

# Alerts & Publications

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## China Implements Climate Change and Environmental Protection Measures

September 24, 2015

Notwithstanding the economic showdown in 2015, climate change and environmental protection continue to be major policy focal points of the Communist Party of China (the “**Party**”) and China’s central government. Foremost among these are China’s new stance on Climate Change and its enforcement and implementation of the amended Environmental Protection Law (the “**New EPL**”), as discussed in this Alert.

### I. China Implements Plan to Combat Climate Change

As the world’s largest CO2 emitter, China pledged its commitment towards combating global climate change in June 2015 by announcing its intended action plan—“*Enhanced Actions on Climate Change*” (the “**Intended Action Plan**”). See our prior April 15, 2015 Alert “Implementation of China’s Climate Change Plan. This stance echoes both China’s commitment under the *United Nations Framework Convention on Climate Change* and its existing national environmental protection programs, such as accelerating infrastructure improvements and emission reduction. In addition, earlier this month, China committed to invest at least \$313 billion in grid improvements between 2015 and 2020, which will greatly enhance the distribution of renewable and low intensity power sources (as well as creating charging stations for 5 million electric vehicles). Earlier this summer, China issued upgrade requirements to its largest state-owned coal-fired generation facilities with requirements phased in between now and 2020.

## Related Practices

Environmental

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## **II. Progress in the Enforcement and Implementation of the New EPL**

Since the amended Environmental Protection Law (the “**New EPL**”) took effect on January 1, 2015, China’s environmental protection authorities are following an aggressive enforcement program. Measures include facility closures, heavier penalties against polluters, expansion of environmental monitoring network and enhanced accountability regime for government officials.

### ***Heavy punishments imposed on polluters***

The new EPL provides that a polluter who has been assessed fines but fails to undertake remedial actions would be subject to daily penalties in the same amount as the initial fine, without cap, until remediation is completed. In the first seven months of 2015, China’s environmental protection authorities have assessed daily penalties with a total over RMB282 million (approximately US\$43 million) in 348 cases throughout the country, according to a report released by the Ministry of Environmental Protection (the “**MEP**”) on September 10, 2015. The average penalty imposed in each such case is equal to RMB810,344 (approximately US\$124,668), whereas prior to the introduction of daily penalties, the average penalty imposed in each similar violation was RMB38,103 (approximately US\$5,862) in 2014.

In addition to daily fines, the New EPL also vested environmental protection and supervision agencies with power to detain the persons responsible for pollution for up to 15 days for failure to comply with any administrative orders and the power to confiscate any equipment that is found to cause pollution. During the period between January and July, there were 927 cases subject to administrative detention and 2,065 cases subject to seal-up and seizure of production equipment.

Further, the *Notice on Strengthening Environmental Supervision and Law Enforcement*, which was issued by the General Office of the State Council in November 2014, adopted the zero-tolerance approach and required local government at different levels to conduct sweeping inspection on environmental protection by the end of 2015. In the first half of 2015, over 9000 facilities have been shut down, around 16,000 have suspended operations pending corrective action and the above-noted fines issued to 23,227 facilities. China’s Minister of Industry, Miao Wei, has suggested that the best way to improve on safety may be relocate an estimated 1000 facilities located in large population centers at an estimated cost of \$63 Billion. This proposal took on currency when a further chemical facility blast took place on August 31st at the Shandong Binyuan Chemical plant in the city of Dongying, killing thirteen people. It is believed that the intensity of enforcement on the environmental laws and policies will increase.

### ***Developing a national pollution monitoring network and punishing data frauds***

*To build a nationwide environmental monitoring network*

On July 26, 2015, in order to establish an environmental monitoring network

as stipulated in the New EPL, the General Office of the State Council published the *Eco-environmental Monitoring Network Development Plan* (the “**Plan**”), which provides for unified and nationwide ecological and environmental monitoring network by 2020.

In particular, the Plan aims to achieve nationwide coverage for ecological and environmental monitoring by establishing monitoring sites which can collect data on air, surface water, soil, noise, and radiation (among other markers). Specifically, according to MEP, by the end of 2015, each of all Municipalities, provincial capital cities and other major cities will have the capabilities to forecast air quality and alert upcoming severe air pollution events. In addition, the number of state-run surface water quality monitoring sites throughout the country will be increased from 972 to around 3,200, according to MEP. Meanwhile, ten provinces, including Liaoning, Jiangsu and Zhejiang, have set up state-run soil pollution monitoring sites, while other provinces are accelerating the speed of building such monitoring sites. Further, the Plan encourages third party monitoring institutions to provide pollution monitoring and device maintenance services to enterprises and calls for an increase in the government’s procurement of services from such institutions in the operation and maintenance of government monitoring sites.

Furthermore, the Plan seeks to boost innovation in advanced technologies in environmental quality monitoring and to cultivate domestic monitoring instrument industries.

#### *To impose severe punishment on falsification of environmental monitoring data*

In an effort to warrant the accuracy of monitoring data, the Plan, along with the New EPL, warns of severe punishment for data falsification. The MEP recently solicited public comments for its draft *Measures for Treatment of Falsification in Environmental Monitoring Data*. As provided in the draft measures, if an environmental monitoring institution or an institution engaging in the maintenance and operation of environmental monitoring device tampers with or falsify monitoring data, such institution, together with the persons involved, would be blacklisted and prohibited from participating in governmental procurement of environmental monitoring services or in other projects funded by the government. Manufacturers are required to install anti-falsification module in their monitoring equipment. For those manufacturers who facilitate data falsification, their names, sales offices and product catalogue will be published by the environmental protection authorities.

#### ***Enhanced accountability for officials causing environmental damage***

In response to the demand of heightened responsibilities for officials to oversee environmental protection under the New EPL, the General Office of the Central Committee of the Party and the General Office of the State Council have jointly issued the *Measures for Investigation of Liability of Officials of the Communist Party of China and the Government for*

*Ecological Environment Damage (for Trial Implementation)* (the “**Accountability Measures**”), which became effective on August 9, 2015. The Accountability Measures require holding relevant senior officials at all levels liable for adopting policies which contradict with the environmental protection laws and policies, approving projects which violates environmental protection laws or policies and for any severe environmental pollution or ecological damage occurred in his/her jurisdiction. In the meantime, such liability will have a lifelong and retroactive effect on those officials, no matter whether the official is promoted, relocated to other government entities, or even retired. Further, such liability will lead to administrative disciplinary actions (which include demotion, no promotion within one or two year, or removal from current position/title) or even to criminal prosecution against those officials. Given that Chinese officials would generally not want to jeopardize their political career for their negligence in following the laws, it is thus believed that the Accountability Measures may help improve the outcome of environmental protection, if the Measures are strictly enforced. In the first seven months of 2015, China’s Central Commission for Discipline Inspection has announced that over 20,000 officials are being investigated for discipline-related infractions. Among these, is investigation of Zhang Lijun who, starting in 2008, was the Vice Minister of the MEP and had primacy over pollution control, emission reduction and enforcement.

### **III. Tianjin Explosion and Response**

Despite the above-noted positive steps, the recent massive explosion in the port of Tianjin is a reminder that there is still more work to do in achieving environmental and safety goals. President Xi Jinping has ordered priority inspections of flammable chemical, cyanide and metals manufacturing plants—especially those adjacent to densely populated residential areas—and has given the authority to shut down facilities found to be out of compliance. Lack of comprehensive environmental impact assessment prior to the facility construction is also a chronic problem which may hinder the enforcement of the Accountability Measures as discussed above. Moreover, emergent situations like the Tianjin explosion highlights the need for a mature ecological monitoring network to provide for timely emergency response for catastrophes. More importantly, the Tianjin Explosion makes upcoming *Pilot Plan for the Reform of the Compensation System for Ecological and Environmental Damage* more urgent.

### **IV. China Clean Water Program**

China continues to face acute water shortages, especially in the northern areas. A key new initiative is construction of desalination plants, primarily to serve industrial needs in this region. In August 2015, the State Oceanic Administration released its 2014 seawater utilization report. According to this report, China had constructed 112 seawater desalination projects by the end of 2014 with daily water output of 926,900 cubic meters/day. This is short of the 2.2 million cubic meter/day goal for the end of 2015.

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