# A Study of the Environmental Judicature System Reformation From the Perspective of Environmental Public Interest Litigation Practices

Sun Qian

Postdoctoral of Law in China University of Political Science and Law, Beijing, China

13810861912@163.com

## Abstract

**Commensurate with its significant environmental problems, China's environmental protection laws and court system have undergone profound changes in the last two years. In this article we highlight the development and implementation of China's Environmental Public Interest Litigation (EPIL) system. We examine particular cases to highlight the success and challenges that the courts face, and conclude by offering suggestions for continued improvement of the system**.

## Keywords

environmental judicature reformation; affirmation of plaintiff qualification; constitution of environmental pollution liability; ecological environment damages; special procedure system.

## 1. Background on the Development of the System of Environmental Public Interest Litigation (EPIL)

Establishment of EPIL is legislative affirmation of the role of China's local courts to enforce environmental protection. At the beginning of this century, as a result of rapid industrialization and urbanization, China experienced a high-frequency of environmental pollution including rampant air pollution, soil contamination and drinking water safety, prompting widespread public concern over pollution issues. [1] on extracts significant societal costs; "life expectancy in the north has decreased by 5.5 years due to air pollution, and severe water contamination and scarcity have compounded land deterioration problems." To help address pollution problems, over the past two decades China has begun to evaluate the use of the judicial system as a means to address pollution issues. [2]The nascent development of environmental protection through the courts required an evolution of China's substantive and procedural laws as well as a revamping of the court system.

One of the early problems was jurisdictional due to the structure of Chinese courts. For example, county level courts could not deal with the issue of trans-administrative division water pollution. A local court could not address pollution emanating from another county. To strengthen the protection of drinking water resource and with the support of local government, a two-level environment tribunal was set up by the Intermediate Court of Guiyang City and Qingzhen Municipal Court in Guizhou Province on November 20, 2007. [3] Following the designated jurisdiction by Guizhou Higher Court, the environmental tribunal of Qingzhen City was then placed in charge of a trans-administrative division environmental public interest litigation case covering the "two lakes and one reservoir" watershed. Guiyang "two lakes and one reservoir" administration brought environmental civil public interest litigation as plaintiff The case became the first EPIL case heard by an environment tribunal. [4] A similar transboundary water pollution case occurred when, blue algae broke out in Taihu Lake, Jiangsu Province. The Wuxi Intermediate People's Court of Jiangsu Province set up an environment tribunal on May 6, 2008.

Since 2007, courts in other provinces such as Fujian, Jiangsu and Yunnan made some explorations on EPIL system and accepted a series of EPIL litigations brought by forestry, environment administrative authority, procuratorate and social organizations, . Two important cases include the Tasman Sea oil spill pollution case brought by Tianjin Oceanic Administrative in 2002, chemical factory environmental pollution case brought by Leling Municipal Procuratorate of Shandong Province in 2003 which resulted in a strong judgment against the polluter. A case involving soil pollution from chromium residue in Qujing City was brought solely by NGO environmental protection organizations Friend of Nature and Chongqing Green Volunteer Federation, again resulting in a successful result. The trans-administrative division trial of EPIL case by environment tribunal prevented local government intervention and improved local environment quality, and the demand for a more formal establishment of EPIL system became increasingly urgent. The EPIL litigation from 2007-2014 demonstrated the need for a more comprehensive legislative solution. These cases brought EPIL into the legislative horizon, made National People's Congress realize both the necessity and feasibility of the establishment of EPIL system. [5]

Changing Procedural and Substantive Laws to Accommodate EPIL.As explained above, China's court system made periodic efforts to address pollution cases. However no clear procedural mechanisms allowed for public interest suits, and many courts rejected them. Establishing and improving EPIL system is an important channel for the country to propel environmental management. According to paragraph 1 of Article 108 of the Civil Procedure Law before its amendment in 2012, only "a citizen, legal person or any other organization that has a direct interest in the case" could bring a lawsuit. The term "direct interest" equates to tort-like injuries a person with no "direct interest" in the case could not bring a suit concerning public interest resources, such as loss of forest resources, or unhealthy air pollution levels. For this reason, in 2012, the amended Civil Procedure Law stipulated in Article 55 that, 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. The amended Article 55 thus provided a basis for public interest litigation to be filed by a social organization (similar to U.S. non-government organizations or NGOS) even without a so-called "direct interest" in the case but prescribed by law to protect public interest. In addition, the old civil procedural law y did not prescribe the procuratorate to bring a public interest lawsuit considering it might affect the performance of its legal supervision duty. In general, it affirmed public interest litigation brought by administrative authority, and demanded that such authority meet conditions prescribed by law to file a suit. In 2013, the new generation central government brought ecological civilization construction into the general layout of state development.

In addition to changes in procedural laws, the structure of the court system has been reorganized to accommodate environmental cases. On July 3, 2014, the Supreme Court formally set up environmental resource tribunal, and demanded all higher courts to follow suit. Intermediate court could set up environmental resource trial organ according to its practical trial volume, and for those with inadequate cases, collegial panels could set up instead. A few grassroots courts with plenty of cases could also set up environmental resource trial organs. Generally, the first instance of EPIL case should be heard by an intermediate court. To strengthen the protection of ecological environment and resource, state owned asset, transfer of state owned land use right and food and drug safety and other social public interest, in July 2015, legislative authority authorized 13 provinces including Beijing, Inner Mongolia, Jilin and Jiangsu to conduct a two-year EPIL, and procuratorate could start environment civil public interest litigation and environment administrative public interest litigation. [6]

Just as some scholars said, looking back at the ups and downs of China's environmental justice construction in the past two decades, we found that the national action to strengthen environmental legal practice was accomplished with the background of ecological civilization system construction. [7] So was the development of environment public interest litigation (EPIL). In 2012, the amended Civil Procedure Law stipulated in Article 55 that, an authority or relevant organization as prescribed by law may institute an action in a people's court, solving the bottleneck of accepting a civil public interest

litigation case. In June 2014, Article 58 of the amended Environmental Protection Law defined the qualifications for social organization to bring an EPIL case. [8] In January 2015, the Supreme People's Court published the Interpretations on Some Issues Concerning the Application of Law in Environment Civil Public Interest Litigation Cases, in which it further elaborated the 2014 Environmental Protection Law and implementation of EPIL. The Judicial Interpretation gave lower courts broad authority to enjoin, remediate and assess monetary costs for damage to public resources caused by private polluters. As discussed below, these improvements in the implementation of the amended Environmental Protection Law, have allowed courts at all levels use their authorities to improve the country's environmental management.

## 2. Implementation of EPIL System

Since the implementation of the amended Environmental Protection Law, the number of EPIL cases has increased dramatically. From 2007 to 2014, courts at all levels accepted 65 EPIL cases, among which 57 were environment civil public interest litigations and 8 environment administrative public interest cases, an annual average of 8.1 cases. From January 2015 to June 2016, courts at all levels accepted 116 EPIL first instance cases and 61 were concluded. Among which 104 were environment civil public interest litigation and 12 environment administrative public interest litigations. From January to June 2015, courts at all levels accepted 2 environment administrative public interest cases brought by procuratorates, and from July 2015 to June 2016, the number of such cases increased to 21, among which 11 were environment civil public interest cases and 3 were concluded; 10 were environment administrative public interest cases (including a case of environment administrative incidental civil public interest litigation), and 6 were concluded. [9] In addition, the location of EPIL cases likewise expanded from a concentration in few provinces like Jiangsu, Guizhou, Fujian and Shandong to now encompass 21 provinces, In additionprocuratorates filed public interest litigations in 12 pilot provinces ; to date Beijing Municipal Court is the only one that hasn't accepted a case filed by the local procuratorate. .

The vastly expanded number and geographic scope of EPIL cases demonstrates that the changes made in Chinese national environmental law are having significant impacts in the court system. Recognizing the importance of allowing social organizations as well as procuratorates to file environmental cases is having tangible results not only in solving specific environmental problems but in raising judicial awareness of the role of courts in upholding national environmental laws. Now that EPIL appears to be firmly established and is maturing in many parts of China, judges and litigants have to address the more complex and nuanced procedural and substantive aspects of EPIL. We discuss these issues in Section __ below.

Because the public interest in natural resources is broadly defined, EPIL cases are focused on a broad spectrum of public environmental problems. Among the EPIL cases accepted thus far include water pollution, air pollution and soil pollution, resource damage cases such as damages to land, forest, sea and endangered wild plants, cases of destruction to natural reserves, damage to human remains and so on. A few examples below demonstrate the broad reach of China's environmental laws.

Water and air pollution cases occupy the largest proportion of EPIL cases. For example, the water pollution public interest litigation case, brought by plaintiff Taizhou Municipal Environmental Protection Association, supported by Tanzhou Municipal People's Procuratorate against 6 chemical and pharmaceutical enterprises including Jiangsu Changlong Agrochemical Co. Ltd. The plaintiff alleged that the 6 defendants violated state environmental protection law and hazardous waste management regulations, by selling 25,934.795 tons of hazardous waste—waste hydrochloric acid and waste sulfuric acid generated in production-- with no requirement for hazardous waste treatment (personnel involved were prosecuted by Tanxing Municipal People's Procuratorate) with a price of about 20 to 100 yuan per ton to covertly discharge the waste in rivers including Taiyun River, Gumagan River in Gaogang District, Tanzhou City, and led to a serious pollution of the water, causing

severe environmental damage, the 6 defendants must assume the liability to rehabilitate the polluted environment. The court of the first instance decided that the 6 defendants pay 160 million yuan of compensation to rehabilitate Taixing's environment. [10] The second instance and the retrial all affirmed the original judgment. [11]

It is clear that China's environmental laws provide a powerful tool to prevent pollution and restore the environment, if they are fully utilized to achieve that end. Article 1 of the Environmental Protection Law clarifies that the purpose of the law is protecting and improving environment, preventing and controlling pollution and other public hazards, safeguarding human health, further construction of "ecological civilization," construction and promoting the sustainable development of economy and society. Article 55 of the Civil Procedure Law and Article 58 of the Environmental Protection Law define the target of EPIL system as protecting social public interest. EPIL not only plays the role of environmental justice to protect environmental rights and interests, balance public rights and help form public policy, [12]it also has the function to safeguard public participation and suppress local interference. Though these laws are in their formative stages, some of their intended benefits have been achieved.

Relieve Environmental Rights and Interests the most direct effect of EPIL's relieving environmental rights and interest is the improvement of local environment quality. Article 33 of the Interpretations of the Supreme People's Court on Some Issues Concerning the Application of Law in Environment Civil Public Interest Litigation Cases stipulates that, social organization requests for deferred payment of litigious cost because of financial difficulty, the court shall grant. This article aims to encourage the public interest organization to file EPIL cases.-Under the incentive mechanism, when choosing a case, some public welfare organization with relatively strong litigious capacity tends to focus on case with great social impact, especially pollutions affecting regional environment management and causing serious damage. Taking cases involving air pollution treatment in Beijing, Tianjin and Hebei for example, the Intermediate Court of Xingtai City, Hebei Province accepted the air pollution case brought by China Biodiversity conservation and Green Development Fund against Jiajing Glass Company of Hebei Daguangming Industry Group; the Second Intermediate Court of Tianjin City heard the air pollution case brought by China Biodiversity conservation and Green Development Fund against Volkswagen (China) Sales Company; and the Fourth Intermediate Court of Beijing City heard the air pollution case brought by China Environmental Protection Fund against Chongqing Changan Automobile Holding Company. There was a civil public interest litigation case entered by All China Environmental Federation (ACEF) against Zhenhua Company of Dezhou Jinghua Group for causing air pollution. Zhenhua Company of Dezhou Jinghua Group was a company in Dezhou city proper, Shandong Province, engaging in glass and deep processing glass products. Though Zhenhua Company invested in desulfurization and dust removal facility, there were still two chimneys emitting excessive pollutants for a long time, causing air pollutions and affecting neighborhood livelihood. In 2014, Zhenhua Company was penalized by environmental protection administrative authority of Shandong Province for several times, but it continued to discharge excessive air pollutants. On March 25, 2015, China Environmental Protection Association filed a lawsuit, requesting a court order for Zhenhua Company to immediately stop emitting excessive pollutants, increase air pollution control facility, and the company shall only start operation after passing the examination of the environmental protection authority; the company should compensate for the 2.04 million yuan of loss caused by its emission and 7.8 million yuan of loss caused for its refusal to correct its excessive emissions, and the payment shall be paid to designated financial account of the local government for air pollution treatment in Dezhou City. Dezhou Government and Dezhou Environmental Protection Bureau supported the trial, before trial, the first instance court organized local government and environmental protection bureau to jointly hold a coordination meeting, Zhenhua Company will close all its production lines and move to Tianqu Industrial Park, which is far from residential living areas and build a new factory there. [13] The combination of a significant civil penalty and the relocation of the factory demonstrates a strong

judicial commitment to implementing the spirit and the letter of the 2014 Environmental Protection Law.

## 3. The Judicial Role of Supervising Administrative Authorities to Perform their Legal Duties

Another long-standing problem in the enforcement of environmental law in China is the unwillingness of local authorities to enforce laws against local companies. In the process of procuratorate supervision before trial, the administrative authority often did not correct the violation or perform its duty. The pollution continued unabated. However the revised EPL provides intermediate courts with jurisdiction over these type of cases, in an effort to remove undue pressure from local governments.

The increased role of the Procuratorate is an important development in the development of public interest litigation is the role of the Procuratorate. The 2012 Civil Procedure Law only provides that "units stipulated by law or social organizations" can file EPIL. The Environmental Protection Law only specifically authorized the NGOs that met its standing requirements (registration at the County level, five years with no violations) to sue. However, the Party also issued a plan to construct an "ecological civilization," which encourages the procuratorate to file EPIL and the establishment of ecological-compensation system.

The Supreme People's Procuratorate then filed an application to National People's Congress to ask for approval for a pilot programs to file EPIL cases both civil (suing polluters) and administrative (suing the government agencies). The NPC approved the application in July 2015. Since then, the SPP selected 13 provinces to experiment with this new arrangement.

The State Council issued another plan in October 2015 which says that the natural resources are state property and it should be the provincial government to establish a legal mechanism to hold polluters accountable for ecological environmental damages. The State Council decided to select 7 pilots. The MEP is tasked to provide guidance to 7 provinces to implement the pilots. MEP designated the China Academy of Environmental Planning to draft those guidelines.

Under this new arrangement, when court receives a case filed by a procuratorate, it will suppress local interference to deliver indictments material, organize evidence exchange and pre-trial meeting, and carry forward explanation and supervision to urge administrative authority to perform its legal duty, thus upholding the public interest. At present, most of the EPIL cases brought by a procuratorate, has led to the local EPB correcting the violations, achieving favorable legal and social effects.

For example, on January 19, 2016, Huaishang District Court of Bengbu City, Anhui Province accepted and heard a case brought by public interest litigant Huaishang District Procuratorate of Bengbu City, with Bengbu Municipal Land and Resource Bureau as the defendant and Hualing Automobile Trade Co. as the third person. The cause of action was that they did not perform their legal duty in land administration. Before legal proceedings, the procuratorate offered procuratorial proposals to the defendant and urged the defendant to perform its legal duty. Bengbu Municipal Land and Resource Bureau issued administrative penalty decision to the enterprise violating the law, and urged it to dismantle some illegal constructions and cement ground, but did not supervise the enterprise to restore the land completely. On January 19, 2016, the procuratorate brought EPIL against the defendant with the cause of not performing its legal duty. The court organized pre-trial negotiation, and the defendant urged the involved enterprise to reclaim the land before the trial. The joint inspection and examination of local land and resource bureau, agricultural bureau and forestry bureau found that the land was come up to the standard of general cultivated land and the land was restored to its original status. The procuratorate thus withdrew its administrative public interest litigation before the trial and the court granted it. [14]

The EPIL system aims to increase public participation in solving China's environmental problems. The scope of social organizations which have the capacity to bring EPIL has been expanded under the 2014 law. Social organizations which meet the requirements can bring a suit in the public interest.

Some scholars have compared China's public interest litigation system with America's 'citizen suit.' and argued that there should be no restrictions to the qualifications of plaintiff who brings public interest litigation. However, without explicit understanding of U.S. judicial system, constitution and civil procedure law, we should not have preconceived ideas and regard 'citizen suit' as 'public interest litigation'. [15]Though citizen suit broadly allow "any person" to bring a suit, U.S. Constitutional requirements limit the reach of citizen suits. [16]Chinese law does not impose these limitations, as a qualifying social organization can bring a suit anywhere in China without demonstrating specific harm to its members. In that sense, though social organizations are more narrowly defined than citizen suit provisions in U.S. law, Chinese laws have less stringent regulations on the qualifications of social organizations. [17]

For example, because of the pollution of Tengger Desert, China Biodiversity Conservation and Green Development Fund (CBCGDF) filed an EPIL against Ningxia Huayu Chemical Industry Co., [18]the Intermediate Court of Zhongwei City, Ningxia Hui Autonomous Region held that the articles and registration certificate of CBCGDF did not register to "engage in environmental protection public interest activity", and dismissed the case. The court of the second instance dismissed CBCGDF's appeal and upheld the original verdict using the same excuse. During retrial, the Supreme Court ruled that, "environment public interest has the quality of general preference and sharing and there's no particular legal person of direct interest, so it's necessary to encourage, guide and regulate social organizations to enter EPIL according to law, to fully display the function of EPIL." Whether the aim and business scope of a social organization includes maintaining environmental public interest, should be judged upon its connotation, not simply upon text expression. Even though the NGO's articles did not explicitly write it shall maintain environmental public interest, the organization works to protect various natural and man-made natural elements that influence the survival and development of human being, Therefore, the Supreme People's Court determined that the organization should be regarded as its aim and business includes maintaining environmental public interest. Since its founding in 1985, CBCGDF has been engaging in environmental public interest activities such as holding environmental protection seminar, organizing ecological investigation and carrying out environmental protection publicity, which were in conformity with legal regulations. The demand that public interest litigation brought by a social organization should be related to its aim and business scope was to guarantee that the social organization has capacity for public interest litigation. Even though the allegations in the lawsuit did not precisely conform to its aim and business scope, but was in fact to the environmental elements or ecological system it tried to protect, courts should affirm its qualifications based on a broad interpretation of the NGO's articles and the broad purposes of EPIL. In this case, the EPIL was triggered by the pollution of Tengger Desert. The interaction of desert species and their environment form a complex and fragile desert eco-system, which should be cherished and taken care of by human beings. CBCGDF sued Huayu Company for discharging excessive waste water directly into evaporation pond, which gravely damaged the fragile eco-system in Tengger Desert. What the organization did was to maintain environmental public interest, which was in conformity with its aim and business scope.

## 4. Promote Implementation of Public Policy

The new EPIL system also demonstrates how one case can have broader implications for environmental policy that reach beyond the defendant in one particular case. In the case brought by public interest litigant Jinping County Procuratorate against Jinping County Environmental Protection Bureau for administrative incompetency, [19]local stone material manufacturer did not build auxiliary environmental protection facility as per the requirement of "three simultaneousness" of environmental protection, [20]the main construction was in operation, and it discharged production waste water directly into Qingshui River, causing contamination to the river. The defendant issued administrative penalty but did not supervise its implementation and the stone material manufacturer continued illegal

operation. After Jinpin County Procuratorate brought public interest litigation, the court organized a pre-trial meeting, under the leadership of county government, the land and resource bureau and environmental protection bureau had a concentrated rectification of non-coal mines and closed all stone material processing factories that broke environmental protection regulations. Because of this case, local environmental protection administrative authority requires local stone material manufacturers to start operation only after the "three simultaneousness" environmental protection auxiliary facilities are built and passed examination by the EPB.

## 5. Conclusion

The overall effect of EPIL is yet to fully display owing to factors such as administrative public interest litigation system has not yet been established, procuratorate's bringing public interest litigation is still in experiment, local provincial government entering ecological environment damage compensation litigation is soon to start experiment, operational trial regulations need to be specified, subject with the right of eco-environment damage compensation has not yet to be categorized etc. For this reason, this article suggests that we should improve and perfect legislation, specify trial regulations, have integrate consideration of the experiences and outstanding problems from the experiment of procuratorate's bringing public interest litigation and eco-environment damage compensation system.

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[9] Article 58 provides that Chinese social organizations that meet the following two requirements can bring suits on behalf of the public interest in cases involving pollution or ecological damage: 1) have registered with the civil affairs departments at or above the municipal level within the district; 2) have specialized in environmental protection public interest activities for five or more consecutive years and have no record of violation of law.
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[28] See Lesley. K McAllister, Environmental Advocacy Litigation in Brazil and the United States, Journal of Comparative Law 6:2 (2011). Constitutional limitations can present significant hurdles to enforcing environmental laws. See e.g. Lujan v. Defenders of Wildlife, 504 U.S. 555, (1991) (dismissing citizen suit under Endangered Species Act for lack of standing); Washington Environmental Council v. Bellon, 732 F. 3d 1131 (9th Cir. 2013) ( citizen suit under federal Clean Air Act (CAA), 42 U.S.C. sections 7401-7671q, seeking to compel the Washington State Department of Ecology and the other regional agencies to regulate greenhouse gas emissions from the state's five oil refineries under the CAA dismissed for lack of standing).
[29] According to Article 58 of the Environmental Protection Law, Article 3, 4, 5 of the Interpretations of the Supreme People's Court on Some Issues Concerning the Application of Law in Environment Civil Public Interest Litigation Cases, social organization must be: (1) Social group, private non-enterprise and fund registered in civil affairs unit of or above municipal level (city with districts); (2) Aim and main business scope defined in the articles of the social organization is to maintain social public interest and it engages in environmental protection public interest activity; (3) Social public interest involved in the litigation brought by the social organization should be associated with its aim and business scope; (4) Social organization has been engaging in environmental protection public interest activity for five consecutive years before bringing the case, during the five years, it did not break any law or regulation and received no administrative or criminal penalty.
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