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

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- 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

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

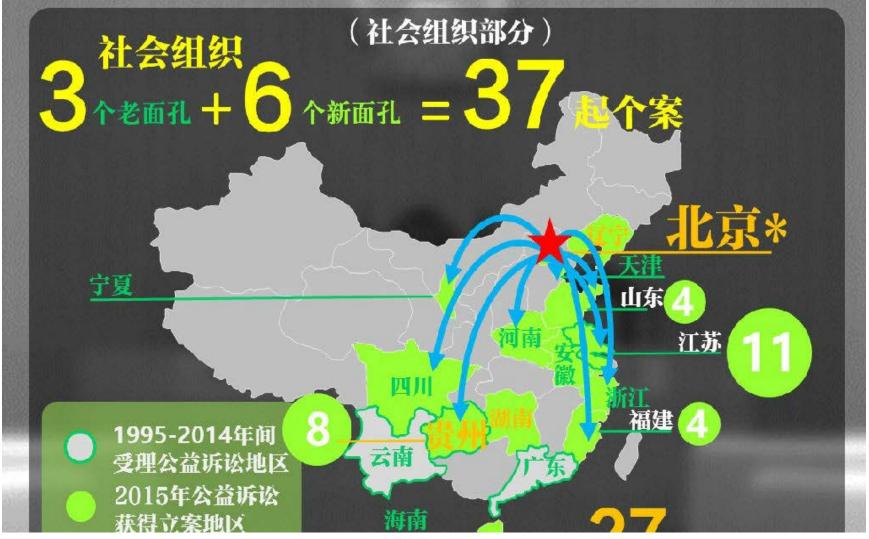


The Changing Landscape of Environmental Litigation: Civil Litigation (2007/8 - 2014): Experimental Public Interest Litigation

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)



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 Trail?
 - Campaign Style Law Enforcement

Thank you!

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