

## Chinese Environmental Law

China has industrialized and urbanized at unprecedented scale and speed since its economic take-off began in the 1980s. It has become the world's second largest economy, but pollution has pushed the environment to the limits of its carrying capacity. *Chinese Environmental Law* provides a comprehensive and structured analysis of the increasingly sophisticated Chinese environmental legal regime. It examines the regulation of pollution in detail, covering key environmental statutes, policies and plans, and investigates judicial innovation in the interpretation and application of environmental legal instruments. The book presents Chinese environmental law in action and in context. By discussing key institutions and processes, readers will understand the operation of the environmental law and policy, the dynamic interactions between state and non-state actors, and the special challenges to the implementation and enforcement of environmental law in the socio-economic and political context of China.

YUHONG ZHAO is Associate Professor at the Faculty of Law of The Chinese University of Hong Kong. Her research interests and teaching expertise include environmental law and civil law. She has published widely on aspects of Chinese environmental law in leading academic law journals and books, and has been invited to speak on China's environmental law reform and its climate policies at international conferences hosted by prestigious universities and professional bodies in Asia, Europe, Australia and the United States.

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**Yuhong Zhao**

The Chinese University of Hong Kong



**CAMBRIDGE**  
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University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India  
79 Anson Road, #06–04/06, Singapore 079906

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[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781107039445](http://www.cambridge.org/9781107039445)  
DOI: 10.1017/9781139600316

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First published 2021

*A catalogue record for this publication is available from the British Library.*

ISBN 978-1-107-03944-5 Hardback  
ISBN 978-1-107-69628-0 Paperback

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## Preface

Chinese environmental law has experienced fascinating and dynamic development since the late 1970s. The first wave of environmental legislation started with the Environmental Protection Law (EPL) (for trial implementation) (1979) and continued throughout the 1980s and 1990s, a period that also witnessed the growth of environmental lawmaking and institution building. The Water Pollution Prevention and Control Law (WPPCL) (1984), the Air Pollution Prevention and Control Law (APPCL) (1987), the Environmental Protection Law (EPL) (1989) and the Law on the Prevention and Control of Pollution by Solid Waste (SWL) (1995) were among laws enacted to address pollution from varied sources. China's command-and-control approach relies heavily on government agencies to set standards, monitor performance and impose sanctions to punish or deter violations. Political and systemic constraints in the context of China's large-scale and rapid economic growth have, however, impeded effective environmental enforcement by local agencies. Despite the enactment of the Environmental Impact Assessment Law (EIAL) (2001) and amendments of the APPCL, WPPCL and SWL in the 1990s and at the turn of the twenty-first century, pollution continues to threaten public health and cause substantial damage to public and private property.

China's most recent environmental law reform has taken place in the second decade of the twenty-first century, with unprecedented active engagement by its supreme executive body, the State Council, as well as the national legislature, the courts and the procuratorates. The most significant Action Plans – the Action Plan on Prevention and Control of Air Pollution (Air Action Plan) (2013), the Action Plan on Prevention and Control of Water Pollution (Water Action Plan) (2015) and the Action Plan on Prevention and Control of Soil Pollution (Soil Action Plan) (2016) – were issued by the State Council to tackle serious pollution as a matter of urgency. The National People's Congress Standing Committee (NPCSC) revised the EPL (1989) in 2014 to strengthen government responsibility and accountability, expand the enforcement powers of local agencies, enhance public participation and information disclosure, and substantially increase the cost of non-compliance. Specialized environmental statutes have been revised or amended, and include the APPCL (2018), WPPCL (2017), EIAL (2018) and SWL (2020). In addition, the Soil Pollution Prevention and Control Law (SPPCL) (2018) was enacted to tackle China's lack of regulatory control of soil pollution. To promote full implementation and effective



enforcement of law, the party-state has initiated institutional reform and judicial innovation. The State Council's institutional reform of 2018 further expanded the powers of the Ministry of Ecology and Environment (MEE), facilitating an integrated approach to regulation and to managing and protecting the environment from pollution. The recent establishment of specialized environmental courts and tribunals, active trialling of public interest litigation (PIL) and the amendment of the Civil Procedure Law (CPL) (2017) and Administrative Litigation Law (ALL) (2017) provide the infrastructure for public access to judicial redress and more effective scrutiny and supervision of both polluters and agencies by social organizations and procuratorates.

This book presents China's increasingly sophisticated environmental legal regime in the context of its social, economic and political transformation. Chapter 1 highlights the country's major environmental crisis of air and water pollution, soil contamination and pollution by solid waste and provides an overview of the legal responses. This overview includes a discussion of the sources of environmental law and the legal hierarchy in China. Chapter 2 examines key institutions and operators of the environmental legal regime, including government organs, judicial institutions and civil society. Chapters 3–8 analyse the command-and-control approach to pollution taken by key environmental statutes, including the EPL (2014), EIAL (2018), APPCL (2018), WPPCL (2017), SWL (2016) and SPPCL (2018). The chapters examine issues ranging from basic environmental legal principles and regulatory control mechanisms to specialized instruments targeting different types of pollution from a variety of sources. Chapters 9 to 12 focus on law in action and investigate how statutory provisions are applied and interpreted by courts in civil, criminal, administrative and PIL cases. These chapters demonstrate how individuals and organizations have been able to use litigation to protect private and public rights and interests from pollution, and how they have made an impact on China's environmental law reform.

This book could not have been completed without the enormous support and assistance of many individuals and institutions. I appreciate very much the excellent professional service and patient support I received from Caitlin Lisle, Marianne Nield, Laura Blake and the editorial team at Cambridge University Press, as well as Indra Siddharthan, Orvil Matthews and Katherine Demopoulos. I completed part of the research and writing while on sabbatical from the Chinese University of Hong Kong. I am grateful to Professor Vivienne Bath, Director of the Centre for Asian and Pacific Law of Sydney Law School for hosting my sabbatical visit to work on this book. I have benefited tremendously from the knowledge and wisdom of my environmental law colleagues and friends as I conducted research for this book. It is impossible to name them all, but I particularly appreciate the insightful guidance of Professor Wang Canfa and Professor Yang Sujuan of the China University of Political Science and Law, Professor Li Yanfang of Renmin University of China, Professor Luo Li of the Beijing Institute of Technology, Professor Wang Mingyuan of Tsinghua University and Professor Li Zhiping of Sun Yat-sen University. My special thanks are reserved for Bing, Cindy and Vicky for their encouragement and genuine interest in what I do.

## Author's Note

This is a brief note to clarify matters of contents, translation, citation, format and related issues.

### CONTENTS

The manuscript was completed in February 2020 and covers Chinese environmental law to the end of that month. Later legislative developments, such as the revision of the SWL in April 2020 and the promulgation of the Civil Code in May 2020, are not included. Where possible, however, minor updates on cases that occurred after February 2020 were adopted during the editorial process.

### TRANSLATION

This book does not follow any specific version of commercial or academic translation of China's statutes or other legal instruments. The author's translation may or may not be the same as other translations. Where there are well-established translations of titles of statutes or other legal instruments, they are used in this book. Otherwise, the author has provided her own translations. Where the contents of a statute, a judgment or other legal instrument are quoted, they are mostly the author's own translation.

### ONLINE RESOURCES

Online resources provide abundant information to readers studying the development of Chinese environmental law and practice. They include, but are not limited to, the official websites of key legal institutions, such as the National People's Congress (NPC), the Supreme People's Court (SPC), the Ministry of Ecology and Environment (MEE) and their corresponding bodies at provincial, municipal and county levels. In addition, the websites of major domestic and international media are also valuable resources. A few examples are *China Environment News*, *Legal Daily*, *People's Daily*, *China Daily*, *South China Morning Post*, *The Guardian* and *The New York Times*. However, many of the weblinks are short-lived and therefore this book keeps their use to a minimum. In comparison, the legal

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database managed by Peking University, known as Beida Fabao and accessed at [www.pkulaw.cn](http://www.pkulaw.cn), provides a relatively stable source of primary and secondary legal resources for the research of Chinese law. Unless otherwise specified in the footnotes, the sources of the statutes, regulations, measures, state plans, party policies, judicial interpretations and cases discussed in this book are Beida Fabao at [www.pkulaw.cn](http://www.pkulaw.cn). For the sake of simplicity, the weblink is not repeated for every single item.

**FOOTNOTE CITATIONS**

This book uses the short-title system of referencing, whereby the full information of a source appears in the first footnote citation and in the Bibliography at the end of the book. Second and subsequent footnote citations use a simplified format and include only key information. For example, for the second and subsequent footnote citations of a single-author book, only the author's surname, the first few words of the book title and a page reference, if relevant, appear. However, given the generic nature of Chinese surnames, such as Wang, Li and Zhang, the full names of Chinese authors are used in all footnotes in order to assist readers in quickly locating a source in the Bibliography. Footnote citations are in English only, while the Chinese version of key sources are given either in the relevant table or the Bibliography. The Pinyin system of romanization is used in the translation of Chinese names, including authors, cities, counties and provinces. Where a Chinese author publishes in English, the author's English name as it appears in the publication is used.

**TABLES OF STATUTES AND OTHER LEGAL INSTRUMENTS**

The tables cover major environmental statutes, state plans, regulations and judicial interpretations in bilingual versions to assist readers to locate the original Chinese sources. The tables do not include every legal instrument mentioned in this book, but focus on the most crucial under which China's environmental legal regime operates.

**ABBREVIATIONS**

All statutes contain 'of the People's Republic of China' in the full title of the original Chinese version: for example, the Environmental Protection Law of the People's Republic of China. For simplicity's sake, both the Chinese title and English translation in this book omit the phrase 'of the People's Republic of China'. For ease of reference, the Environmental Protection Law is further abbreviated to the EPL. In addition, abbreviated forms of some legal instruments are used instead of the full title. For example, the State Council's Decision on Implementing Scientific Development and Strengthening Environmental Protection (2005) is abbreviated to State Council Decision (2005) for the second and subsequent appearances in a chapter.