollution Control Law (2008) Article 88

Can't prevent the pollution

New Environmental Legislations

- ▣ Environmental impact assessment law 2003
- ▣ Solid waste pollution control law 2005
- ▣ Water pollution control law 2008
- ▣ Governmental information disclosure rule 2008

- ▣ Property law 2007

Water pollution control law, 2008

- ▣ Article 87 For an action of damage due to a water pollution shall assume the burden of proof shall be shifted to , the party discharging pollutants , and it shall prove the nonexistence of causation between its act and the harmful consequences thereof. –**Shifting the Burden of Proof**
- ▣ Article 88 If the number of parties whose legitimate rights and interests are damaged in a water pollution is relatively huge, these parties may select a representative to file a collective action. —**Class Action**
- ▣ The administrative department of environmental protection and the related social organizations may legally support the parties whose legitimate rights and interests are damaged in a water pollution accident to file a lawsuit with the people's court.

The state encourages law offices and lawyers to provide legal assistance for victims of lawsuits on damage of water pollution accidents. –**Legal Aid and maybe NGOs Standing?**

Urging the judiciary to independent



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Challenges and Lessons

- ▣ Lack of independent judiciary
- ▣ No trust toward courts and laws
- ▣ Litigation is expensive
- ▣ No public interest litigation
 - Limited and strict standing requirement for filing litigation
- ▣ Undeveloped NGOs
- ▣ “Development first, clean up later”?
- ▣ “It is better to be poisoned than be poor”?

Hope

- ▣ The public's strong awareness of rights and willing to use litigation
- ▣ Emerging public interest / right-protection lawyers
- ▣ New legislation
- ▣ Technologies for freedom of information
 - new approach for lawyers to collect evidence

Rising Public Awareness Xiamen, 2007



Rising Public Awareness Chengdu, May 2008



Public interest lawyers' role: Empower people



Thanks!
zhjjzh@gmail.com

