

The Changing Landscape of Environmental Litigation in China from the 1990s to 2016

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Outline

- Environmental Litigation
 - 1990s-2008
 - 2009-2014
 - 2015-Present

The Changing Landscape of Environmental Litigation Civil Litigation (1990s – 2007/8)

- Environmental Civil Litigation
- Civil Law Principle 1986: No-fault liability in environmental tort cases
- Environmental Protection Law 1989
- Civil Procedure Evidence Rule 2002: Shift the Burden of Proof
- Tort Liability Law 2009: No-fault liability in environmental tort cases

Fujian Province 2004



The Changing Landscape of Environmental Litigation: Environmental Administrative Litigation 1990s - 2016

- Administrative Litigation
 - Administrative Litigation Law 1990
“民告官”
revised in 2015
 - 10 Model Environmental Administrative Cases in 2015 and 2016 by Supreme Court of China

The First Public Hearing on Environmental Issues 2004



The Changing Landscape of Environmental Litigation: Civil Litigation (2007/8 - 2014): Experimental Public Interest Litigation

- **Public Interest Litigation**
 - **Civil Procedure Law 2012**
- Article 55: For conduct that pollutes the **environment**, infringes upon the lawful rights and interests of vast **consumers** or otherwise damages the public interest, **an authority or relevant organization** as prescribed by law may institute an action in a people's court. 对污染环境、侵害众多消费者合法权益等损害社会公共利益的行为，法律规定的机关和有关组织可以向人民法院提起诉讼。
- **Environmental Protection Law 2014**
- **Chapter 5: Public Participation and Public Interest Litigation**

The Changing Landscape of Environmental Litigation: Civil Litigation (2015-Present)

(社会组织部分)

3 社会组织
个老面孔 + **6** 个新面孔 = **37** 起个案



Environmental Public Interest Litigation in China: Castles Made on Sand?

Environmental Public Interest Litigation in China

1. Standing
 - 1) GNGOs
 - 2) NGOs
 - 3) Procuratorates
 - *Project Plan for Reform Pilots on Procuratorates Initiating Public Interest Litigation* 《人民检察院提起公益诉讼试点工作实施办法》 2016
2. Civil Litigation
 - After-the-Fact Approach
 - Seeking Monetary Court Awards
 1. Evaluating the expenses of Ecological remediation/restoration.
 2. Who can manage compensation?

Citizen Suits in the US

1. “Private Attorney General”:
 - “any person”
2. Citizen enforcement action: Supplement of Governmental Enforcement
 - Not civil litigation
 1. Injunctions
 2. Fines: court awards payable to the government not the plaintiff

Public Interest Litigation: Castles on Sand?

Environmental Public Interest Litigation

- 93 cases 2015-06/2016

Public Interest Litigation on Consumers' Rights

- 1-2 cases from 2012-2016
 - China Consumers Association vs. Lovol Heavy Industry CO.,L TD
 - 中消协诉雷沃重工股份有限公司
 - OSI Group LLC meat scandal in Shanghai 2014
- Standing
 - China Consumers Association and its provincial branches

Public Interest Litigation: Castles on Sand?

- Top-down or Bottom-up: Who Represents Public Interest?

- GONGOs

- All China Environmental Federation
- China Biodiversity Conservation and Green Development Foundation 绿发会
(中国生物多样性保护与绿色发展基金会)

Procuratorates

- *Project Plan for Reform Pilots on Procuratorates Initiating Public Interest Litigation* 《人民检察院提起公益诉讼试点工作实施办法》 07/2015-06/2016:
21 cases

- NGOs: Friends of Nature

- Independent Judiciary and Fair Trial?

- *Campaign Style Law Enforcement*

Thank you!

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