

The Amended Law on the Prevention and Control of Water Pollution

Enforcement of environmental standards in China has always been an issue, even though ad hoc regulations regarding pollution control and prevention exist. Because power in China is decentralized and delegated to the various local governments and administrations, many rules may have different impact and different degrees of enforceability depending on the region.

Local governments seem to have been more concerned about “passing” their political performance test, based on the fulfillment of economic goals, than to protect environment and people’s health. In an effort to boost economic growth, local administrators often do not take into account potential environmental problems, and leave the results of such problems out of performance reports.

An appreciation of this problem appears to have given birth to the new Law on Prevention and Control of Water Pollution, passed on 28 August 2008. The law replaces the previous one issued in 1984, further revised in 1996.

The new law finally sets forth defined enforcement provisions and allocates responsibilities for water pollution directly on local administrations, which in exchange have been given the power to prosecute illegal behaviors by means of issuing notifying orders to polluting factories to restrict or terminate production. In case of persistent non-compliance, factories and other polluting entities may be shut down.

Civil and criminal liabilities have been further strengthened and protection accorded to victims of pollution-related accidents has been enlarged. In regard to environmental torts, the new law introduces an exception to the traditional principle of exclusion of responsibility of the infringer towards the victim. This is in order to account for the possibility that the damages claimed by the victim have been exclusively caused by negligence of the infringer.

The new law states that victims of pollution accidents cannot seek compensation from the infringer in cases of the victim’s absolute negligence. Meanwhile compensation is still possible, although reduced, in case of serious – but not malicious – negligence on the part of the victim.

Further, the law stimulates lawyers and local organizations to represent victims of pollution-related accidents in the relevant proceedings against infringers, in an attempt to encourage victims to take action to defend their rights. Additionally, the law provides for the establishment of ecological compensation and pollution discharge permit systems, as well as setting forth detailed provisions on water pollution accidents.

Implementing regulations on these aspects are expected to be issued in the near future.



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Legal news

Incentives to Alternative Energy Vehicles Production

To foster production and sales of alternative energy vehicles, Chinese government, through its Ministry of Finance, has issued measures to grant consumers a one-time financial subsidy to buyers of energy-saving, fuel efficient and new and alternative energy cars (electric, fuel cell and hybrid).

The bonus policy is effective in Beijing and Shanghai, and will be probably extended in other 11 cities such as Chongqing, Changchun, Dalian, Hangzhou, Jinan, Wuhan, Shenzhen, Hefei, Changsha, Kunming and Nanchang.

Additionally, a US\$1.5 fund is being raised by the Government to help producers in the automotive industry to research new technologies and develop energy efficient and low-consumption vehicles in the next three years.

The public sector is involved in the project as well. Public transport, taxis and postal vehicles will gradually be replaced by alternative and energy efficient vehicles.

Production permits have been issued for new Chinese made vehicles such as the ones developed by BYD and Chang’an Jie Xun.

The new bonus policy creates a favorable investment climate for both overseas and domestic players in the Chinese automotive industry. High prices, however, still represent a barrier to sales’ take off in the domestic market.

2008 saw incredible developments in solar energy technology, which have begun to be recognized as a feasible way to supplant the current fossil fuel dependent system. Despite decreasing gas prices and a tumultuous financial situation, research in the West and implementation in the East both provide evidence of strong potential in the industry in the future.

Researchers at MIT have made progress in storing solar energy for use during non-daylight hours. Through a process that is based on photosynthesis, Professor Daniel Nocera and his team have pioneered technology that uses solar energy to separate water into hydrogen and oxygen gas, which can then be recombined any time to create a steady energy source. This is the sort of advance that can make solar into an efficient and feasible energy system for usage throughout the day.

While progress in the laboratory is one thing, progress in implementation and popularization is another. In this, recent news in China has been encouraging. One solar energy project announced recently, to be constructed in Northwest China, is stated to become the world's largest upon its completion. One interesting facet of this project is the emphasis on high-tech photovoltaic cells, which convert sunlight directly into electricity but are much more expensive than the relatively low-tech alternative, solar water heating.

Previous solar successes in China, including China's largest solar energy firms, have all focused on the latter. Solar water heaters are suitable for individual homes and small communities, but less so for providing cities with power. Photovoltaic, on the other hand, is geared more towards creating electricity for a power grid, and can be used far away from its source.

Because of the difference in these technologies, an investment in a large photovoltaic project is perhaps symbolic of China's willingness to embrace sustainable energy as a real feature of future infrastructure. China's potential solar resources are some of the best in the world, with northern regions free from rainfall most of the year.

Investment

No Cooling off China's overheated coal industry

Growth in China's coal industry continues to present reason to worry about China's energy future. In particular, two major deals in China's coal industry point to the future of the industry. China National Coal is the second largest coal company in China, with a coal production in 2008 of some 105 billion tons of coal. The firm has started construction of a large scale coal mine in Shanxi province (Eastern Pingshuo Coal Mine) which is predicted to produce 20 million tons of coal per year. Additionally, the firm is building a smelting facility which will wash 20 million tons of coal per year. Construction time is estimated at 3 years, including an annexed 30 km railway to connect the mining complex to the national coal railway.

According to information released in early January, in a move to gain resources to run its thermal power plants, Guodian Changyuan Electric Power Co., Ltd., is acquiring two coal companies in Henan province. The firm will conduct the operation through the establishment of a coal company in the province which will then acquire the two target companies Anxing Coal Co., Ltd., and Xinghua Coal Co., Ltd., for a value of RMB390 million. Thanks to this acquisition, Guodian Electric will produce 1.2 million tons of coal per year.

The operation is in line with the recent trend from power generation companies to acquire coal companies to ensure regular coal supplies.

One piece of good news is that meanwhile, in response to frequent coal mine collapses and environmental catastrophes, the government of Shanxi province has increased safety inspections in coal mines. Part of the aim of the provision is to slow down production in order to balance the oversupply of the market which has caused fall in prices. It has been foreseen that such inspections will force coal mines to temporarily reduce or cease production for the duration of the inspection. In addition, the local government has raised safety production standards and increased the number of Chinese New Year vacation days for workers.

The coal industry continues to supply the vast majority of China's energy resources. In spite of increasing investment in renewable energy, the parallel investments in coal infrastructure give observers reason to remain cautious in commending China's energy future.