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

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• PILnet: the Global Network for Public Interest Law (Public Interest Law Institute)
• 2009-2012 Deputy Country Director for China
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
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

- 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.

- Environmental Protection Law 2014
- Chapter 5: Public Participation and Public Interest Litigation
The Changing Landscape of Environmental Litigation: Civil Litigation (2015-Present)
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
<table>
<thead>
<tr>
<th>Environmental Public Interest Litigation</th>
<th>Public Interest Litigation on Consumers’ Rights</th>
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<tbody>
<tr>
<td>• 93 cases 2015-06/2016</td>
<td>• 1-2 cases from 2012-2016</td>
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<tr>
<td></td>
<td>• China Consumers Association vs. Lovol Heavy Industry CO., LTD</td>
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<td></td>
<td>• 中消协诉雷沃重工股份有限公司</td>
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<td>• OSI Group LLC meat scandal in Shanghai 2014</td>
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<td>• Standing</td>
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<td>• China Consumers Association and its provincial branches</td>
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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)

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 Trail?
  • Campaign Style Law Enforcement
Thank you!

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