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# Open Environmental Information Upon Disclosure Request in China: The Paradox of Legal Mobilization

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## Abstract

Taking a realist view that law is one form of politics, this dissertation studies the roles of citizens and organizations in mobilizing the law to request government agencies to disclose environmental information in China, and during this process, how the socio-legal field interacts with the political-legal sphere, and what changes have been brought about during their interactions.

This work takes a socio-legal approach and applies methodologies of social science and legal analysis. It aims to understand the paradox of why and how citizens and entities have been invoking the law to access environmental information despite the fact that various obstacles exist and the effectiveness of the new mechanism of environmental information disclosure still remains low.

The study is largely based on the 28 cases and eight surveys of environmental information disclosure requests collected by the author. The cases and surveys analysed in this dissertation all occurred between May 2008, when the OGI Regulations and the OEI Measures came into effect, and August 2012 when the case collection was completed.

The findings of this study have shown that by invoking the rules of law made by the authorities to demand government agencies disclosing environmental information, the public, including citizens, organizations, law firms, and the media, have strategically created a repercussive pressure upon the authorities to act according to the law. While it is a top-down process that has established the mechanism of open government information in China, it is indeed the bottom-up activism of the public that makes it work. Citizens and organizations' use of legal tactics to push government agencies to disclose environmental information have formed not only an end of accessing the information but more a means of making government agencies accountable to their legal obligations. Law has thus played a pivotal role in enabling citizen participation in the political process.

Against the current situation in China that political campaigns, or politicization, from general election to collective actions, especially contentious actions, are still restrained or even repressed by the government, legal mobilization, or judicialization, that citizens and organizations use legal tactics to demand their rights and push government agencies to enforce the law, become *de facto* an alternative of political participation. During this process, legal actions have helped to strengthen the civil society, make government agencies act according to law, push back the political boundaries, and induce changes in the relationship between the state and the public.

In the field of environmental information disclosure, citizens and organizations have formed a bottom-up social activism, though limited in scope, using the language of law, creating progressive social, legal and political changes. This study emphasizes that it is partial and incomplete to understand China's transition only from the top-down policy-making and government administration; it is also important to observe it from the bottom-up perspective that in a realistic view law can be part of politics and legal mobilization, even when utterly apolitical, can help to achieve political aims as well. This study of legal mobilization in the field of environmental information disclosure also helps us to better understand the function of law: law is not only a tool for the authorities to regulate and control, but inevitably also a weapon for the public to demand government agencies to work towards their obligations stipulated by the laws issued by themselves.

**Keywords:** China, open government information, environmental information disclosure, legal mobilization, social activism, public participation

## Tiivistelmä

Tämä väitöskirja tarkastelee kansalaisten ja järjestöjen rooleja ympäristön tilaa koskevan tiedon vaatimisessa valtion laitoksilta hyödyntämällä sitä varten tehtyjä lakeja Kiinan kansantasavallassa. Tarkastelun kohteena ovat myös tietopyyntöprosessin yhteiskunnallis-laiillisen puolen ja poliittis-laiillisen puolen vuorovaikutuksen mukanaan tuomat muutokset.

Väitöskirjan lähestymistapa on oikeussosiologinen sen hyödyntäessä yhteiskuntatieteen ja laintulkinnan metodeja. Sen keskiössä on kansalaisten ja muiden toimijoiden toiminnan ristiriita niiden hyödyntäessä lakia saadakseen käsiinsä ympäristön tilaa koskevaa informaatiota. Ristiriita kumpuaa tiedon saannin epävarmuudesta ja uuden mekanismin toimintavarmuuden kyseenalaisuudesta. Väitöskirjassa laki nähdään realistisen koulukunnan mukaan yhtenä politiikan osa-alueena.

Tutkimuksen pohjana on 28 tapausta ja kahdeksan selvitystä ympäristötietoa koskevista tietopyynnöistä. Tapaukset ja selvitykset ajoittuvat vuoden 2008 toukokuun jälkeiselle ajalle, jolloin Kiina otti käyttöön tiedon avoimuutta käsittelevät säädökset. Materiaalien keräys päättyi vuoden 2012 elokuussa.

Tutkimuksen johtopäätös on, että hyödyntämällä valtion omia lainvoimaisia tietopyyntöjä mahdollistavia mekanismeja, kansalaiset, järjestöt, asianajotoimistot ja media ovat aikaansaaneet valtioon kohdistuvan paineen, joka pakottaa sen toimimaan lain kirjaimen mukaan. Näin ylhäältä käsin luodun mekanismin toimivuuden on todistanut ruohonjuuritason aktivismi. Kansalaiset ja järjestöt ovat siis luoneet niin pääsyn tiedon lähteille kuin keinon saattaa valtion toimijat vastuuseen lain edellyttämistä velvoitteistaan. Lain rooli kansalaisten osallistamisessa poliittiseen prosessiin on täten ilmeinen.

**Avainsanat:** Kiinan kansantasavalta, hallinnon avoimuus, kansalaisaktivismi, ympäristötiedon tiedonantovelvollisuus, legaalinen mobilisaatio, julkinen osallistuminen

## Abbreviations

OGI:	open government information
OEI:	open environmental information
SC:	State Council
EPD:	Environmental Protection Department
EPB:	Environmental Protection Bureau
MEP:	Ministry of Environmental Protection
CTO:	China Transparency Organization
NGO:	non-governmental organization
ENGO:	environmental non-governmental organization
CCP:	Chinese Communist Party
NPC:	National People's Congress
UN:	United Nations
EIA:	environmental impact assessment
SEPA:	State Environmental Protection Administration
CASS:	China Academy of Social Sciences
NAPSS:	National Administration for the Protection of State Secrets
SPC:	Supreme People's Court
IPE:	Institute of Public & Environmental Affairs
MoA:	Ministry of Agriculture
CLAPV:	Centre of Legal Aid for Pollution Victims
NRDC:	Natural Resources Defense Council
PITI:	Pollution Information Transparency Index
FWB:	Forest & Water Bureau
POPs:	persistent organic pollutants
PCBs:	polychlorinated biphenyls
ACEF:	All China Environmental Federation
GONGO:	government organized non-governmental organization

以子之矛陷子之楯，何如？

韩非子·难一

What if I stab your shield with your spear?

*Hanfeizi*. "Collection of Difficulties, No. 1"



# 1 INTRODUCTION

Effective public participation in environmental matters requires, first and foremost, that the public have access to environmental information.<sup>1</sup> In China, special legislation with regard to access to environmental information includes the *Regulations of the People's Republic of China on Open Government Information* (政府信息公开条例 hereafter as OGI Regulations)<sup>2</sup> and the *Interim Measures on Open Environmental Information* (环境信息公开暂行办法 hereafter as OEI Measures).<sup>3</sup> Both pieces of legislation were adopted in 2007,<sup>4</sup> since then, in Chinese law scholar Jamie Horsley's words, "China officially started its own process of developing an effective, enforceable nationwide information access regime."<sup>5</sup> Stanley Lubman, the Chinese Law expert, states that "[l]egal reform shapes and disseminates concepts about relations between state and society that affect individuals' relationships with each other as well as with the state."<sup>6</sup> Since the coming into effect of the OGI Regulations and the OEI Measures, has the new mechanism of open government information affected the relations between state and society? If so, how? Noticeably, citizens and organizations have already started to invoke the new law to push forward government information disclosure. This has been gradually creating changes within and between the public and the authorities. While the public is empowered by the new legislation, the authorities react with changing attitudes. This dissertation explores these changes with a particular focus on environmental information disclosure.

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<sup>1</sup> Ryall 2011, 45.

<sup>2</sup> The English translation of the OGI Regulations, please see Appendix 8.1.

<sup>3</sup> The English translation of the OEI Measures, please see Appendix 8.2.

<sup>4</sup> It shall be noted that the OGI Regulations and the OEI Measures are not the only two pieces of legal documents about government information disclosure, but just the two most relevant ones with regard to this study. There are other rules about government information disclosure issued by other ministries as well, for instance, the *Interim Measures of Government Information Disclosure* issued by the Ministry of Finance, and the *Open Government Information Interim Measures for Education Government Agencies* issued by the Ministry of Education.

<sup>5</sup> Horsley 2007a.

<sup>6</sup> Lubman 1999, 308.

Focusing on the role of citizens, and entities, mainly environmental organizations and law firms in this dissertation, in mobilizing the law to request government agencies to disclose environmental information, this dissertation argues that it is the changes with regard to social, political and legal factors pertinent to legal mobilization that make the mechanism of open government information more meaningful. By invoking the law promulgated by the authorities to request government agencies to disclose environmental information, citizens and entities have been strategically created a repercussive pressure upon government agencies to react according to the law. While it is the central government that lays down the structure of open government information, it is indeed the public who has been mobilizing the law to push forward its implementations. While other means of social movements, such as demonstrations and protests are still highly controlled and repressed, legal mobilization constitutes a critical and comparatively safe strategy for citizens and entities to form a community and strengthen the civil society,<sup>7</sup> push back political boundaries, and induce changes in the relationship between the state and the public,<sup>8</sup> thus helping to realize citizen participation in China's political process. This explains the paradox that, on the one hand, difficulties, obstacles and failures of obtaining government information through disclosure requests and suing government agencies for non-disclosure do exist; on the other hand, citizens and entities are active in using legal tactics for information disclosure and what is more, they have achieved in creating political responses that are far beyond the end result of information disclosure itself.

The legal actions taken by citizens and entities analysed in this dissertation also echo with the argument of SULNAM established by political scientist Kate Zhou that they are "spontaneous, unorganized, leaderless, non-ideological, and apolitical, yet cumulatively have revolutionized Chinese society".<sup>9</sup> Differing from the

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<sup>7</sup> Civil society in this dissertation refers to the growing citizen power, vis-à-vis the state, consisting of both individuals and organizations, which is outside of the state authorities. It does not refer to the concept in a strict sense that civil society is defined as independent organizations completely out of the control of the government in a liberal democratic society where a strong opposition party exists and freedom of expression is guaranteed. Although China remains an authoritarian state and the civil organizations are rather more embedded than independent, they have been acting towards the aims that independent organizations in the western liberal states have been fighting for. Therefore, in this dissertation, the concept of civil society is taken by its function within the arena between state and society but not the presence of certain conditional requirements. (Thibaut 2011, 138.) A detailed discussion of the concept of civil society, please see, Diamond 1994.

<sup>8</sup> Yang 2003.

<sup>9</sup> Zhou 2009, xxvii.



traditional repertoire of political participation such as protest and demonstration that are collectively taken and well-organized, legal actions are mostly individualized, sporadic, localized, and non-political; however while more and more citizens act in similar measures, in accumulation, together they can form a powerful individualized collective activism.<sup>10</sup>

This dissertation also reflects that when actions of politicization (政治化), for instance, forming political parties,<sup>11</sup> signing Charter 08,<sup>12</sup> or demanding government officials to disclose their assets,<sup>13</sup> are repressed to a large extent by the Chinese government, judicialization (司法化), even appearing as utterly apolitical, becomes an alternative of seeking changes as well. Nevertheless, although seemingly non-political and bearing no political purposes, these actions can result in political responses and political changes anyway. Moreover, it shall be noted that legal mobilization of requesting government agencies to disclose environmental information is nevertheless not a single and lone phenomenon of using law to interact with the authorities for social and political changes, the emerging rights-defense movement<sup>14</sup> and using legal procedures to seek social justice, for instance through public interest litigation,<sup>15</sup> have all shared many similarities: citizens have been forming a bottom-up social activism in pushing forward rule of law in China and thus creating political responses and political changes. This dissertation emphasizes that it is clearly partial and incomplete to understand China's transition and transform only from the top-down political process of policy making and government administration, it is equally, if not more, important to

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<sup>10</sup> van Deth & Maloney 2013.

<sup>11</sup> In China, to forming a political opposition party that advocates for democracy is not allowed. Moreover, organizers can be sentenced to long-term imprisonment for trying to do it.

<sup>12</sup> Charter 08 is a manifesto demanding Chinese government to launch democratic political reforms. It was published on 10 December 2008, the 60th anniversary of the *Universal Declaration of Human Rights*. One of the main drafters of the Charter 08, Liu Xiaobo was charged with "subverting state power" and sentenced to 11 years imprisonment for his activism in the Charter 08 campaign and other writings calling for democratic reform in China. The Charter 08 was originally launched by Chinese elite intellectuals and it is signed by more than 10,000 Chinese intellectuals, and citizens in various professions. See, e.g., Béja et al., 2012.

<sup>13</sup> Between the end of 2012 and August 2013, in China, dozens of people, including veteran activist lawyer Xu Zhiyong, were detained for their involvement in the New Citizens' Movement (新公民运动) and publicly demanding government officials to disclose their assets. Clearly, although the OGI Regulations provide the channel for citizens to request government information disclosure, they do not safeguard the political right of citizens to go to street holding posters written with "demanding government officials to disclose assets".

<sup>14</sup> See, e.g., Teng 2012.

<sup>15</sup> See, e.g., Fu 2011, Fu & Cullen 2010.

observe it from the bottom-up perspective and scrutinize how Chinese people have been creating changes during this process as well.

## 1.1 Open Environmental Information Upon Disclosure Request

Government environmental information in this dissertation refers to environment-related information made or obtained by government agencies. This definition differs from the one in the OEI Measures that “government environmental information refers to information that is compiled or obtained during environmental protection agencies exercising their environmental protection responsibilities and recorded and stored in a given form”.<sup>16</sup> The definition in this dissertation is broader than the OEI Measures mainly due to two reasons. First, *de facto*, environmental information can also be held by non-environmental protection government agencies. Second, a broader definition of environmental information conforms with the *Rio Declaration on Environment and Development*, adopted by China, that the public shall have access to information held by all government authorities.<sup>17</sup> Thus, in this dissertation, environmental information disclosure requests relate to not only environmental protection agencies but other government agencies as well.

According to the OEI Measures, public access to environmental information includes mainly two categories: access to information held by enterprises,<sup>18</sup> and access to information held by government agencies. Within each category there are two sub-categories of public access to environmental information. The first is mandatory information disclosure, or active access to environmental information:

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<sup>16</sup> OEI Measures, Article 2. Translation is made by the author in this dissertation unless it is otherwise noted. With regard to the translations made by the author, the responsibility for any inaccuracy lies with the author as well.

<sup>17</sup> See *Rio Declaration*, Principle 10.

<sup>18</sup> The aim of this dissertation is to study the interactions between the public and the authorities, particularly the roles of citizens in this process; therefore, access to enterprise information is not discussed. Information disclosure by enterprises is stipulated explicitly by the OEI Measures that government agencies shall encourage enterprises to disclose environment-related information. It nevertheless mostly imposes obligations upon government agencies with regard to environmental information disclosure. Punitive measures about enterprise compulsory disclosure are only stipulated in the last article of the OEI Measures. And it is a rule that is directly based on the *Law of Promotion on Cleaner Production Law of the P.R.C.* (the PCP Law) that enterprises with serious pollution must disclose their pollutants emission information, otherwise they can be fined with RMB100,000. See, the OEI Measures, Article 2, Chapter III, & Article 28.

that is, a government agency<sup>19</sup> or enterprise takes active measures to make information available to the public on its own initiative, for example to publish environmental impact assessment approvals or statistics of an enterprise's pollutants discharge on the Internet or in local newspapers. The second is information disclosure upon request, or passive access to environmental information, which requires government agencies and enterprises to disclose environmental information upon disclosure request submitted by information requesters.<sup>20</sup>

This dissertation mainly focuses on the second type, environmental information disclosure upon request, particularly government information disclosure upon request.<sup>21</sup> Compared to mandatory information disclosure, government information disclosure upon request directly reflects the interactions between the public and state. It requires the government to take positive measures to disclose information and guarantee the public's access to this information.<sup>22</sup> It diverges from the Chinese tradition that government affairs are mostly not interfered with by the public.<sup>23</sup> Instead, it directly reflects how citizen actions can affect government administration and, more broadly, the political process.

The choice of focusing on environmental information disclosure in this dissertation is based on the reason that, compared to public participation in other fields, for instance a citizen demanding political reform, environmental protection and environmental activism has been more tolerated by the Chinese government. Moreover, using the law to access government information helps citizens to interact directly with the government administration and can possibly help to curb social conflicts caused partly by black-box decision making where information disclosure

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<sup>19</sup> Government agency in this dissertation has a broad meaning. It refers to both the governments at different levels, e.g., a city government, as well as different government departments of the local and central governments, e.g., an EPB under a city government, or the MEP under the SC at the central government. Government/administrative agency (政府/行政机构), government/administrative department (政府/行政机关), and administrative/government organ (行政/政府部门), are all used, mostly interchangeably, in this dissertation, either by the author depending on the context and situation, or in the original translation of Chinese laws.

<sup>20</sup> See *Aarhus Convention-An Implementation Guide*, ECE/CEP/72, UN Economic Commission for Europe, 2000, 49.

<sup>21</sup> A study on both information disclosure by government agencies and enterprises with regard to risk management in China, please see, Mol, He and Zhang 2011.

<sup>22</sup> Xu Siyi 2010, 59.

<sup>23</sup> *Ibid.*

is inadequate, such as the 2007 Xiamen demonstration<sup>24</sup> and the 2012 protest in Ningbo against PX plants.<sup>25</sup> It is actually not only officially permitted but can be encouraged by the state. According to the veteran environmental journalist Liu Jianqiang,<sup>26</sup> journalists find it easier to report about the environment, since “the environment in China is not politics; politics is very sensitive.”<sup>27</sup> In fact, there is generally a favourable political environment towards citizens and organizations promoting environmental rights in China.<sup>28</sup> It is thus suggested here that access to environmental information, compared to many other types of government information, such as government officials’ assets, government budget spending, should be enforceable with less difficulty. Therefore, it is not difficult to predict that there can be a potential power for it in making progressive social and political changes, advancing citizens’ rights and participation in the political process. This clearly deserves our careful examination.

## **1.2 Approaching Open Environmental Information Upon Disclosure Request Through Legal Mobilization**

This study takes an integrated approach of studying the workings of law in the field of environmental information disclosure, why and how legal tactics are adopted, and how they affect the social and political fields through the perspective of legal mobilization. In the early 1980s, American legal jurist Frances Zemanis stated that “the law is . . . mobilized when a desire or want is translated into a demand as an

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<sup>24</sup> See, e.g., Zhu Qian 2008; He Yu 2007; Bai Liping 2009. Most Chinese articles concerning the Xiamen PX Incident can only be found from non-core journals. This seems that talking about the incident still remains an unwelcoming issue by the central government. Also, these articles writing about the incident mainly refer to the importance of environmental information disclosure, orderly citizen political participation, or the good interaction between the Xiamen government and the residents who expressed their opposition against the chemical plant.

<sup>25</sup> *BBC*, 28 October 2012.

<sup>26</sup> For clarity, unless it will not cause any confusion, full Chinese names are used in this dissertation to avoid confusion that if only surname is used, people might have the same Chinese surname. Also Chinese practice is followed in this dissertation with regard to Chinese name that family name is placed before given name. However, with regard to the name of an author of an English article, only family name is cited following the practice of academic English writing. The exception is when there is the possibility of causing confusion then full name is used, for instance, Wang Chenguang, and Wang Canfa are used when citing their articles/books in English published in the same year.

<sup>27</sup> Geall 2013, 22.

<sup>28</sup> See, e.g., Wilson 2012.

assertion of rights”<sup>29</sup> and by contrast, “actual legal mobilization occurs only when there is an active demand based on legal norms”.<sup>30</sup> Legal mobilization makes “the legitimacy of one's claim ... grounded in rules of law” and creates new venues for political participation and citizen activism.<sup>31</sup> The study of legal mobilization “focuses on demands rather than needs, on citizens rather than lawyers or judges, on decision making rather than access, and on invoking the law rather than compliance with it”,<sup>32</sup> and it is of significant importance in helping to understand public participation in the political process and how citizens can affect political changes through the language of law.<sup>33</sup> A core understanding of legal mobilization, stated by political scientist Michael McCann, is as follows:

*[L]aw is ... understood to be a resource that citizens utilize to structure relations with others, to advance goals in social life, to formulate rightful claims, and to negotiate disputes where interests, wants, or principles collide. Legal knowledge thus can matter as both an end and means of action; law provides both normative principles and strategic resources for the conduct of social struggle.*<sup>34</sup>

From the perspective of legal mobilization, law is clearly not only about legislation and legal control, but also a resource for citizens to claim and defend their rights. Law is not only about rules but also the strategic application of rules. It is not static but rather about taking actions based on law. In the words of Rachel A Cichowski, the processes of legal mobilization “involve the strategic action of individuals and groups to promote or resist change in a given policy arena”.<sup>35</sup>

While many studies of the Chinese legal system focus to a large extent on its legislative development, social control and legal campaigns initiated by the government<sup>36</sup>—in other words legal development from the top-down, making the law and enforcing the law for social regulation and social control—recent studies have also shifted to emphasize the bottom-up mobilization of the law by the public to safeguard their rights, to sue government officials or act against polluting

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<sup>29</sup> Zemans 1983, 700.

<sup>30</sup> *Ibid.*, 701.

<sup>31</sup> Zemans 1983, 700, 692-694; See also, Gallagher 2006, 788.

<sup>32</sup> Zemans 1982, 995.

<sup>33</sup> Vanhala 2011b.

<sup>34</sup> McCann 2007, 506-522.

<sup>35</sup> Cichowski 2007, 7.

<sup>36</sup> See, e.g., Cai Dingjian & Wang Chenguang (Eds.) 2010; Liang 2008; Peerenboom 2002.

enterprises.<sup>37</sup> These studies have shown a growing trend of citizens invoking the law for their rights and interests, forming “both sites and agents of political change”.<sup>38</sup> For instance, when analysing how citizens launch legal complaints based on the labour law in China, Gallagher argued that:

*laws are significant because they shape the expectations of citizens and rights of citizenship and enjoyment of the rule of law, should be treated analytical as political processes rather than as gifts bequeathed or withheld from above.*<sup>39</sup>

Following this trend, this dissertation takes a realist view of the law and treats the workings of law as not only a legal process but citizen participation in the political process.<sup>40</sup> Legal practices relating to government information disclosure are a matter of legal mobilization, where citizens are asserting their rights through the medium of law and most of all by doing this, they interact with the authorities. This is politics and it is political, even if citizens express explicitly that their actions are non-political and they are merely exercising their rights based on the laws. To acknowledge the citizens’ role in legal mobilization is to acknowledge that law is clearly not unidirectional from state to citizen, it can also “endorse an active, assertive participatory citizenry that is central to a democratic society”.<sup>41</sup>

There are different types of legal mobilization. Political scientist Lisa Vanhala construes legal mobilization in the Oxford Bibliographies as follows. In a broad sense, legal mobilization can refer to “any type of process by which individual or collective actors invoke legal norms, discourse, or symbols to influence policy or behaviour”.<sup>42</sup> In its narrowest application, the term refers to “high-profile litigation efforts for (or, arguably, against) social change”.<sup>43</sup> A broad application of the concept of legal mobilization is applied in this dissertation. Specifically, this dissertation focuses on two types of legal practices: the actions taken by individuals and different types of entities, including organizations, law firms, and the media, in using legal rules to request information disclosures from government agencies, and

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<sup>37</sup> Recent studies have been diverting towards this direction. See, e.g., Stern 2013; Wilson 2012; Burell & Svensson (Eds.) 2011; Stern 2011; Van Rooij 2010; Van Rooij 2006; Gallagher 2006; O’Brien & Li 2006; Lubman & O’Brien 2005; Gallagher 2005.

<sup>38</sup> Yang 2005.

<sup>39</sup> Gallagher 2005, 76.

<sup>40</sup> Paris 2010, 24.

<sup>41</sup> Zemans 1983, 701.

<sup>42</sup> Vanhala 2011b.

<sup>43</sup> *Ibid.*

administrative litigation (行政诉讼)<sup>44</sup> initiated by them to address failures of accessing environmental information through disclosure requests.

The dissertation aims to study how the law is utilized by citizens and entities in China to create changes in the above-outlined area of environmental information disclosure, specifically, how citizen actions can or cannot influence the mechanism of government information disclosure, and how citizen litigation help to make Chinese courts to clarify legal issues and thus create more legal opportunities for future lawsuits. Furthermore, how these changes can affect the interactions between the public and the state.

Nevertheless, changes in any society do not come without obstacles. It is well argued by scholars of China studies that in an authoritarian state such as China, legal mobilization, “whether by individual or by groups, and with or without a support structure, is likely to produce counter-mobilization from the state’s coercive organs”.<sup>45</sup> Inevitably, the tradition of being a secrecy government and the lack of independence of the judicial system in China do not really nurture a favourable environment for open government information or for citizens to file administrative lawsuits against government agencies. While individuals and entities have been actively using the new legislation to request that government agencies disclose information, government agencies have been hesitating over or even obstructing the providing of this information, resulting in an ineffective implementation of the new legislation.

From the legal perspective, citizens shall be more willing to use the law when it works well. A puzzling phenomenon thus occurs: even knowing that their actions are likely to result in failures to obtain the information or win the litigation, why do citizens and entities still take measures to request government information disclosure and take government agencies before Chinese courts? Focusing on environmental information disclosure upon request, the main aim of this dissertation is thus to understand this legal paradox: *citizens and entities have been invoking the law demanding government information disclosure despite their being fully aware of the fact that various obstacles exist and the effectiveness of the new legal mechanism remains low.*

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<sup>44</sup> Administrative litigation and administrative lawsuit are used interchangeably in this dissertation. Both refer to the legal action taken by citizens to sue government agencies before Chinese courts.

<sup>45</sup> Diamant, Lubman & O’Brien 2005, 8.

This puzzling phenomenon shall not be difficult to understand if we see it from a realist perspective of the law that, in the words of Michael Paris, law is regarded as “not much separate from politics. Rather, Law is simply one form of politics”.<sup>46</sup> While the public has not achieved their aim of obtaining the information requested, they have nevertheless utilized legal rhetoric and exercised legal practices that constitute a process of political participation. Besides the end aim of information disclosure, they have also been creating social and political changes in the process of mobilizing the law. Most of all, what they have been doing is sufficiently based on the laws that are promulgated by and shall be abided by the authorities. In the words of Zemans, they made the legitimacy of their claims “grounded in rules of law”.<sup>47</sup> This makes their actions legal and within the scope of official rhetoric, and thus more tolerated or even encouraged by the authorities.

This legal mobilization bears similarities with the “boundary-spanning contention” identified by China studies political scientist O’Brien that citizens employ “the rhetoric and commitments of the powerful to curb political or economic power”,<sup>48</sup> thus constitute “rightful resistance”<sup>49</sup> and exert pressure upon government officials. The difference is that, the boundary-spanning action in this dissertation is not contentious that it directly accuses official corruption or mismanagement in local-elections and village administration as discussed by O’Brien, but rather how citizens have been taking legal actions based on the authorities’ behalf to push forward the implementation of open government information mechanism. During the process, citizens do not contend against government agencies; instead they are willing to cooperate for an effective implementation of the new mechanism, constituting an “embedded social activism”.<sup>50</sup>

Aiming to study law in action, but not only in words, this dissertation particularly underscores the role of the social actors, including citizens and entities, and how they contemplate their situation and make their choices to interact with the authorities of both the government agencies and the courts. All actors, including citizens and entities, government agencies and the courts, exist in various but interacting fields.

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<sup>46</sup> Paris 2010, 24.

<sup>47</sup> Zemans 1983, 700.

<sup>48</sup> O’Brien 2003, 53.

<sup>49</sup> *Ibid.*; See also, O’Brien & Li, 2006.

<sup>50</sup> Ho 2008a, 36.



Bourdieu and Wacquant define the concept of field as “a patterned system of objective forces (much in the manner of a magnetic field), *a relational configuration endowed with a specific gravity* which it imposes on all the objects and agents which enter it.”<sup>51</sup> Applying the concept of field in his study about environmental organizations in China, Yang argued that in the field, actors gather and frame their actions and interact with multiple institutional fields,<sup>52</sup> such as the political sphere, the judicial system, the media and the Internet. The relationships among different fields are not really equal due to the differences in power and resources. The political field is usually in the dominant position while others are subordinate. None of these fields can be completely autonomous but are relative to and interactive with each other.<sup>53</sup> The community of individuals and entities that use the law for environmental information disclosure in this study can form one field. This field nevertheless does not exist alone but rather interacts with the government agencies, the courts, and other fields such as the community of the legal professionals and the Internet.

Fields can also overlap and form a network or an umbrella field. In this study, there are two umbrella fields: the political field as the authority, and the social field. Since there is no independent judicial system in China where the judicial system is directly under the leadership of the Political-Legal Committee (政法委) of the Chinese Communist Party (CCP)<sup>54</sup>—that is, directly under the sole leading political party from central to local level respectively—both government agencies and courts are included in the political field. The social field refers to citizens, organizations, the media, the Internet and other supporting structures in the society, such as law firms. Linking these two fields is the implementation of the OGI Regulations and the OEI Measures. The two fields affect each other, with the political field holding the dominant influence and the social sphere remaining less dominant, but nevertheless affecting the political field in return. Moreover, changes made by actions in the social sphere towards the political system also, in return, provide more opportunities for the social sphere to push forward for more changes. The

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<sup>51</sup> Bourdieu & Wacquant 1992, 17.

<sup>52</sup> Yang 2005, 48.

<sup>53</sup> *Ibid.*

<sup>54</sup> It is argued that it would be incomplete to view China’s judicial organs without noting that CCP plays “leadership” in the political-legal work in China. Under the CCP Central Committee, there is the Central Political-Legal Committee (中央政法委员会, in brief 政法委). Within each party committee at various levels, for instance, provincial party committee or city party committee, one CCP member is in charge of political-legal work and works with a political-legal subcommittee. Chen 2011, 172-173.

interactions and changes thus keep on going forward and, during the process, each field shapes and in return is shaped by the changes incurred during their interactions. In the interactions between the two major fields, law plays a pivotal role.

On the one hand, the law provides opportunities for the public to take legal actions. On the other hand and most of all, citizen actions are “to an extent able to shape and create legal opportunities rather than always being shaped by them”.<sup>55</sup> In this dissertation, the concept of legal opportunities is used instead of the concept of legal opportunity structure that refers to “the degree of openness or accessibility of a legal system to the social and political goals and tactics of individuals and/or collective actors.”<sup>56</sup> First of all, legal opportunity structure is nevertheless, not static and unchangeable. It can be changed by restructuring the legal system: for instance, establishing new specialised courts that specifically focus on environmental protection<sup>57</sup> can clearly provide more legal opportunities for environmental lawsuits. It can also be changed through the external pressures of public opinion or litigation activism. It is suggested by Vanhala that

*the static, snapshot image of “structure” as presented in some (but importantly not all) formulations of the LOS [legal opportunity structure] approach misses an important part of the story in explaining the emergence and progress of legal mobilization. ... by shifting focus on to social movement agents, we can gain a more accurate picture of the mechanisms that explain continuity and change in the socio-legal environment.*<sup>58</sup>

In China, with the continuous effort of all actors and through administrative litigation, changes have been indeed happening with the legal opportunity structure: citizen activism in filing administrative litigation has created chances for Chinese courts to make rulings clarifying both procedural requirements and substantive issues in open environmental information administrative litigation. Second, this study argues that legal opportunities can be extended out of the judicial system as well, for instance in the scope of administrative law that legal actions can happen between the public and government agencies even without going to the court.

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<sup>55</sup> Hilson 2013.

<sup>56</sup> Vanhala 2012, 527; Hilson, 2002.

<sup>57</sup> See, Wang & Gao 2010.

<sup>58</sup> Vanhala 2012, 525.

Clearly, positive political responsiveness towards legal actions taken by the public, e.g., using the law to request for government information disclosure, is in fact also providing new opportunities for the public to utilize the law to approach government agencies.

Nevertheless, legal actions taken by citizens studied in this dissertation are not specific behaviours “designed to influence political decisions” such as demonstrating or casting a vote.<sup>59</sup> Rather, no matter they are information disclosure requests or filing court cases, they are mostly sporadic, individualized, fragmented, and most of all, in the words of rules of law established by the authorities, thus appearing non-political, or in the words of Zhou, they take forms of SULNAM participation that they are “spontaneous, unorganized, leaderless, non-ideological, and apolitical”.<sup>60</sup> However, non-political actions could also be used for political aims, constituting part of political participation; moreover, when more people act in a similar way, cumulatively, they form an individualized collective activism,<sup>61</sup> actively playing a role in creating their legal opportunities and affecting the Chinese society and politics as well.

To fully understand why and how citizens and entities have been taking legal strategies during this political process of legal mobilization, this dissertation takes a step-by-step approach by answering the following questions:

- How has the top-down development of the legal institution that lays down the foundation for the public to request government information disclosure been established and developed in China?
- What factors have been accelerating or obstructing the effects of environmental information disclosure requests in China?
- How have the bottom-up legal strategies been utilized by the public to invoke the law to challenge the government authority on disclosing government environmental information? What are the effects?

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<sup>59</sup> van Deth 2013, 122.

<sup>60</sup> Zhou 2009, xxvii.

<sup>61</sup> van Deth & Maloney 2013.

### 1.3 The Significance of Studying Legal Mobilization in China

Initiated within the United States, legal mobilization studies have provided an integrated approach of linking the interactions between society and politics. Academics have produced abundant studies of legal mobilization, particularly regarding basic civil rights, such as workers' rights,<sup>62</sup> women's rights,<sup>63</sup> or disability rights.<sup>64</sup> There is also a rich scholarship integrating the studies of legal mobilization with social movement.<sup>65</sup> These studies have demonstrated that material support,<sup>66</sup> legal awareness, support structure<sup>67</sup> and political opportunities are important factors that can affect the role of law in bringing about social and political changes. It is also suggested that financial resources are "necessary when groups embark on the expensive road of litigation".<sup>68</sup>

Studies about legal mobilization in China are nevertheless lacking.<sup>69</sup> As suggested by Michael McCann, when discussing law and social movements, more comparative studies are needed on the topic of legal mobilization politics.<sup>70</sup> The primary intention of this dissertation thus contributes to the study of legal mobilization with a particular focus on China, taking into account its different legal and political system.

A study from the perspective of legal mobilization is of particular significance in understanding the interaction of the public and the state through judicialization in China while politicization (政治化) becomes so sensitive that depoliticization (去政治化) has been utilized and preferred by more; under this situation, non-contentious legal practices become a very important alternative of political participation. From another perspective, the lacking of a democratic political environment can also

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<sup>62</sup> See, e.g., McCann 1994; Vanhala 2009a; Burstein 1991.

<sup>63</sup> Cichowski 2007.

<sup>64</sup> See, e.g., Vanhala 2011a; Vanhala 2009b.

<sup>65</sup> See McCann 2007; Vanhala 2012.

<sup>66</sup> Galanter 1974.

<sup>67</sup> Epp 1998.

<sup>68</sup> Cichowski 2007, 32-33.

<sup>69</sup> Books focusing on legal mobilization in China are still rare. Although there are articles focusing on citizens' using the law to defend their rights in China, most of them are not specifically discussed from the perspective of legal mobilization. See, e.g., Fu 2011; a book with particular focus on legal mobilization in Hong Kong, see, Tam 2012. Tam argued that legal mobilization exists under the authoritarian post-colonial Hong Kong from the perspective of historical institutionalism. He argued that a legal complex including the independent judiciary and cause lawyers, and critical juncture, e.g., the issuance of the Hong Kong Bill of Rights Ordinance in 1991 in the wake of the 1989 Tian'anmen Incident crackdown, and the Basic Law that laid down the fundamental rights protection, have facilitated the development of legal mobilization in Hong Kong.

<sup>70</sup> McCann 2007, 519.

contribute to the using of legal language and rightful resistance. Analysing administrative reviews in post-1997 Hong Kong, Chan argued that the tension of discussing political reform has led to the “focus on the judiciary as a forum to make the Government accountable and responsive”; thus “the resort to judicial challenges as a means for pushing legal and political reform is itself a result of democracy deficit.”<sup>71</sup> This exists with environmental activism as well. The Chinese environmental law scholar van Rooij summarizes that, there are two types of actions that citizens have taken to get an effective remedy for their pollution-related grievances: legal action and political action.<sup>72</sup>

*Legal action includes various types of lawsuits against enterprises or government agencies for their failures, tort litigation against companies, and administrative litigation against enforcement authorities for negligence in conducting their environmental management or enforcement duties. Political action includes complaints and petitions to enforcement authorities, petitions to higher levels of government, media involvement, and collective action through demonstrations, blockades or physical action against industry premises.*<sup>73</sup>

Peter Ho argues that China’s environmentalism differs from its counterparts in the West and the ex-socialist states of Eastern and Central Europe in that it is generally not openly confronting the government.<sup>74</sup> In general, non-contentious strategies of using the official language of law are not only practical but also less risky, and provide a channel for organizations and citizens to assert their environmental rights without confronting the authorities.

Specifically, the new legislation of open government information has created a new “proper channel”, in the words of Burstein,<sup>75</sup> for the public to use legal language to assert their claims of information disclosure. This proper channel is rather non-contentious, individually initiated, sporadic and less provocative. Furthermore, Burstein argued that to have a better understanding of the progress of political change, it is important to explore the activities within the proper channels

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<sup>71</sup> Chan 2009, 166.

<sup>72</sup> van Rooij 2010, 61.

<sup>73</sup> *Ibid.*

<sup>74</sup> Ho 2001.

<sup>75</sup> Burstein 1991, 1201-1203.

as well as other collective actions such as demonstrations, strikes and boycotts.<sup>76</sup> With regard to the situation of China, it is indeed of particular necessity and importance to study the proper channels of legal mobilization while the classic social movement repertoire of contentious activities, such as collective demonstrations or protests, are still highly restrained and strictly controlled by the authorities.<sup>77</sup>

A study in this proper channel of environmental information disclosure also helps us to understand the development of public participation in environmental matters in China. Generally, public participation in environmental matters happens in three aspects: environmental information disclosure, environmental impact assessment, and environmental litigation. Access to environmental information constitutes the first prerequisite for public participation in environmental matters. It reflects the first stage of public participation in environmental matters. Arnstein divided public participation into three stages: nonparticipation, tokenism and citizen power.<sup>78</sup> Nonparticipation includes manipulation that put people into groups for the “purpose of ‘educating’ them or engineering their support”, and therapy brings people together to “adjust their values and attitudes to those of the larger society”,<sup>79</sup> both provide an illusory involvement of the public.<sup>80</sup> Tokenism includes informing, consultation, and placation of citizens. The highest stage citizen power refers to partnership, delegated power, and citizen control.<sup>81</sup> In partnership, negotiation exists between citizens and power holder. Delegated power enables citizens to engage in joint decision-making. And citizen control makes people to demand power to take full participation in decision-making.<sup>82</sup> Studies about public participation in environmental matters, from collective actions of anti-dam, chemical

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<sup>76</sup> Burstein 1991, 1203.

<sup>77</sup> This nevertheless does not mean that collective environmental actions do not exist in China. Statistics have shown that since 2006, the annual growth rate in Chinese environmental protests is 29%, and there are 300,000 petitions on environmental matters. (*Nanfang zhoumo*, 29 November 2012.) Large-scale environmental collective actions that thousands or more people took part also occurred in many places, e.g., the 2007 Xiamen anti-PX demonstration, Beijing residents’ demonstration against Gao’antun Incinerator and the Shanghai residents’ demonstration against the maglev train construction in 2008, Dalian residents anti-PX chemical plant demonstration in 2011, and in 2012, Jiangsu Qidong protest against the construction of a waste pipe line for a paper factory and demonstration in Zhejiang Ningbo against an expansion of a chemical plant, etc.

<sup>78</sup> Arnstein 1969; Thibaut 2011, 140-141.

<sup>79</sup> Arnstein 1969.

<sup>80</sup> Thibaut 2011, 140.

<sup>81</sup> Arnstein 1969.

<sup>82</sup> *Ibid.*

plant and incinerator, to environmental impact assessment, generally agree that environmental participation in China is still nascent and tokenism.<sup>83</sup> What is the situation with regard to environmental information disclosure then? This study thus also fills the gap and examines public participation from the perspective of access to environmental information.

This study further enriches academic research on law in context and in action. To write down laws on paper is always the first step; however, this never ensures that laws will be implemented and rights will be delivered to the people automatically. To gain a deep understanding about how law works, there must be more works focusing on Chinese law in action.<sup>84</sup> This approach can also help to solve the dilemma of the discussion on the traditional dichotomy of China's legal system whether it is totally rule of law or totally not rule of law. Law shall never be understood from a single point of view, for instance, if the government is taking all measures to implement rule of law; or unidirectional, from the top down. It depends on more diverse actors besides the government itself. To neglect the role of citizens in mobilizing the law is one-sided understandings that law means citizens' obey to it.<sup>85</sup> Instead, legal mobilization launched by the public reflects a more interactive role of the law and how the public can participate and make changes in the political process through the language of law.

Moreover, this study also helps us to understand the complex relationship between the state and society in China. As Professor Schick-Chen argues, a new approach can be applied when studying Chinese legal culture from two interactive lines: the social-legal sphere and the politico-legal setup. Based on the presumption that "any change in the interplay between law and politics would have an impact on the law and society relationship, while any shift in the socio-legal sphere would be equally followed by an adjustment of the politico-legal set-up," she further argues that "the intersections of these two lines of interaction can be identified as the points of manifestation of legal culture as well as indications of the direction in which the latter is developing".<sup>86</sup> Through the lens of legal mobilization, a study on environmental information disclosure upon request thus also fulfils the function of

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<sup>83</sup> Discussions about public participation in environmental matters in China, please see, Thibaut 2011; Zhao 2010.

<sup>84</sup> Studies linking law with society, see, e.g., Lubman 1999; O'Brien & Li 2006; Lubman & O'Brien 2005; Burell & Svensson (Eds.) 2011; van Rooij 2006; Gallagher 2006.

<sup>85</sup> Zemans 1983, 701.

<sup>86</sup> Schick-Chen 2012.

helping us to understand the interrelatedness of the politico-legal and socio-legal systems in China.

Last but not least, this study provides us a new perspective of understanding social movement in China.<sup>87</sup> It raises the question about how legal mobilization can or cannot form part of social movement in China, and whether and to what extent unorganized collective action can/shall be regarded as an alternative or part of social movement and how law plays its role in social movement and political change in China.

#### **1.4 Previous Studies About Open Government Information in China**

Studies on open government information laws in China have mainly started in the past decade. In the past few years, more attention has been paid by researchers in this field along with the promulgation and implementation of the new OGI Regulations with books published and academic articles flourishing. However, studies focusing on open environmental information are very limited. Therefore, this review of the existing scholarship does not focus on only environmental information disclosure but open government information from a general perspective.

Chinese books concerning open government information mainly dealt with introduction to the open government information mechanism,<sup>88</sup> guidance on the implementation of OGI Regulations<sup>89</sup> or administrative litigation concerning information disclosure,<sup>90</sup> and comparative studies on open government information.<sup>91</sup> Written by law professors who participated in the OGI legislation process or drafting of the OEI Regulations, officials from the State Council (SC) Legal Office<sup>92</sup> and also justices from the Supreme People's Court of PRC,<sup>93</sup> these books mostly intended to prepare for the implementation of OGI Regulations.

There is also a sufficient amount of articles on open government information in China. This has shown that open government information has attracted attention

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<sup>87</sup> Related works about social movements in China, see, e.g., Perry & Seldon 2010; Perry 2010; Paltemaa 2006; Wasserstrom & Perry 1994.

<sup>88</sup> Wang Shaohui 2010.

<sup>89</sup> Mo Yuchuan & Lin Hongchao etc. (Eds.) 2008; Cao Kangtai etc. (Eds.) 2007.

<sup>90</sup> Li Guangyu 2009a.

<sup>91</sup> Lü Yanbin 2008.

<sup>92</sup> Cao Kangtai etc. (Eds.) 2007.

<sup>93</sup> Li Guangyu 2009a.



among academics in China.<sup>94</sup> The following discussion presents some representative arguments in studies on open government information in China. Generally, these articles discussed three main issues: the importance and principles of open government information laws, problems concerning the law implementation, and the theoretical problems of OGI Regulations.

Starting from the very beginning of the issuance of the OGI Regulations, legal studies have started to pay attention to problems with the OGI Regulations via both case studies and legal analysis. It is widely agreed that there are legislative defects in the OGI Regulations.<sup>95</sup> Analysing the so-called first open government information case,<sup>96</sup> Chen Yi argues that double “glass doors” erected by the administration and the judiciary have impeded the public’s success in obtaining government information upon disclosure request.<sup>97</sup> This exposes several legislative defects of the OGI Regulations: the unclear scope of disclosure and non-disclosure, and a lack of delineation of state secrets, business secrets and individual privacy.<sup>98</sup> He further points out that the main reason why plaintiffs met with double obstacles was because administrative agencies and courts still did not take the OGI Regulations seriously. The legacy of “not to disclose as principle and to disclose as exception” (以不公开为原则, 以公开为例外) and “the important is the undisclosed and the disclosed is unimportant” (重要的都是不公开的, 公开的都是不重要的) still prevail in Chinese administration.<sup>99</sup> Moreover, the failure of the Chinese courts as

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<sup>94</sup> A search via CNKI shows this clearly. The search was made on 8 August 2011. Several set criteria for the search are as follows: search subjects include Literature/History/Philosophy, Politics/Military Affairs/Law, Education & Social Sciences, and Economics & Management; search field is title; date range from 2000 to 2011; matching requirement is precise; journal range is core journals. When the title search term is 政府信息公开 (open government information), there are 255 results of academic articles, when the term changes to 环境信息 (environmental information), the result is 97 articles, when the term changes again to 环境信息公开 (open environmental information), the result is 11 articles.

<sup>95</sup> Chen Yi 2008; Wang Xixin 2011, 67-70.

<sup>96</sup> This case refers to Huang Youjian et al.’s information disclosure request. Just a few days after the coming into effect of the OGI Regulations, on 4 May 2008, Huang Youjian et al. requested Rucheng (汝城) County Government in Hunan Province to disclose an investigation report about the reformation of the former water company in the city. The official who dealt with the information disclosure request refused their request on the spot, stating that the information did not belong to the scope of government information disclosure. Huang and others sued the government before the local court on the following day. The Court refused to accept the case based on the reason that the case concerned enterprise reformation and did not fall within the scope of administrative litigation. See Chen Yi 2008. See also Wang Ling 2009; Zhang Jiansheng 2009.

<sup>97</sup> Chen Yi 2008.

<sup>98</sup> *Ibid.*; Wang 2011, 67-70; Wang 2009.

<sup>99</sup> Chen Yi 2008.

an external supervisor also contributed to the ineffective implementation of the OGI Regulations.<sup>100</sup>

Wang Xixin, Professor of Administrative Law and Director of the Center for Public Participation Studies and Supports at Peking University, has highlighted another legislative defect of the OGI Regulations: Article 8 of the OGI Regulations had a logical contradiction which provided great dodging space (规避空间) for government agencies to refuse disclosure.<sup>101</sup> Article 8 stipulates that “[n]o administrative agency may endanger national security, public security, economic security or social stability when disclosing government information”. Originally this article was enacted to safeguard public interest.<sup>102</sup> But it created the risk of it being used as an exception of disclosure in that government information that might affect state security, public security, economic security and social stability shall not be disclosed.<sup>103</sup> In practice, this rule of “three securities one stability” (三安全一稳定) has already become a justification for government agencies to refuse information disclosure.<sup>104</sup>

Besides the problems with unclear rules in the OGI Regulations, theoretical deficiency also exists.<sup>105</sup> It is argued by Xu Siyi that the core value of open government information is to strengthen democratic politics, but not only for the three aims stipulated in the OGI Regulations: to safeguard the public’s access to government information, administrative agency to promote administration according to law and to realize the government’s service function.<sup>106</sup> According to him, the OGI Regulations are lacking the value of democratic politics and have granted special rights to the government, making the government prevail over the public in open government information.<sup>107</sup> Xu Siyi further argues that the lack of the value of democratic politics is reflected with several other deficiencies in the regulations. Briefly, the regulations not explicitly state the principle of “to disclose as principle

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<sup>100</sup> Chen Yi 2008; Wang Xixin 2011.

<sup>101</sup> Wang Xixin 2011, 65-66.

<sup>102</sup> *Ibid.*; see also, Cao Kangtai 2007, 50.

<sup>103</sup> Wang Xixin 2011, 65-66.

<sup>104</sup> For example, when Southern Weekend requested EPBs to disclose lists of enterprises that received environmental penalties, Tianjin EPB refused to disclose the information, alleging that the disclosure might affect state security, public security, economic security, and social stability. (*Nanfang zhoumo*, 23 June 2010) For further analysis on more cases where Article 8 used as information disclose refusal reason, please see Chapter 3 & 4.

<sup>105</sup> Xu Siyi 2010.

<sup>106</sup> *Ibid.*, 59.

<sup>107</sup> *Ibid.*, 65.

and not to disclose as exception” (以公开为原则, 以不公开为例外) provides the possibility for government departments to use all kinds of reasons to refuse information disclosure, for instance, the idea of three securities and one stability, and information belonging to a state secret or business secret.<sup>108</sup> Moreover, Xu Siyi also pointed out that an effective access to justice is lacking in the OGI Regulations.<sup>109</sup> This negative evaluation on the OGI Regulations and linking it with democratic politics seems rare in Chinese academic articles, as most articles simply discussed problems existing with legal rules, but did not refer to the political system in China.

Analysing court cases of government information disclosure, Chen Yongxi found out that Chinese courts basically have a trend to make a narrow interpretation of the right to information. That is, the courts did not acknowledge that all citizens have the right to information as an independent legal right, but related citizens' right to information to their personal rights and property rights. This has shown that Chinese courts have only emphasized the function of open government information to safeguard citizens' other concrete rights, but lessened its role of supervising the government and promote democratic participation.<sup>110</sup>

Compared to Chinese research, Western studies on China's open government information are more likely to relate law implementation to the wider background of China's political and social system. Generally, it is agreed that the promulgation of China's OGI Regulations itself has shown great progress in China's administration from being a secret state<sup>111</sup> to a transparent government, but its implementation also faces enormous challenges and “a transformation of bureaucratic culture”.<sup>112</sup> In 2007, an American scholar of Chinese law, Jamie Horsley, predicted directly after the promulgation of the OGI Regulations that it “will take Chinese agencies and officials a long time to get used to, let alone comfortable with, the new concept of government being obliged to share information with its citizens”.<sup>113</sup> This can be explained with a comparative study to other researchers' arguments. Before the coming into effect of the OGI Regulations, Hubbard pointed out that there were

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<sup>108</sup> Xu Siyi 2010, 65. This dissertation will later argue that in practice, not only the rules of exceptions in the OGI regulations or OEI Measures, but also rules from other laws are used as excuses to refuse information disclosure.

<sup>109</sup> Xu Siyi 2010, 66-67.

<sup>110</sup> Chen Yongxi 2011.

<sup>111</sup> Hubbard 2008, 4.

<sup>112</sup> Horsley 2007a.

<sup>113</sup> *Ibid.*

obstacles faced by the central government in ensuring consistent implementation of the regulations nationwide due to the unclear rules and lack of guidance and inconsistent models developed by central ministries and local governments.<sup>114</sup> He specifically pointed out that the “real paradox of open government information in China is its introduction into a non-democratic political system” since “[f]reedom of information has a strong ideological connection with democracy”.<sup>115</sup> The establishment of the open government information mechanism in China was more a top-down political project that the central government believed that popular supervision would aid the central’s control of its decentralized government.<sup>116</sup> Therefore the OGI Regulations are of instrumental value to the central government by compensating for “its weak administrative control of its subordinate government organs”.<sup>117</sup>

In April 2010, nearly two years after the OGI Regulations came into effect, Horsley summarized that “while individuals had greater luck obtaining information relating to their personal lives, government agencies have been generally reluctant to provide information on government operations and policies, and Chinese courts have frequently refused to accept lawsuits over information disclosure or have found in favour of the government”.<sup>118</sup> She also argued that a promising element concerning the implementation of the OGI Regulations was that the Chinese public had started to play an active role in access to government information and the OGI Regulations seemed to have “an impact within Chinese society and on government policy”.<sup>119</sup>

English studies focusing particularly on China’s open environmental information have also started to appear. A study based on the implementation of open environmental information laws between 2008 and 2009 in China shows that the political economy of a city is likely to affect the willingness of city leaders to promote environmental transparency and cities based on single industry are more likely to resist implementing transparency requirements compared to cities that depend less on concentrated industrial sector.<sup>120</sup>

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<sup>114</sup> Hubbard 2008.

<sup>115</sup> *Ibid.*, 4.

<sup>116</sup> *Ibid.*, 3-4.

<sup>117</sup> *Ibid.*, 5.

<sup>118</sup> Horsley 2010.

<sup>119</sup> *Ibid.*

<sup>120</sup> Lorentzen, et al. 2010.

In another research article analysing information disclosure pilot programs in two Chinese cities between 1999 and 2000, Li demonstrated that the success of top-down open environmental information depended on the “commitment, perception and resources” of local leaders. She further suggested that, concerning the new OGI Regulations, active non-governmental organization (NGO) engagement could put pressure from the bottom up and help to establish a web of dialogue to further enable the public to participate in environmental decision-making.<sup>121</sup> Clearly, both government commitment and public activism are crucial in realizing government information disclosure. Focusing on information disclosure for environmental risk management, researchers have shown that the implementation of the OEI Measures in China is “improving but far from widespread, full and effective”.<sup>122</sup> They conclude that the lack of enforcement and the ambiguity of some rules in the OEI Measures and the “longstanding closeness, secrecy and monopoly of information in China’s political system”<sup>123</sup> have made the implementation ineffective.

In his research focusing on how organizations use the obtained environmental information, Johnson argued that while the new legislation created additional space for non-state actors, NGOs were nevertheless constrained in acting on information to exert pressure upon polluting enterprises or make claims on the state due to China’s authoritarian political system.<sup>124</sup>

To summarize, previous studies on open government information and open environmental information pinpointed problems and findings in at least five aspects. First, there are inborn defects in the OGI Regulations that might affect its effective implementation. Second, there is value deficiency in a lack of democratic politics in the OGI Regulations. Third, the existence of decentralization might also affect the implementation of the law due to inconsistent practices. Fourth, the authoritarian and non-transparent political system is not favourable to the new mechanism of open government information. Last, public awareness and citizen activism is important in pushing forward open environmental information. Crucial in opening the door to research on China’s open government information, these studies reveal various problems and findings from different perspectives. However, the actors, no matter whether individuals or groups, who invoke the law to demand government

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<sup>121</sup> Li 2011.

<sup>122</sup> Mol, He, Zhang & Lei 2011, 163.

<sup>123</sup> *Ibid.*

<sup>124</sup> Johnson 2011.

information disclosure, and their strategies, are to a large extent still neglected in previous studies. Particularly, it is still unclear why citizens and organizations have remained active in mobilizing the new legislation despite the fact that so many problems exist and the implementation of the law is not really effective.

## 1.5 Research Methodology and Sources

This dissertation studies the role of agents, including individuals and entities, i.e., environmental organizations, law firms, and the media, in invoking the law to push forward open environmental information in China. It is an interdisciplinary study adopting approaches of legal studies and methods of sociological research. The research is based on multi-case studies and aims to find out what the legal tactics taken by citizens and organizations are, for what causes they have taken these strategies, their contextual interface with the authorities, and the effects of their actions.

The sources for my research are Chinese laws, court judgments, books and journal articles, cases of individual information disclosure requests, surveys and reports by NGOs and other entities, web news and reports, blogs and microblogs of individuals and NGOs, interviews with pollution victims, lawyers and NGO officers, direct observation, and seminars. Undoubtedly, the Internet is changing our lives unprecedentedly, and the way we conduct research to a certain extent. Chinese legislation can be obtained from government or university law school websites easily nowadays, and some are also available in English. Nevertheless, some translations are made by the author when needed, either because official translation is not available or available translation is not concise. Academic discussion can be followed by perusing the core Chinese legal journals, for example, *China Legal Science* (中国法学) and *Legal Science Research* (法学研究), via the online Chinese database CNKI (中国知网) and *Wanfang* (万方), which are all accessible from the University of Turku.<sup>125</sup> I can also obtain some court judgments and documents of information disclosure requests from the Internet as well as easily keep in touch with

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<sup>125</sup> Since this study is an interdisciplinary research within the area of China studies and Chinese law at the same time, Chinese materials are used as a major source of research. English legal studies database, such as the Westlaw, was searched for related articles and cases, little result was found with regard to cases of environmental information disclosure in China.

or follow my informants afterwards via emails or Sina weibo (新浪微博), a twitter-like Chinese microblog.

This research is largely based on cases of environmental information disclosure requests collected by the author. In total, 28 cases and eight surveys of environmental information disclosure requests are collected and documented.<sup>126</sup> These cases and surveys all relate to disclosure requests with regard to environmental information, thus excluding other government information disclosure, for instance information relating to government budget spending. Environmental information in this dissertation generally refers to any information that relates to the environment, including information of the environment or that affects the environment. This dissertation adopts the categorization of environmental information by two Chinese researchers that it includes six categories of environmental information listed by Chinese scholars: environmental legislation and policy, environmental management, state environmental guidance, environmental conditions, environmental knowledge, and production and people's lives that affect the environment.<sup>127</sup>

Most of the requests analysed here were submitted to environmental protection agencies. In China, there are generally four levels of these agencies. From the top down, the Ministry of Environmental Protection (环保部 MEP) as the central environmental administration agency, provincial-level Environmental Protection Departments (环保厅 EPDs)<sup>128</sup> at the second level, and Environmental Protection Bureaus (EPB 环保局) at various levels including municipality-level EPBs at the second level,<sup>129</sup> city-level EPBs at the third level, and district or county-level EPBs at the fourth level.<sup>130</sup> Additionally, some cases relate to requests for environmental information disclosure submitted to other government agencies.

The cases and surveys analysed in this dissertation all occurred between May 2008, when the OGI Regulations and the OEI Measures came into effect, and August 2012 when the case collection was completed, and cover almost all the cases

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<sup>126</sup> Please see Appendix 8.3 for the list of the cases and surveys collected by the author.

<sup>127</sup> See, Ma Yan & Jiao Yuehui 2003, 20.

<sup>128</sup> Besides the 22 provinces at the provincial level in mainland China, five autonomous regions, Inner Mongolia, Tibet, Ningxia, Yunnan, Xinjiang, also belong to provincial level government administration.

<sup>129</sup> Four municipalities that are directly under the central government include: Beijing, Tianjin, Shanghai, and Chongqing.

<sup>130</sup> The lowest level of EPBs in China is township (镇) EPB in China, but township EPBs are only in some places. (Jahiel 1998, 759). For a detailed introduction of the environmental protection system in China, please see, Jahiel 1998.

of environmental information that could be located within the period chosen. In China, there are no official statistics available with regard to environmental information disclosure requests, nor is there a compilation of related court cases; these cases were mostly originally located by the author through the Internet search engines Google, and Baidu (百度), a Chinese search engine, and later numbered and documented by the author. It must be agreed that due to the censorship in China, this method of case collection has its own limits of being incomplete. Nevertheless, the collection of the cases shall be regarded as sufficient in comparison to the case collection of the China Transparency Organization (CTO).<sup>131</sup> Established in November 2008, CTO is the major academic, non-government and non-profit website about open government information in China.<sup>132</sup> It has the most comprehensive collection of open government information cases in China. Hundreds of media reports reposted under the category of “information disclosure cases” on the website of CTO up to August 2012 cover 20 cases of environmental information disclosure requests, which are all included in the cases collected by the author. Additionally, eight more cases were collected by the author through Internet searches. The data analysed in this study can also be compared with a search via Chinacourt.org dated 22 October 2012 that shows 69 court judgments about government information disclosure, but none of them concern environmental information disclosure. A similar result was found by searching Lawinfochina, the largest Chinese law database, on the same date. It shows 206 court judgments about government information disclosure, but none of them relate to environmental information disclosure. It also shows four media reports and, among them, only one relates to environmental information disclosure.

The case studies in this research are supported with both first-hand and second-hand materials, ranging from interview transcripts to media reports, from information disclosure request documents to court judgments, collected by the author through the Internet as well as during her three stages of fieldwork between 2010 and 2012 in China. The fieldwork lasted for two months in 2010, one and half months in 2011, and one month in 2012.

Since this dissertation mainly aims to analyse the process of citizens invoking the law to request government environmental information disclosures, and particularly

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<sup>131</sup> Official website of China Transparency: [www.chinatransparency.org](http://www.chinatransparency.org)

<sup>132</sup> A personal website <<http://chinesefoi.org/>> established and updated by Chen Yongxi, a researcher based at the Chinese University of Hong Kong, also has very comprehensive collections of open government information cases. CTO is nevertheless more organized and easier to search.



the interactions between the public and government agencies in the process, it does not particularly intend to pursue the detailed end results of all the requests. For simplicity and convenience of documentation, the cases are categorized on the basis of the information disclosure requester and the content of the information requested for disclosure instead of each information disclosure request. Practically, it is also almost impossible to have an accurate number of all requests submitted since some were not submitted successfully, or refused or ignored and resubmitted, or were revised and resubmitted.<sup>133</sup> In principle, requests submitted by the same or very closely related person, for instance from the same family, and concerning information relating to one environmental issue are regarded as one case. Most of these cases cover more than one request addressing one or several different government agencies. For instance, Xie Yong<sup>134</sup> submitted several environmental information disclosure requests to different environmental protection agencies from the local county level EPB to the central level MEP, he also submitted one request in the name of his wife. However, all his requests concern information of the local incinerator that is alleged to have caused his child's sickness. Therefore, all these requests are regarded as one case, although there are at least five information disclosure requests by him and his wife. However, in other circumstances, one request can also constitute one case, such as: Mao Da submitted three requests with regard to three different pieces of environmental information about three different issues towards three different government agencies;<sup>135</sup> his requests constitute three cases in the study.

The cases in my study occurred in various places in China. The fieldwork was also multi-sited, though clearly, out of capacity and it being not necessary, I did not go to all the places where the cases were located. During my fieldwork in China, besides collecting research materials, I conducted interviews, did on-site observations, as well as attended related seminars. For the interviews I usually planned my questions and made appointments with my interviewees in advance. Either in advance or at the start of the interview, I informed my interviewees of the purpose of my research and interviews. I conducted in total 32 interviews<sup>136</sup> and

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<sup>133</sup> Approximately, these cases concern over 60 requests; and the surveys concern more than 500 requests.

<sup>134</sup> Case 12; Names of Chinese people in cases are also put in the Chinese way that full Chinese names are used and with surname placed before given name. With regard to the cases and names already published in media, generally, no anonymity is taken. Otherwise, due to confidentiality concerns, the identities of interviewees referenced in this dissertation have been kept anonymous.

<sup>135</sup> Cases 6, 7, 8.

<sup>136</sup> Please see Appendix 8.4 for the list of interviews.

transcribed all the interviews as well. My interviewees consist of eight lawyers, eleven ENGO officers (one is also a lawyer), eight individuals who are pollution victims or environmental information disclosure requesters, four law professors, three government officials. The number of interviewees does not exactly correspond with the number of interviews due to the reason that it occurred twice two people were interviewed at the same time and two lawyers were interviewed twice.

Twenty-two of the interviews were conducted face-to-face. Two of them were conducted at the pollution victims' homes, which provided me the chance to make on-site observation as well. Nine interviews were made via phone calls. One was conducted through email. Mostly, I prepared the interview questions in advance, but during the interviews I also asked prompt questions following the interviewees' replies. The interviews usually lasted between half an hour to one hour. Most interviews were recorded with the approval of the interviewees and later transcribed by myself. A few interviews were not recorded due to various reasons. For example, with interviews with government officials, there was the concern that recording might cause people to feel nervous or cautious in responding to my questions, thus I chose to keep notes only. I also did not record one interview that was conducted in a very crowded and noisy conference room of a law firm where my interview was submerged in simultaneous discussions by several other groups of lawyers and clients.

I want to make it clear that the interviews with government officials were limited. In total, I only talked with three officials from one EPB. This is mainly due to the reason that approaching government officials without a go-between person could probably only result in official talks echoing government reports on open government information publicities. Nevertheless, I was fortunate that one of the EPB officials I interviewed was very open-minded and environmentally concerned and he did provide me insightful thoughts and helpful understanding. His opinions, in fact, also correspond with experiences encountered by some of my other interviewees.

Besides the interviews, I attended in total nine seminars organized by environmental non-governmental organizations (hereafter as ENGOs) in Beijing. Some seminars directly related to open environmental information, for instance the seminar on the three years of implementation of open environmental information organized by Friends of Nature (自然之友), the Beijing-based oldest ENGO in China, in April 2011, and the seminar on information disclosure concerning Zijin Mining Corp's major pollution incident of acid leakage organized by Green Beagle

(达尔问自然求知社), a young ENGO based in Beijing, in July 2010. Others were not directly related to open environmental information but were nonetheless environment related. Attending relevant seminars helped me to gain direct knowledge from people who work or are interested in environmental protection.

Additionally, I also had informal conversations with people I happened to meet during my fieldwork, and my experience echoes with Chinese scholar Liang's experience that

*learning to engage oneself in natural and unexpected conversations with people who have experience and knowledge on the research subject is very important and sometimes produces very meaningful data.*<sup>137</sup>

Although I have documented almost all the cases that I can find so far, it might be criticized that the number of cases studied is still limited. I would like to reiterate that in the context of China's size and complexity, any study on China, no matter whether quantitative or qualitative, bears the risk of being limited and impossible to apply to the whole situation: this research is no exception. Additionally, this multi-case study is not meant to be exhaustive and representative, but rather to draw findings about access to government-held environmental information, a new phenomenon in China that only came into sight in 2008, and help to provide concrete insights on understanding the complexity and the paradox of the relationship between the state and society in China. The aim of these case studies is to help us understand the meaning of actions, the particular context within which the actors take actions, the processes of their taking actions, and the causal explanations.<sup>138</sup> Nevertheless, conclusions based on case studies at least offer us some "internal generalizability" that applies "within the setting or group studied",<sup>139</sup> and the findings can be tested by future research as well.

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<sup>137</sup> See Liang 2008, 14.

<sup>138</sup> Maxwell 2005, 22-23.

<sup>139</sup> *Ibid.*, 115.

## 1.6 Dissertation Framework

This dissertation consists of six chapters. This introductory chapter presents the background and theory of the research, the research questions, related previous studies, research methodology and sources of materials.

Chapter two is a general review of the top-down development of the legal institutions concerning access to environmental information in China. This chapter maps the development of Chinese laws with regard to access to environmental information and provides a picture of the formation of the legal structure of environmental information disclosure in China.

Chapter three reviews the general situation of the public making requests to government agencies for environmental information disclosure. This chapter explores the effectiveness of the implementation of the new regulations based on statistical data of cases and surveys collected by the author, and analyses the possible causes to the ineffectiveness of environmental information disclosure. It emphasizes how legal rhetoric is utilized by government agencies, mitigating the socio-legal power in challenging government authorities.

Chapter four takes a bottom-up approach and focuses on how the public invokes the law to request government agencies to disclose environmental information despite the obstacles and impediments to obtaining the information. It discusses the purposes of their requests, the strategies they take and the effects their requests bring about. This chapter particularly analyses how various actors and their supporting structures have been mobilizing the law to their causes before government agencies, and what effects they have achieved.

Chapter five continues with the analysis of how citizens and entities mobilize the law and bring administrative lawsuits before Chinese courts. It focuses on the development of administrative lawsuits with regard to how open environmental information litigation has helped to create new legal opportunities, affecting both government agencies in dealing with environmental information disclosure requests and Chinese courts in accepting and adjudicating related lawsuits.

Chapter six summarizes the findings concerning how legal mobilization by the public has pushed for the open environmental information mechanism to work in China, and the theoretical implications of understanding the complex interactions between the socio-legal sphere and the political-legal setup in China.

## **2 THE DEVELOPMENT OF ACCESS TO ENVIRONMENTAL INFORMATION IN CHINESE LAW FROM A HISTORICAL PERSPECTIVE**

To understand environmental information disclosure, it is also necessary to understand the broader legal framework in which it exists. Therefore, differing from the other chapters focusing only on open environmental information upon disclosure request, this chapter is written from a broader perspective. Without a body of legislation, there would be no rules for people to initiate legal mobilization. The development of the legal system in China since the late 1970s is the *de jure* and *de facto* prerequisite for Chinese citizens' legal activism. This chapter thus reviews the major development in Chinese legislation that lays down the basis for environmental information disclosure. It is a normative study focusing on the development of law on paper, which nevertheless has helped to shape the legal practices taken by citizens and entities analysed in the following chapters.

The following section of this chapter first summarizes the development of the legal system in China, and the sources and hierarchy of Chinese law. Secondly, it reviews the major development of China's environmental law. Thirdly, it reviews and discusses the different sources of law concerning open environmental information in China. Lastly, it concludes the recent legal development pertaining to open environmental information in Chinese law.

## 2.1 The Legal Development in China

The legal development<sup>140</sup> in China has been a “long, winding, challenging, and even repetitive task”.<sup>141</sup> This research divides it into the pre-1976 period where limited progress was achieved and the post-1976 period where China has been endeavouring to establish its legal system “to rule the country according to law”.

### 2.1.1 Chinese Law pre-1976

Since the establishment of the People’s Republic of China in 1949, legal development in China briefly experienced four periods. According to the law professor Wang Chenguang of Tsinghua University, the first period was the initial stage of legal system construction, between 1949 and 1956. During this period, the CCP abolished all the laws promulgated by the Kuomintang Republican government, such as the “Six Laws Pandect” (六法全书),<sup>142</sup> and started to establish its own laws.<sup>143</sup> The development of the legal system was slow and limited. Only a few laws were promulgated on an *ad hoc* basis as an expedient strategy of solving emerging issues, for instance the *Outline of the Land Law* (土地法大纲) and the *Marriage Law* (婚姻法), except for the promulgation of the 1954 *Constitution* (宪法) as the greatest achievement.<sup>144</sup> The second period is the stagnant stage between 1957 and 1966 when the Anti-Rightist movement was launched and no real effort was taken to establish the legal system.<sup>145</sup> Most law schools were closed down or merged with other departments; labelled capitalists and rightists, intellectuals, judges, lawyers and other professionals were persecuted, and some were sent to the

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<sup>140</sup> Legal development is not the only term used when studying Chinese law. Jean-Pierre Cabestan used “legal modernization” when assessing the legal process in China. He considers that the term of “modernization” neutral. (Cabestan 2005, 60, ft 4). Coincidentally, legal modernization (法制现代化) is also a buzz phrase in China. While there are setbacks in China’s legal reform, it does seem that legal modernization is more an appropriate term to describe the legal process in China. However, this dissertation does not intentionally avoid using the term “legal development”, since *de facto* it is already the most commonly used when referring to the on-going legal reform or legal process in China.

<sup>141</sup> Wang Chenguang 2010, 50.

<sup>142</sup> *Common Program of The Chinese People’s Political Consultative Conference*, adopted by the First Plenary Session of the Chinese People’s Political Consultative Conference on September 29th, 1949, Article 17.

<sup>143</sup> Wang Chenguang 2010, 5.

<sup>144</sup> *Ibid.*, 6.

<sup>145</sup> *Ibid.*

countryside for reform.<sup>146</sup> “Legal nihilism” and “class struggle legal science” had started to dominate the legal system in China and law became the slave of politics.<sup>147</sup> This continued and reached its climax to the third period of legal modernization between 1966 and 1976, the “destructive period” of the Cultural Revolution.<sup>148</sup> Almost all laws and the entire legal system were demolished during this stage and personal pronouncements and party policies replaced law.<sup>149</sup> During this phase, citizens’ rights were taken away.<sup>150</sup>

### 2.1.2 Legal Reform post-1976

Wang Chenguang regards the period from 1976 until the present day as the fourth period of China’s legal development within China, when it rebuilt its legal system, thus calling it the “golden era of legal development”.<sup>151</sup> Since the late 1970s, China has been building its legal system incrementally and it seems that progress has been made in its construction towards “ruling the country according to law” (依法治国).<sup>152</sup> Legal development in China relates to its political change as well as economic reform from its very beginning.<sup>153</sup> Learning the lessons of the Cultural Revolution, aiming to prevent any future recurrence of the lawless days and to start China’s economic construction, Deng Xiaoping, the leader of China at that time,

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<sup>146</sup> Peerenboom 2002, 45; See also, Zhong Xia 2008.

<sup>147</sup> Zhong Xia 2008, 92; Li Ning 2006.

<sup>148</sup> Wang Chenguang 2010, 7. The Great Proletarian Cultural Revolution, commonly known as the Cultural Revolution refers to the period between 1966 and 1976 in China. During this “ten-year calamity” (十年浩劫), the then Chairman of the CCP Mao Zedong launched a political struggle movement to enforce communism in the country by removing capitalist, traditional and cultural elements from Chinese society, and to impose Maoist orthodoxy within the Party. “To revolt is justifiable” became the most popular slogan; law was completely destroyed. From high-level officials to ordinary people, from judges to teachers, and people from almost all walks of life, millions of people were persecuted in the violent factional struggles; many were publicly criticized, humiliated, and even beaten to death, or sent to prisons and labour camps for reformation without going through legal procedure. The Cultural Revolution was officially ended only after Mao’s death in 1976.

<sup>149</sup> Chen 2007, 718; Peerenboom 2002, 45-46.

<sup>150</sup> Wang Chenguang 2010, 5.

<sup>151</sup> *Ibid.*

<sup>152</sup> Chen 2007, 689-739. Ruling the country according to law (依法治国) was formally established as a long-term aim in the Fourth Plenary Session of the Eighth National People’s Congress and was written into the *Ninth Five Year Plan on National Economy and Social Development and Long-Range Objectives to the Year of 2010*. In 1999, “ruling the country according to law and building a socialist rule of law country” (依法治国建设社会主义法治国家) was written into the Chinese Constitution.

<sup>153</sup> See, e.g., Wang Chenguang 2010, 12-14; Keith 1994, 5.

changed China's governing framework by introducing economic reform and "socialist legality" (社会主义法制) at the Third Plenary Session of the Eleventh Central Committee of the CCP in 1978.<sup>154</sup>

Since then, China has been seized by a "legislative explosion"<sup>155</sup> and enforcement.<sup>156</sup> This legal development between 1978 and present has been further divided by two professors of the Chinese Academy of Governance,<sup>157</sup> Yuan Hongshu and Yang Weidong, into three further stages. During the first stage, between 1978 and 1992, the main task was to re-establish the authority of law: to promulgate basic statutes, from the *Constitution* (宪法) to the *Organic Law of the People's Court* (人民法院组织法) and *Organic Law of the People's Procuratorate* (人民检察院组织法), *Criminal Law* (刑法) and *Criminal Procedural Law* (刑事诉讼法) and *Interim Regulations on Lawyers* (律师暂行条例); to rebuild the judicial institutions, administrative implementation institutions, for example the Industry and Commerce Bureaus, Tax Bureaus, other important government administrative agencies; and the establishment of law firms.<sup>158</sup> The second stage started from 1992 when the Fourteenth CCP Congress decided to take up the route of constructing a socialist market economy, which lasted until 2002. During this period, the aim of legal development was to meet the requirement of the transition from a planned economy to socialist market economy, and "ruling the country according to law" started to be established as a major governing strategy and was written into Article 5 of the Chinese Constitution with its third amendment in 1999. To administer according to the law was also emphasized.<sup>159</sup> The third stage is from 2002 until the present. In 2002, the sixteenth National Congress of the CCP stated that China would start to build a *xiaokang* (小康 literal translation: little comfort) or a moderately well-off society in an all-round way and speed up socialist modernization. Therefore, legal development shall assist China's construction of its

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<sup>154</sup> *Communique of Third Plenary Session of the 11th Central Committee of the CPC*, 22 December 1978; See, also, e.g., Chen 2008, 50-51; Keith 1994, 20; Yuan Hongshu & Yang Weidong 2009. Wang Chenguang 2010, 12.

<sup>155</sup> Peerenboom 2002, 239; Keith J. 2013.

<sup>156</sup> Delmas-Marty 2003, 11.

<sup>157</sup> Established in 1994, Chinese Academy of Governance is a ministry-level civil servants training college directly under the leadership of the State Council in China. Its major task is to train civil servants at medium-level and high-level positions, to provide policy consultation to the central government, and to conduct theoretical research on public administration. See, the official website of the academy: <http://www.nsa.gov.cn/cenep/>

<sup>158</sup> Yuan Hongshu & Yang Weidong 2009.

<sup>159</sup> *Ibid.*



*xiaokang* society.<sup>160</sup> An important step in the third stage is that “to administer according to law” (依法行政) and “to establish government ruled by law” (法制政府) were set as the main tasks of governance.<sup>161</sup>

It is clear that during the past 30 years, the central government has been increasingly emphasizing the role of law as a governing strategy in China.<sup>162</sup> Moreover, although it is generally agreed that there is no rule of law in China, the concept of rule of law is nevertheless elusive and contested. It is pointed out by Peerenboom that “[d]ebates about the meaning of rule of law shall not blind us, however, to a broad consensus as to its core meaning and essential elements”.<sup>163</sup> Inevitably, today Chinese legislation contains some basic elements the Western notion of rule of law embodies—equality before the law, the supremacy of law, and law shall impose limits upon power.<sup>164</sup> Based on his thin theory of rule of law that “law must impose meaningful limits on the ruler and all are compatible with a thin rule of law”,<sup>165</sup> Peerenboom argues that China is going towards some form of rule of law, “albeit a Statist Socialist version”, but also contains elements of other forms,<sup>166</sup> and with oppositions and occasional setback.<sup>167</sup> A similar argument by Jianfu Chen is that there have been signs showing China is moving towards the rule of law, though it is premature to treat these latest developments as representing a firm trend.<sup>168</sup>

### 2.1.3 The Sources of Chinese Law

Chinese legislation appears in various forms. Different terms are used to refer to the different legal instruments within China’s legal system; for consistency and clarity, this dissertation adopts the terms according to the *Legislation Law of the PRC* (中华

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<sup>160</sup> Yuan Hongshu & Yang Weidong 2009, 1.

<sup>161</sup> State Council, *Outline for Promoting Law-based Administration in an All-round Way*, 2004; Yuan Hongshu & Yang Weidong 2009.

<sup>162</sup> Li Buyun 2007, 9; See, also Wen Jiabao, 27 August 2010, Speech at the National Working Conference on Administration According to Law; State Council, 2004, *Outline for Promoting Law-based Administration in an All-round Way*; The State Council Information Office, *2008 Government Whitepaper on the Rule of Law*.

<sup>163</sup> Peerenboom 2006, 63.

<sup>164</sup> See, e.g., Li Buyun 2008; Li Buyun 2007; Xu Xianming 1996.

<sup>165</sup> Peerenboom 2002, 4.

<sup>166</sup> *Ibid.*, 570.

<sup>167</sup> *Ibid.*, 2002, 559.

<sup>168</sup> Chen 2008, 696-699.

人民共和国立法法)<sup>169</sup> and with reference to the book of *Introduction to the Legal System of the People's Republic of China* by Professor Albert Chen.<sup>170</sup> Based on the *Legislation Law*, the major sources of Chinese law include: the Constitution (宪法), law (法律), administrative regulations (行政法规), local regulations (地方性法规), autonomous regulations (自治条例), separate regulations (单行条例) and rules (规章). The Constitution is promulgated by the National People's Congress (NPC), laws are passed by the NPC or its Standing Committee; administrative regulations are issued by the State Council; local regulations are passed by local congresses and their standing committees; autonomous regulations and separate regulations are issued by people's congresses and their standing committees of national autonomous regions. Rules can be further categorized into ministry rules (部门规章)<sup>171</sup> and local government rules (地方政府规章).<sup>172</sup> Ministry rules are issued by the "ministries and commissions of the State Council, the People's Bank of China, the State Audit Administration as well as the other organs endowed with administrative functions directly under the State Council may, in accordance with the laws as well as the administrative regulations, decisions and orders of the State Council and within the limits of their power, formulate rules".<sup>173</sup> Local government rules are made by the "people's governments of the provinces, autonomous regions, municipalities directly under the Central Government and the comparatively larger cities."<sup>174</sup>

Different types of legislation have different legal statuses according to the hierarchy of their promulgators. With regard to the Constitution, laws, administrative regulations, local regulations and local government rules, there is a clear hierarchy according to the hierarchy of their promulgators. Namely, that the Constitution prevails over the others,<sup>175</sup> and that laws, administrative regulations, local regulations<sup>176</sup> and local government rules are in a top-down hierarchy,

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<sup>169</sup> The English translation of the *Legislation Law of the PRC* is available at [http://english.gov.cn/laws/2005-08/20/content\\_29724.htm](http://english.gov.cn/laws/2005-08/20/content_29724.htm)

<sup>170</sup> Chen 2011, 123-170. For introduction of the different sources of legislation in China, please also see, Wang Chenguang 2010, 23.

<sup>171</sup> Legislative Law, Article 71.

<sup>172</sup> *Ibid.*, Article 73.

<sup>173</sup> *Ibid.*, Article 71.

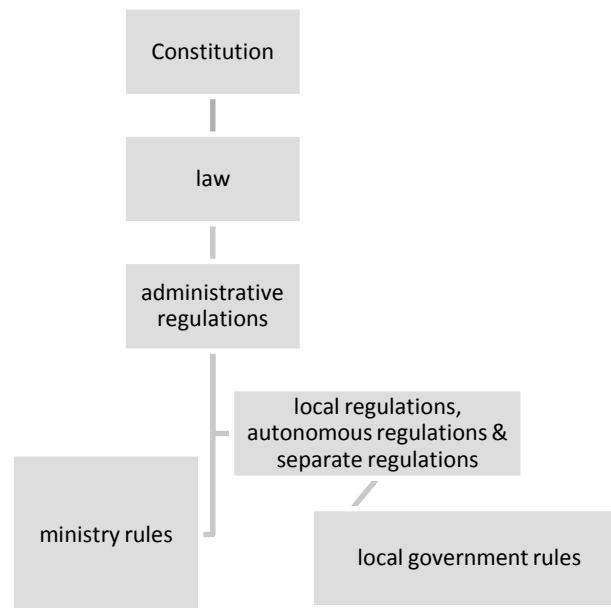
<sup>174</sup> *Ibid.*, Article 73.

<sup>175</sup> Legislative Law, Article 78.

<sup>176</sup> Autonomous regulations (自治条例), separate regulations (单行条例) can be treated similarly to local regulations, since they are basically local regulations that govern autonomous regions, but in different names.

respectively.<sup>177</sup> The general principle is that lower level legislation cannot conflict with higher level laws. If two pieces of conflicting legislation are at the same level, the new legislation prevails over the old legislation. However, with regard to ministry rules, local regulations and local government rules, their legal status is rather unclear.<sup>178</sup> Generally it is argued that ministry rules regulate different scopes of administration than local regulations and local government rules, which mostly regulate local issues. Thus there is no clear hierarchical relationship between the former one and the latter two. If any conflict occurs between them, it shall be referred to the corresponding superior government organ for resolution.<sup>179</sup>

Chart 2-1 Basic hierarchy of Chinese legislation



In practice, the situation can be more complex and confusing. Li and Otto have argued that there has been dramatic progress in Chinese legislation, but there have also been problems and tensions developed at the same time. The numerous legislators have caused the problem of “law coming out of various doors” (法出多门), which affects the unity of law and the consistency of law, and renders

<sup>177</sup> Legislation Law, Article 79, Article 81.

<sup>178</sup> Gu Jianya 2006, 49; Li & Otto 2002, 26.

<sup>179</sup> See, e.g., Gu Jianya 2006, 29; for detailed analysis of China’s law making, please see, Li and Otto 2002; Peerenboom 2002, 239-270.

implementation more difficult. Second, it has caused the problem of the overstepping of power (越权立法), or that one legislator may legislate to regulate issues that shall be within another legislator's scope of responsibility. Third, authorities have been competing with each other to make the legislation favourable to their interests, resulting in departmentalism (部门主义).<sup>180</sup> There is also the problem of confusion with regard to the inconsistency of naming different types of legislation in China. Generally, with regard to the Constitution and laws, there is no such problem. However, with regard to regulations and rules, their titles might be in several forms, and some of these forms may be used for legislation issued by legislative bodies at more than one level of the hierarchy of law-making.<sup>181</sup> For instance, local government rules and ministry rules are all called 规章 in Chinese. The same type of legislation might also be called different names: the OEI Measures are ministry-level rules (部门规章), but they are named "measures" (办法). And ministry rules also appear with other titles, such as the *Medical Waste Management Technical Standards* (标准). Moreover, legislation can also be categorized as regulations for trial implementation (试行) or interim measures (暂行办法). However, they are all part of formal laws in China with legal effects, though they bear the certain intention of acting experimentally in the legal system and it is possible that they will be revised according to the experience gained during the course of their implementation.<sup>182</sup>

## 2.2 Developing China's Environmental Legislation

Although a comprehensive legal system formally started to be built after 1978, Chinese environmental law had already started to develop by the early 1970s. In recent years, legislation concerning public participation in environmental matters has been developing dynamically. This change corresponds with the general evolution of state policies on environmental protection in China that includes three main stages: the 1970s command and control policy, the 1980s market-based policy,

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<sup>180</sup> Li & Otto 2002, 26.

<sup>181</sup> Chen 2011, 143.

<sup>182</sup> *Ibid.*, 144; A general review on the sources of law and law-making in China, please see Chen 2008, 171-206; Alford and Liebman also made detailed discussion on the NPC and its Standing Committee on law-making in China. See Alford & Liebman 2001, 706-707.

and the information, dialogue and cooperation mechanism since the 1990s.<sup>183</sup> Accordingly, Chinese laws concerning environmental protection have experienced the development from basic environmental protection laws with the state as the dominant regulator, through market-based economic penalties and economic incentives upon enterprises, to the latest state of promoting public participation in environmental matters via environmental impact assessment and open government information.

### 2.2.1 The Emerging of Environmental Law

The earliest development of Chinese environmental law began in the early 1970s,<sup>184</sup> spurred by China's attendance at the United Nations' (UN) Conference on Human Environment held in Stockholm.<sup>185</sup> In October 1971, China gained its UN membership.<sup>186</sup> On 5 June 1972, China sent its delegation of 40 members to the conference. This was the largest Chinese delegation sent to an international venue during the period of Cultural Revolution between 1966 and 1976 where law was almost completely abandoned and the whole nation was in chaos. The participation in the UN conference made the Chinese delegates realize that the environmental problem did not only belong to capitalist countries, it also existed in socialist China.<sup>187</sup> China thus started to be aware of its environmental pollution problems. On 5 August 1973, the first national environmental protection conference was held in Beijing. The conference lasted for half a month and it disclosed many serious environmental problems China faced at that time, for instance, pollution in a reservoir near Beijing, industrial pollution in the Yellow River, and pollution caused by thermal power stations.<sup>188</sup> Shortly after the conference, in order to "avoid and reduce the serious environmental problems experienced by developed countries in hopes of demonstrating the progressiveness and superiority of socialism",<sup>189</sup> the SC passed China's first legal document concerning environmental protection, *Several Rules Regarding Environmental Protection and Improvement* (关于保护和改善环

<sup>183</sup> Ge, Bi & Wang 2009, 1.

<sup>184</sup> See e.g., Lü Zhongmei 2000; Palmer 1998, 790; Alford & Liebman 2001, 708.

<sup>185</sup> Beyer 2006, 185-186; Lei Hongde & Ye Wenhui 2006, 104-107.

<sup>186</sup> UN General Assembly Resolution 2758, 25 October 1971, 1976th plenary session.

<sup>187</sup> Lei Hongde & Ye Wenhui 2006, 106.

<sup>188</sup> *Ibid.*, 106-107.

<sup>189</sup> Wang Canfa 2010, 498.

境的若干规定 EPR Rules).<sup>190</sup> Issued for trial implementation, the EPR Rules had 10 articles. Most of the articles contain only general rules on environmental protection; nevertheless, Article 4, for the first time in Chinese legislation, explicitly stipulated the principle of “three simultaneous” (三同时), which requires “all newly-constructed, expanded, or reconstructed enterprises to have environmental pollution facilities designed, constructed, and operated at the same time with the major project.”<sup>191</sup>

### 2.2.2 The Development of Environmental Law Post-1976

The next step of the development of environmental law was after 1976 when China started to rebuild its legal system. During this period, law started to be regarded as an important policy tool in China’s political, economic and social transformation.<sup>192</sup> It is argued, by the environmental law professor Wang Canfa, that “during China’s three decades of reform and opening (改革开放), environmental law has become one of the most rapidly developing areas of law.”<sup>193</sup> Up to 2012, there were about 30 laws regulating environmental protection and natural resources protection promulgated by the NPC, 25 administrative regulations issued by the SC, and more than 700 local regulations and local rules issued respectively by local People’s Congresses and local governments. There are also around a thousand national environmental standards made by the central government agencies. China has also ratified about 50 international conventions on environmental protection.<sup>194</sup>

The development of China’s environmental legislation since the beginning of its reform and opening can be roughly divided into three periods.<sup>195</sup> The first phase was between 1978 and 1982 while China started to rebuild its legal system. The most significant environmental legislation is the promulgation of the *Environmental Protection Law of the People’s Republic of China* (中华人民共和国环境保护法 EP

<sup>190</sup> See, Lei Hongde & Ye Wenhui 2006, 104-107.

<sup>191</sup> Lei Hongde & Ye Wenhui 2006, 107.

<sup>192</sup> Beyer 2006, 185-186; Wang Canfa 2010, 498.

<sup>193</sup> Wang Canfa 2010, 495.

<sup>194</sup> Yang Chaofei 2012, speech at the 11th Conference of the National Congress Standing Committee.

<sup>195</sup> The division of the different periods concerning China’s environmental law development is mainly based on an analysis on China’s environmental legislation development by Sun Youhai, the Director General of the Legal Office of the Committee of Environment & Resources within the NPC. However, Sun’s three periods ended by 2008 when his article was published. See, Sun Youhai 2008; A retrospect on the development of environmental legislation based on China’s five-year plan, please see, Wang Jin 2009.

Law) on 13 September 1979 at the Eleventh Meeting of the Standing Committee of the Fifth NPC. Regarded as the fundamental environmental law by academics,<sup>196</sup> this law served as “the starting point for environmental protection law in China.”<sup>197</sup> This EP Law was issued for trial implementation; it nevertheless, for the first time, solved many fundamental legal issues concerning environmental protection in China.<sup>198</sup> It stipulated the establishment of environmental administrations, and a few important environmental mechanisms that are still in use today, such as the environmental impact assessment (EIA) system, and the three simultaneous system.<sup>199</sup>

Between 1982 and 1997, the main corpus of environmental legislation was basically established.<sup>200</sup> Abundant basic environmental laws and regulations were issued, including the *Marine Environmental Protection Law* (海洋环境保护法), *Prevention and Control of Water Pollution Law* (水污染防治法 PCWP Law), *Land Administration Law* (土地管理法), *Prevention and Control of Environmental Noise Pollution Law* (环境噪声污染防治法), and *Regulations on Nature Reserves* (自然保护区条例). Most importantly, the amendment of the PCWP Law in 1996 for the first time stipulated explicitly that “EIA reports must include opinions from work units and residents in the area where the construction project is to be built.”<sup>201</sup> This implied that related parties were entitled to access information about the project. On the policy side, in 1996 the NPC passed the *Ninth Five Year Plan on National Economy and Social Development and Long-Range Objectives to the Year of 2010* (国民经济和社会发展第九个五年计划和 2010 年远景目标), emphasizing that:

*economic development, city and rural development and environmental protection shall be planned, implemented and developed simultaneously, all construction projects must have plans for and fulfil requirements of environmental protection. ... [The state] shall improve its administration system and legal system for environmental protection.*<sup>202</sup>

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<sup>196</sup> Wang Canfa 2010, 499-502.

<sup>197</sup> *Ibid.*, 495.

<sup>198</sup> See, Sun Youhai 2008, 19.

<sup>199</sup> The three simultaneous system requires environmental protection measures must be simultaneously designed, constructed and operated along with the project. See, EP Law, Article 25.

<sup>200</sup> Sun Youhai 2008, 20.

<sup>201</sup> PCWP Law, Article 13; See also, Wang Canfa 2010, 525; Du 2009, 143.

<sup>202</sup> The NPC, 1996, *The Ninth Five Year Plan on National Economy and Social Development and Long-Range Objectives to the Year of 2010*.

Although abundant laws were promulgated during this period, environmental protection has not been strengthened together with the emphasis on economic growth, environmental pollution and ecological problems were worsening rapidly<sup>203</sup> along with China's fast industrial development and economic growth.

The third phase of the development of environmental law was started after 1997 and continues to the present day. During this phase, a system of environmental law started to emerge<sup>204</sup> in which more basic environmental laws have been revised or promulgated. A few examples of legislation adopted in this period include the *Regulations on the Protection of Basic Farmland* (基本农田保护条例), *Environmental Impact Assessment Law* (环境影响评价法 EIA Law), *Promotion on Cleaner Production Law* (清洁生产促进法 PCP Law), *Interim Measures on Public Participation in Environmental Impact Assessment* (环境影响评价公众参与暂行办法 PPEIA Measures), and *Plan Environment Impact Assessment Regulations* (规划环境影响评价条例 PEIA Regulations), and most of all, the OGI Regulations and the OEI Measures were issued in early 2007. Generally, this period has been regarded as a revitalization of environmental rule of law<sup>205</sup> that a comprehensive system of environmental legislation has been established in China.

During this period, China has also strengthened its environmental protection capacity by upgrading the National Environmental Protection Agency (国家环境保护局) from sub-ministry to ministry level, named the State Environmental Protection Administration (国家环境保护总局 SEPA) in 1998, but renamed the Ministry of Environmental Protection (环保部 MEP) in 2008. The restructuring of the central environmental protection mechanism aimed to solve environmental problems incurred with heated economic growth.<sup>206</sup>

### 2.3 The Emergence of the OGI Regulations and the OEI Measures

The emergence of the OGI Regulations and the OEI Measures is in fact part of China's transition toward government transparency from its long tradition of government secrecy. Generally, it appears that this transition grows out of many causes: the "open village affairs" (村务公开) movement started in the early 1980s,

<sup>203</sup> Wang Jin 2009, 9; SEPA 1988, 16.

<sup>204</sup> Sun Youhai 2008, 21.

<sup>205</sup> Wang Jin 2009, 5.

<sup>206</sup> *Ibid.*, 5.



China's economic growth and information technology development, the basic World Trade Organization requirement that China has to comply with since its accession in 2001, the government's promoting of rule of law, eradication of corruption, and maintaining social stability.<sup>207</sup> With regard to the issuance of the OGI Regulations and the OEI Measures, it is specifically pointed out by Horsley that:

*[a] mixture of economic and political motives has driven the authoritarian Chinese Communist Party leadership toward greater transparency. China's international and bilateral commitments require greater transparency and provide an external impetus toward greater openness. However, the main motivations underlying the OGI Regulations are largely domestic: broader sharing of government information in the service of economic development, improving people's lives, enhancing trust between the public and the government, curbing government corruption and promoting better governance at all levels of government.*<sup>208</sup>

There are also other arguments about the emergence of China's open government information law that makes it distinguishable from the development of open government information laws in other countries. Generally, an accountability deficit and globalization are the two common discourses for the adoption of open government information in the international community. The accountability deficit discourse argues that the control of information by the government is to maintain power in itself, and information disclosure can help to solve this problem and enhance liberal democracy.<sup>209</sup> This has resulted in the establishment of the mechanism of open government information in many liberal democracies before the 1990s. Since then, and especially during the 2000s, a recent wave of open government information has developed in newly democratic countries, and others, along with the globalization, which enables countries to share experiences.<sup>210</sup> However, neither of the two explanatory models applies to the situation in China, as argued by Xiao Weibing. China is lacking the liberal democratic elements, such as rule of law, free media, and active civil society, that help to lay down the foundation

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<sup>207</sup> Horsley 2007b, 54; See also, Zhou Hanhua 2007, 104-107.

<sup>208</sup> Horsley 2007a. See also, Zhou Hanhua 2002, 78-83.

<sup>209</sup> Xiao 2012, 1-2.

<sup>210</sup> *Ibid.*, 2-3.

for heated debate about government accountability.<sup>211</sup> Second, globalization is a follow-up but not a key driver in China establishing its open government information system. Instead, he argues that three main elements have made China establish its open government information mechanism. First, the development of improved information flow in the Chinese government information environment has enabled the Chinese government to accept a transparent approach to government information management instead of a secretive one. Second, it is part of a wider policy of developing grassroots democracy promoted by the central government in China. Third, the administrative law reform has made the Chinese government acceptable to external monitoring.<sup>212</sup>

Differing from Xiao's reasoning of China's establishing the open government information mechanism based on information flow, Hubbard argued that the Chinese government started it as a political project to control its decentralized government and subordinate government organs through popular supervision.<sup>213</sup>

In practice, the central government's promotion of "open government affairs" (政务公开) stimulated the emergence of open government information as well as the subsequent open environmental information in China. The open government affairs program was originally inspired by the practice of open village affairs that started in the early 1980s,<sup>214</sup> which "kicked off the move toward greater openness throughout the country".<sup>215</sup> Starting in the 1990s, the open government affairs program was introduced incrementally throughout the country. It requires administrative agencies to make their administration activities open to the public.<sup>216</sup> In December 2000, the General Office of the CCP (中共中央办公厅) and the SC General Office jointly issued a notice<sup>217</sup> requiring all township (乡镇) governments to carry out open administration in order to realize public supervision. By 2006, the open government affairs system was established in all 31 provinces, autonomous regions and cities directly under the central government, and 15 sub-provincial cities (副省级城市). Further to this, 36 central ministries issued open government affairs normative

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<sup>211</sup> Xiao 2012, 2-3; See also, Horsley 2007b, 80.

<sup>212</sup> Xiao 2012, 7-9.

<sup>213</sup> Hubbard 2008, 3-5.

<sup>214</sup> Horsley 2007a; A detailed discussion of the development of open village affairs can be found in Reinertsen 2009, 54-58.

<sup>215</sup> Zhou Hanhua 2007.

<sup>216</sup> Mo Yuchuan & Lin Hongchao (Eds.) 2008b, 1; Wang Shaohui 2010, 4-5.

<sup>217</sup> China Central Government Office & State Council Office, 6 December 2000, *Notice on Promoting Open Government Affairs to Full Scope in Town and Village Level Governments in China*.

documents (规范性文件).<sup>218</sup> This rapid development of open government affairs requires local governments to make accessible both government information and government activities. However, one major difference between the system of “open government affairs” and the mechanism of open government information is that the former only concerns the government disclosing relevant information on its own initiative; it does not grant the public the right to request the government to disclose information, while the latter requires both.

More importantly, since late 2002, experimental points (试点)<sup>219</sup> of open government information have started to appear in China.<sup>220</sup> In December 2002, the first local government rules concerning open government information were issued by Guangzhou city government.<sup>221</sup> Following this, local government rules concerning open government information also started to emerge in Shanghai, Beijing, Chengdu and other cities.<sup>222</sup> Open government information legislation is therefore also a process from local experimental experience to national regulations. However, the initiation of open government information shall not be completely understood as a bottom-to-top initiative, as Heilmann pointed out that:

*China’s experiment-based policy-making requires the authority of a central leadership that encourages and protects broad-based local initiative and filters out generalizable lessons but at the same time contains the centrifugal forces that necessarily come up with this type of policy process.*<sup>223</sup>

<sup>218</sup> Mo Yuchuan & Lin Hongchao (Eds.) 2008a, 9; Mo Yuchuan & Lin Hongchao (Eds.) 2008b, 4; Horsley 2007a.

<sup>219</sup> In fact, this is not uncommon in China’s policy making. To test a policy with local legislation in certain locations, or “experimental points” (试点), is not unique for the OGI Regulations. This approach has been widely used by China during the last 30 years in a wide range of areas, from rural de-collectivization to opening up to foreign investment. (See, Heilmann 2008; Reinertsen 2009, 55) This practice of local experiment national policy is said to be in conformity with the requirement of Article 3 (4) of the *Constitution* that writes “giving full play to the initiative and enthusiasm of the local authorities”. See, Mo Yuchuan & Lin Hongchao (Eds.) 2008a, 9.

<sup>220</sup> Open environmental information differs from open government information that it includes both government information disclosure and enterprise information disclosure. As to enterprise information disclosure, mostly it requires both local EPBs and enterprises to cooperate in disclosing information. Between 1999 and 2000, pilot experiments on disclosing enterprise information were conducted in Zhenjiang (镇江), Jiangsu Province and Hohhot (呼和浩特), Inner Mongolia. The experiment rated the environmental performance of individual enterprises using five colours—green (best), blue, yellow, red and black (worst)—and made the results public. See, Li 2011, 332, 338.

<sup>221</sup> Horsley 2007b, 69-70.

<sup>222</sup> Mo Yuchuan & Lin Hongchao (Eds.) 2008b, 5.

<sup>223</sup> Heilmann 2008, 29.

He further points out that China's "from point to surface" (由点到面) is in fact:

*experimentation under hierarchy, that is, the volatile yet productive combination of decentralized experimentation with ad hoc central interference, resulting in the selective integration of local experiences into national policy-making.*<sup>224</sup>

Compared to policy experiments, academic research on open government information started even earlier. In 1997, the Law Institute of the China Academy of Social Sciences (中国社会科学院 CASS) was consulted by the National Administration for the Protection of State Secrets (保密局 NAPSS) concerning revising the *State Secret Law* (保密法 SS Law). It is clear that secret keeping and information disclosure are like two sides of the same coin: the delineation of one decides the scope of the other. Upon the consultation by the NAPSS, Zhou Hanhua, researcher and professor of the Law Institute at CASS, suggested that the amending of the SS Law should start by clarifying information disclosure. This proposal was nevertheless not accepted by the NAPSS who was afraid that pushing forward open government information did not really match its administrative responsibility.<sup>225</sup> Nevertheless, a research on government information development, utility and management (政府资源的信息资源开发利用与管理) was launched consequently at CASS, though due to the sensitivity of government information disclosure, the research project did not even use the concept of open government information (政府信息公开) at that time.<sup>226</sup>

The first document that used the concept of open government information appeared in 2002, the same year that China first started its "experimental point" of open government information in Guangzhou city. The central government issued an administrative document concerning the issues of drafting open government information regulations, stating that its aim was to:

*加快推进电子政务法制建设。适时提出比较成熟的立法建议，推动相关配套的法律法规的制定和完善。加快研究和制定电子签章、政府信息公开及网络与信息安全、电子政务项目管理等方面的行政法规和规章。基本形成电子政务建设、运行维护和管理等方面有效的激励约束机制。*

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<sup>224</sup> Heilmann 2008, 29.

<sup>225</sup> Zhou Hanhua 2008, 16.

<sup>226</sup> *Ibid.*, 16.

*quickly push forward the establishment of e-governance legal system. To make appropriate legislation proposal, to push forward the promulgation of related laws and regulations. To research and draft administrative regulations and rules concerning e-signature, open government information as well as Internet and information security, e-governance management. To build a basic mechanism promoting e-governance construction, operation and management.*<sup>227</sup>

Although open government information was, for the first time, clearly used in a central government document, according to this message the promotion of open government information was not really initiated to facilitate public access to information but was more or less a by-product of China's building its e-governance and internet information security management.<sup>228</sup>

In 2002, the Law Institute of CASS submitted its first expert version of the draft OGI Regulations to the SC. In 2004, the draft version was submitted again to the SC. Only in 2006 did SC list the promulgation of the Regulations as its priority and planned to pass them in 2007.<sup>229</sup> In January 2007, the OGI Regulations were passed by the SC at its 165th Executive Meeting and became effective in May 2008. In a press conference in light of the issuance of the OGI Regulations, Zhang Qiong, Deputy Director of the SC Legal Affairs Office stated that:

*推行政府信息公开，是科学执政、民主执政、依法执政的必然要求； ... ..*

*全面贯彻实施该条例，有利于保障公民、法人或者其他组织依法获取政府信息，实现人民群众对政府工作的知情权、参与权和监督权，有效发挥政府信息对人民群众生产、生活和经济社会活动的服务作用。*

*open government information is the necessary requirement of carrying out scientific administration, democratic administration and administration according to law; ... to fully implement the regulation is beneficial to safeguard the right to obtain government information by citizens, legal persons and other entities, to realize the people's*

<sup>227</sup> State Information Work Leading Group, *Guiding Opinion on Establishing E-governance*, [2002] No.17, Article 2 (8).

<sup>228</sup> To understand more about China's e-governance and Internet management, see, Lagerkvist 2006.

<sup>229</sup> Zhou Hanhua 2008, 16-17.

*right to know, right to participate and monitor, and to make government information to serve the people's production, livelihood and economic activities.*<sup>230</sup>

This statement shows clearly that the issuance of the OGI Regulations was indispensable for building a transparent government and guaranteeing public access to government information. This seemingly shifted open government information from being a by-product of e-governance and Internet security to a matter of public access to government information and right to participate.

The OGI Regulations also require “competent departments or offices of the SC” to formulate specific measures to further implement SC regulations.<sup>231</sup> In February 2007, SEPA became the first ministry-level agency to do this by issuing the OEI Measures.<sup>232</sup> This was regarded as both an outcome of promoting public participation and enterprise information disclosure by SEPA in the past years as well as a solution to provide detailed procedures to help the realization of environmental information disclosure.<sup>233</sup>

Thus, the OGI Regulations laid the foundation for the OEI Measures and together they form the most important legislation with regard to open environmental information in China. However, rules concerning environmental information disclosure do not exist only in these two regulations. Other laws promulgated

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<sup>230</sup> State Council Legal Affairs Office, Vice Director Zhang Qiong answers about Open Government Information Regulations, 24 April 2007.

<sup>231</sup> OGI Regulations, Article 37.

<sup>232</sup> SEPA is not the only ministry that issued ministerial rules concerning open government information. Many ministries issued their own rules. E.g., Ministry of Public Transport issued its own *Open Government Information Measures* under Jiaobanfa [2008] No.13, 8 April 2008; Ministry of Education, *Open Government Information Interim Measures for Education Government Agencies*, effective on 1 May 2008; Ministry of Education, *Higher Education Institutes Open Information Measures*, passed on 30 March 2010, effective on 1 September 2010; *Ministry of Land and Resources Open Government Information Interim Measures*, issued on 4 August 2009; In 2011, an information disclosure request concerned the OGI Implementation Measures (Implementation Measures) issued by the Ministry of Railway (MoR). MoR stated in several documents that it carried out open government information based on the OGI Regulations and issued its own Implementation Measures. However, this document of Implementation Measures could not be found on the ministry's official website, nor could it be found on other websites of the Internet. Moreover in China Government Transparency Report (2010), the MoR was graded zero for the category of implementing mechanisms, which meant that it did not have its own implementation measures. On 26 August 2011, Zhu Mang, a professor of administrative law at Shanghai Jiaotong University submitted an information disclosure request to the MoR. This request was returned stating that the addressee was not clear. Zhu sent the same letter with the same addressee again. He received the reply from MoR in mid-October 2011. And the MoR Implementation Measures [2008] No. 194 was uploaded to the Internet on 13 October 2011. Nevertheless, until 27 November 2011, the document still cannot be found on the Ministry's own website. See, Caixin wang, 29 Sept 2011.

<sup>233</sup> See, Mol, He & Zhang 2011, 171; see also, MEP website, 26 April 2007.

before as well as after the OEI Measures also provide a legal basis for access to environmental information. The following section thus provides a general review on the laws, regulations, rules and other legal documents, that have either explicit or implicit rules with regard to environmental information disclosure.

## 2.4 The Path of Legislation Towards Open Environmental Information

In China, there is no clear consensus or clarification on the concept of access to environmental information. Several concepts are regarded as relating to access to environmental information, including the right to know (知情权) and the right to environmental information (环境信息权). It has been argued that the right to know refers to the right of the public to obtain and to know, for example, environment-related information. It is realized through disclosing environmental information by the government either voluntarily or upon disclosure requests by the public. Another discourse goes further, arguing that the right to information is consisted of a bundle of rights; it not only refers to the right to know the information, but also the right to disseminate environmental information, and the right to be given a remedy if the right to information is violated.<sup>234</sup> Therefore, the right to environmental information is derived from the right to know, but contains more aspects than merely getting to know the environmental information. Nevertheless, there is no clear distinction between the right to know and the right to information.<sup>235</sup> When talking about access to environmental information in Chinese, “the right to know” and “the right to information” are both adopted to refer to “access to information”.

Moreover, it is also argued that access to information shall consist of two elements. First, the government shall provide environmental information to the public; second, the government shall hear and consider feedback and communications from the public. Therefore, access to information constitutes a dual-direction communication between the government and the public.<sup>236</sup>

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<sup>234</sup> Kong Xiaoming 2008, 103.

<sup>235</sup> see, e.g., Lü Zhongmei 2007, 126.

<sup>236</sup> Zhu Qian 2008, 140-142.

## 2.4.1 Environmental Information Disclosure pre-OEI Measures

Although there were local government rules concerning open environmental information, there was no nationwide legislation regulating access to environmental information in effect before the OGI Regulations and the OEI Measures came into effect in May 2008. However, access to environmental information was implied in other general and special environmental laws, regulations, and rules, particularly legislation concerning the EIA. Major laws that have rules concerning access to environmental information include: the EP Law, the *Prevention and Control of Atmospheric Pollution Law* (大气污染防治法 PCAP Law), The EIA Law, the PCP Law, and the PPEIA Measures.<sup>237</sup>

### 2.4.1.1 The Environmental Protection Law of the People's Republic of China

As one of the earliest environmental legislation—the EP Law, adopted and enforced since December 1989, only briefly refers to environmental information disclosure in two articles. Article 11 states that:

*The competent agencies of environmental protection administration under the State Council and governments of provinces, autonomous regions and municipalities directly under the Central Government shall regularly issue bulletins on environmental situations (环境状况).*

Article 31 stipulates that the entity that has caused or is likely to cause an accident of pollution shall make the situation known to other entities and residents who are likely to be harmed as well as report the incident to the competent environmental protection administration agency.

Both articles are information-holder centred, and public access to information depends on whether they are informed by the government, or the concerned entity. Moreover, the scope of information the public can access is limited, since environmental situations only concern general information of the environment,

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<sup>237</sup> See Appendix 8.5 for China's major legal documents concerning open environmental information.



water quality or air quality,<sup>238</sup> but not specific projects that might affect people's health, or the pollutant discharge information of one enterprise. Furthermore, environmental information that concerns incidents or other exigencies causing or threatening to cause pollution only applies when there is a pollution incident occurring or going to occur, therefore daily industrial emissions within the standard is excluded from information disclosure.

Moreover, there is a lack of sanctions if the government or private entities fail to fulfil their obligations. In reality, the requirement by the EP law to disclose information concerning pollution incidents has been neglected repeatedly even in severe environmental pollution incidents. For example, in July 2010, the Zijin Mining Group delayed its information disclosure to the public for nine days after a leak of 9,100 cubic meters of acid from the plant's wet sewage facilities into the Ting River, resulting in serious pollution and the death of 1,890 tons of aquatic life.<sup>239</sup> And in July 2011, the first information disclosure concerning a serious oil-field leakage caused by ConocoPhillips China in the Bohai Sea was made by State Oceanic Administration one month after the accident occurred on 4 June.<sup>240</sup> Furthermore, both enterprises were not sanctioned for the delay of their information disclosure, though they were ordered to compensate for the losses caused by their pollution.

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<sup>238</sup> General air or water quality also affects people's living directly. Between late 2011 and early 2012, information disclosure concerning air quality aroused great anger among Beijing citizens. In early November 2011, Beijing was experiencing very bad air pollution for several days. While the results of the US Embassy described Beijing's air quality as "hazardous" or "dangerous," the Beijing EPB said the pollution was minor. (See, *Nanfang dushibao*, 5 Dec 2011.) The great discrepancy between these two inspection results is due to different air quality standard applied by both monitoring parties. Chinese netizens and NGOs started urging the authorities to adopt tighter monitoring standards to reining air pollution. This has made Beijing announce that it will take measures to deal with air pollution problems.

<sup>239</sup> *Di yi caijing ribao*, 13 July 2010.

<sup>240</sup> On 5 July 2011, the first information disclosure of the Ministry of Ocean said that the leakage caused environmental damage to the ocean environment to a certain level. It also explained that "although the sea area inspected is 840 square kilometres, it does not mean that the area affected is so large". On 26 August, the Ministry of Ocean made its second information disclosure that polluted area accumulated to 550 square kilometres and the sea water area categorized as level 4 serious polluted water is 870 square kilometres. *Zhongguo qingnianbao*, 30 August 2011.

### 2.4.1.2 The Prevention and Control of Atmospheric Pollution Law

The PCAP Law was amended and adopted by the Standing Committee of the National People's Congress on 29 April 2000, and became effective as of 1 September 2000. It imposes obligations upon both enterprises and government agencies to disclose environmental information. Article 20 of the PCAP law stipulates explicitly that private enterprises whose activities caused environmental incidents that might result in air pollution shall immediately take measures to prevent air pollution, inform entities and residents that might be affected by air pollution, and report the incident to the environmental protection agencies. Under the circumstance that heavily polluted air causes harm to people's health and security, the local governments shall inform the public of any dangerous environmental conditions or pollution incidents in good time.<sup>241</sup> Article 23 requires environmental agencies of local governments of large and medium-sized cities to release air quality environmental reports at fixed intervals. These reports shall include the quality of air pollution in cities, the types of main pollutants and the levels of harmful effects of this pollution.<sup>242</sup>

American Chinese law experts Alford and Liebman have argued that as one of the early environmental laws, the PCAP law "takes steps towards increasing public awareness of environmental problems".<sup>243</sup> However, with regard to information disclosure, the PCAP Law bears much similarity to the EP Law. First, both laws are information-holder centred, and there is a lack of punishment if the information holder, either a private enterprise or public actor, does not fulfil their duty to disclose. Second, the information that shall be disclosed is limited to serious environmental incidents and the general condition of the environment. Although the law requires government agencies to inspect enterprise pollutant discharge,<sup>244</sup> it does not grant the public access to information of environmental pollution or other environmental information concerning specific enterprises.

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<sup>241</sup> PCAP Law, Article 20.

<sup>242</sup> *Ibid.*, Article 23.

<sup>243</sup> Alford and Liebman 2001, 727.

<sup>244</sup> PCAP Law, Article 21.

### 2.4.1.3 The Law on Promotion of Cleaner Production of the People's Republic of China

Effective in 2003, the PCP Law takes one step further in explicitly stipulating that the state encourages the public to participate in dissemination, education, promotion, implementation and supervision regarding clean production.<sup>245</sup> Moreover, it specifically requires the state agencies responsible for environmental protection at a provincial level<sup>246</sup> to publish a list of heavily-polluting enterprises in local primary media.<sup>247</sup> It also requires enterprises that appear on the list to periodically publish the status of the discharge of their major pollutants and submit it to public supervision.<sup>248</sup> Imposing the obligation on the government agencies responsible for environmental protection and heavily-polluting enterprises to disclose information in newspapers or on websites, the PCP Law plays an instrumental role in providing a channel for the public to find out about environmental information concerning specific enterprises.<sup>249</sup> Nevertheless, it is still limited to information about the heavily-polluting enterprises, and other enterprises are excluded from the compulsory requirement of environmental information disclosure.

In 2003, based on the PCP Law, SEPA decided to launch a nationwide work of enterprise environmental information disclosure to promote public monitoring of enterprise environmental activities and issued the *Bulletin on Enterprise Environmental Information Disclosure* (EEID Bulletin).<sup>250</sup> According to the EEID Bulletin, enterprises that are obliged to publish their environmental information have a wide margin of choice in deciding by which means they will publish their environmental information. They can choose to publish the information on the websites of SEPA or provincial EPDs, in newspapers, via other media, or in printed brochures. This in fact leaves the possibility open for enterprises to choose approaches to fulfil their obligation of information disclosure which avoid making the information effectively or broadly accessible to the public, if they intend to do so for their own sake. For instance, they may publish environmental information in an

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<sup>245</sup> PCP Law, Article 6.

<sup>246</sup> Specifically, it includes environmental protection departments of provinces, autonomous regions and municipalities directly under the Central Government. In Chinese, sheng, zizhiqu and zhixiashi (省, 自治区, 直辖市).

<sup>247</sup> PCP Law, Article 17.

<sup>248</sup> PCP Law, Article 27.

<sup>249</sup> See, also Mol, He & Zhang 2011, 170.

<sup>250</sup> SEPA EEID Bulletin, Huanfa [2003] No.156.

unpopular local newspaper with limited subscription, or by printing a few handouts of their environmental information.

The only compulsory and strict requirement in the EEID Bulletin is that the environmental protection agencies in the locality in which the enterprises are registered shall make the enterprises publish their environmental information on SEPA's website under certain serious circumstances. These circumstances include:

- a. an enterprise's major pollutant discharge does not meet the national or local pollutant discharge standard twice or more during regular environmental inspections;*
- b. an enterprise's pollutant discharge surpasses the total emission volume allowed by the emission license twice or more during regular environmental inspections;*
- c. an enterprise incurred two or more violations of environmental laws during on-site environmental inspections;*
- d. an enterprise causes major polluting accidents;*
- e. collective petitioning related to environmental problems occurred.<sup>251</sup>*

These rules have reflected the most important concerns of the state regarding environmental problems, namely enterprises' repeatedly polluting, heavily-polluting enterprises, and pollution-related collective petitions.<sup>252</sup>

Compared to the EP Law, the PCP Law and its further enforcement guidance the EEID Bulletin have explicitly extended public access to environmental information about heavily-polluting industry. This further imposes pressure on various enterprises to alleviate or prevent pollution. If the PCAP Law "takes steps towards increasing public awareness of environmental problems",<sup>253</sup> the EEID Bulletin and the PCP Law in fact constitute the first step towards access to environmental

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<sup>251</sup> SEPA Bulletin, Huanfa [2003] No.156.

<sup>252</sup> A 2009 report shows that "while the total amount of petitioning, collective petitioning, irregular appeals, and collective incidents is decreasing, petitioning and collective incidents relating to environmental matters are increasing at an annual rate of 30%". The report also states that environmental issue is no more an easy problem nowadays; it has become the fuse of conflicts between the government and the public. (*Guoji xianqu daobao*, 27 Aug 2009.) A 2012 report shows that since 2006, the annual growth rate in Chinese environmental protests is 29%, and there are 300,000 petitions on environmental matters. *Nanfang zhoumo*, 29 November 2012.

<sup>253</sup> Alford & Liebman 2001, 727.

information by explicitly imposing obligations upon both environmental protection agencies and all heavily-polluting enterprises to disclose environmental information, for instance by listing the heavily-polluting enterprises and the major pollutant discharge.<sup>254</sup>

Nonetheless, like the early environmental laws, both the EEID Bulletin and the PCP Law are still information-holder centred and access to information through disclosure request is lacking. In other words, the public does not have a positive right to request that either a government agency or an enterprise disclose environmental information. This could probably be explained by the discourse that the PCP Law is, in essence, an environmental economic law that affirms and normalizes government activities to interfere appropriately in the economic sector to prevent environmental pollution;<sup>255</sup> thus, it is not a law that regulates public participation in environmental matters as such.

#### **2.4.1.4 The Law of the People's Republic of China on Environmental Impact Assessment**

The EIA Law was promulgated in October 2002 and entered into force on 1 September 2003. It is important to notice that, distinguishing it from previous environmental laws, the EIA Law is the first Chinese law that explicitly makes public participation one of its general principles;<sup>256</sup> it is also the first law that not only implies active access to information but also passive access to environmental information. In this sense, it constitutes the second major step forward towards open environmental information.

In the first part of its General Principles, the EIA Law stipulates that:

*the state encourages relevant entities, experts and the general public to participate in the appraisal of the environmental impacts in appropriate ways.*<sup>257</sup>

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<sup>254</sup> PCP Law, Article 17 & Article 27.

<sup>255</sup> Wang Mingyuan 2006.

<sup>256</sup> Public participation in EIA in China is still lag behind, and stays at mostly as tokenism but not effective public participation. Discussion about public participation in China's environmental impact assessment, please see, Zhao 2010, Tang & Tang 2005.

<sup>257</sup> EIA Law, Article 5.

In its subchapters it further clarifies that if a subject plan (专项规划) or construction project (建设项目) “may cause unfavourable environmental impacts or directly involve the environmental interests of the general public”, opinions of relevant entities, experts and the general public shall be sought by the program planning unit or the construction entity through holding demonstration meetings (论证会) or hearings (听证会) or any other means, unless it is provided by the state that it shall be kept confidential.<sup>258</sup> Although access to information has not been explicitly stipulated in the EIA law, undoubtedly demonstration meetings and public hearings cannot be held without the public knowing the relevant environmental information. Thus, organizing a demonstration meeting and hearing (or via any other means) *de facto* creates the possibility of public access to environmental information. Moreover, during demonstration meetings or hearings, the public does have the chance to ask questions about the program or construction project, which, as a matter of fact, constitutes passive access to information. The EIA law also embodies a dual-direction communication with regard to access to information.<sup>259</sup> It requires the program drafting entities and project construction units to take public feedback into consideration as well as state whether public opinion has been taken or refused in their environmental impact assessment report for examination and approval.

#### **2.4.1.5 Interim Measures on Public Participation for Environmental Impact Assessment**

The PPEIA Measures belong to ministry-level rules. Issued by SEPA on 14 February 2006 and entered into force on 18 March 2006, the PPEIA Measures have been proclaimed by the *Legal Daily* (法制日报) as the first legal document on public participation.<sup>260</sup> The vice minister of SEPA, Pan Yue, stated that the PPEIA Measures not only clarified the public’s right to participate in environmental impact assessments but also set rules on the scope, procedure, means and duration of public

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<sup>258</sup> EIA Law, Article 11 & Article 21. Article 11 stipulates rules concerning subject plan environmental impact assessment and Article 21 sets rules with regard to construction project environmental impact assessment.

<sup>259</sup> Zhu Qian 2008, 140-142.

<sup>260</sup> *Fazhi ribao*, 28 March 2007.

participation, and this has helped to safeguard the right of the public to access environmental information.<sup>261</sup>

The PPEIA Measures until today constitute the first national legislation explicitly setting out the most detailed rules with regard to access to information. Moreover, they explicitly include not only active access to information but also passive access to information. Thus, compared to the EIA Law's implied passive access to information, the PPEIA Measures takes a third step forward, towards open environmental information. Aiming to promote and regulate public participation in environmental impact assessment,<sup>262</sup> it clearly states in its General Principles that construction entities or the entrusted environmental impact drafting entities during the environmental impact report drafting period, and the environmental protection agencies during its assessment and approval process, shall publish relevant environmental impact information and listen to public opinion.<sup>263</sup> The whole Section 1 of Chapter 2 of the PPEIA Measures concerns environmental information disclosure. This section includes five articles defining in detail who shall disclose the information, the content of the information, and the means to make the information public. It particularly points out that the impact on the environment by construction projects, and measures taken to prevent or decrease the negative impact on the environment, shall be made public; it also stipulates that the public shall be informed when and how they can obtain additional information from the construction entity or its entrusted environmental impact assessment entity.<sup>264</sup> This stipulation of obtaining additional information is *de facto* a stipulation of passive access to information that the public has the right to request government information disclosure. Moreover, similar to the EIA Law, the PPEIA Measures also have rules implying the dual-direction communication of environmental information by requiring construction entities and their entrusted drafting entities, and the environmental protection agencies, to consult the public.<sup>265</sup>

In brief, the PPEIA Measures constitute a dividing line between implied and explicit public access to environmental information. Most of all, they set out the most detailed rules concerning access to information during the process of the environmental impact assessment of a construction project. However, construction

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<sup>261</sup> *Fazhi ribao*, 28 March 2007.

<sup>262</sup> PPEIA Measures, Article 1.

<sup>263</sup> *Ibid.*, Article 5.

<sup>264</sup> *Ibid.*, Article 9.

<sup>265</sup> *Ibid.*, Articles 12, 13, 14, & 17.

projects are, under most circumstances, carried out by private entities, which therefore implies that the PPEIA Measures mostly impose the duty upon private entities instead of government agencies to disclose relevant information. While there is a lack of clear rules on the government's role and responsibility in guaranteeing access to environmental information, the PPEIA Measures cannot be regarded as comprehensive and profound.

#### 2.4.1.6 Summary

Access to information in Chinese law from the EP Law to the PPEIA Measures has mainly undertaken a path from the implied to the explicit, from the government disclosing information on its own initiative to encouraging the public to request information disclosure, and from a one-direction to dual-direction communication. However, despite the legislative developments, access to environmental information before May 2008 remained limited in the scope of information that could be accessed or disclosed and deficient in a state-dominated and public-marginalized structure.

First of all, access to information mainly depends on whether the information holders are willing to disclose; the rules concerning access to information are insufficient, mostly limited to environmental impact assessment. Most public-concerned information—such as pollutant emissions of enterprises near to residential areas—is not accessible. Without access to environmental information, it would be difficult for the public to effectively help protect the environment from being polluted or actively participate in environmental governance.<sup>266</sup>

Second, although both government agencies and enterprises were required to disclose information to the public, it seems that when compared to government agencies, enterprises bear more of the responsibility with regard to information disclosure. Moreover, there is a lack of clarification on the government's obligation and responsibility to regulate enterprises' information disclosure. Few constraints on state authorities were imposed to ensure that enterprises act strictly according to law and disclose their environmental information to the public.

Third, there was almost no strict responsibility imposed upon either the government or the enterprise if they fail to disclose relevant information. In the PCP

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<sup>266</sup> Han Guang, Yang Xing, Chen Weichun, et al. 2007, 312-313.



Law, there were rules stating that when an enterprise fails to publish its pollutant discharge information the relevant government agencies responsible for environmental protection shall publish the discharge information, and may also impose a fine upon the enterprise.<sup>267</sup> However, this “may impose” shows a lenient attitude towards violating enterprises, indicating that enterprises may also not be punished.

To conclude, rules regarding access to environmental information before May 2008 were rather vague, lenient towards information disclosing parties, information-holder centred and lacked a responsibility mechanism. Regarding the defects and weaknesses of the legislation concerning access to environmental information, scholars have various suggestions to improve the situation. It has been proposed, for example, that an open environmental information system be constructed, based on citizens’ right to obtain environmental information and participate in environmental protection activities; second, that special laws should be drafted on open government information; third, access to information and public participation shall be combined closely, not only in environmental impact assessment, but expanded to other areas of decision-making, for example, legislation and policy-making. Furthermore, it had been suggested that the scope of environmental information should be expanded and the system of government information disclosure extend from urban to rural areas; various means should be adopted to make environmental information available to the public, for example by constructing websites, organizing press conferences, and holding demonstration meetings; and enterprise information disclosure systems should be improved, based on the experience of the trial cities.<sup>268</sup> Other suggestions include, learning from the Aarhus Convention and based on China’s situation, to promulgate special open information laws, and to amend the EP Law with one chapter added that particularly deals with environmental information disclosure. Thus, the legislation should clarify the following factors: the definition and scope of environmental information, the information disclosure subject and means of disclosure, disclosure procedures, exceptional circumstances, and legal remedies.<sup>269</sup> While it is not definite how academic discourses have resulted in the promulgation of the open government information legislation, it is clear that scholarly discussion has pointed out new

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<sup>267</sup> PCP Law, Article 36.

<sup>268</sup> Han Guang, Yang Xing, Chen Weichun, et al. 2007, 321-329.

<sup>269</sup> Zhong Weihong & Wen Hanguang 2006, 21.

possibilities for China's legal development of establishing its mechanism of open government information. And some suggestions have also clearly been reflected in China's establishment of its open government information mechanism. For instance, it has been argued that open government information legislation could be issued as administrative regulations to act as a transitional experiment and provide experience for improvement, to be upgraded into law in the future.<sup>270</sup> So far, open government information legislation does consist of regulations and rules but not laws.

#### **2.4.2 Strengthening Access to Information: 2008 and Beyond**

In May 2008, the OGI Regulations and the OEI Measures came into effect. Additionally, open environmental information has also appeared in other legislation promulgated in recent years, mainly in the newly revised *Prevention and Control of Water Pollution Law* (水污染防治法 PCWP Law) in 2008, The *Circular Economy Promotion Law* (循环经济促进法 CEP Law) that came into force as of 1 January 2009, and the *Plan Environmental Impact Assessment Regulations* (规划环评条例 PEIA Regulations) effective since 1 October 2009.<sup>271</sup> These laws and regulations have further shaped China's open environmental information mechanism.

##### **2.4.2.1 Special Legislation on Open Government/Environmental Information**

The OGI Regulations and the OEI Measures were promulgated in early 2007 and both came into effect in May 2008. The OGI Regulations, belonging to the category of regulations promulgated by the SC, prevails over the OEI Measures, which are ministry rules. Nevertheless, they all belong to special legislation concerning open government information, and bear many similarities. The following discussion therefore adopts an integrated and comparative approach by analysing the two pieces of legislation together.

Article 1 of the OGI Regulations explicitly and directly states that its objective is to guarantee the public access to government information. Although the OGI

<sup>270</sup> Han Guang, Yang Xing, Chen Weichun, et al. 2007, 321-329.

<sup>271</sup> Another relevant law, MEP *Measures on Public Participation in Environmental Protection* (公众参与环境保护办法) were entrusted to the CLAPV to be drafted, but it seems that the drafting process was halted later.

Regulations do not concern environmental information directly, they require all levels of government and their agencies to disclose various kinds of government information, which includes government-held environmental information. It specifically stipulates that state agencies shall voluntarily disclose information that concerns the vital interests of citizens, legal persons or other organizations, information that should be widely known by the general public or concerns the participation of the general public, development planning, regional planning, information on the approval of great construction projects and their implementation, and urban construction information.<sup>272</sup>

The OEI Measures specifically require environmental protection agencies to disclose environmental information. Most of all, besides the listed types of information that shall be disclosed, there is a clause stating that the environmental protection agencies shall also disclose other environmental information that shall be disclosed according to laws, regulations and rules.<sup>273</sup> The Measures also require enterprises to disclose environmental information.<sup>274</sup>

Besides voluntary disclosure by public actors, both pieces of legislation stipulate that citizens, legal persons and other entities can request that government agencies disclose environmental information.<sup>275</sup> In other words, the legislation has rules about both passive access to information, that the public can seek information from public authorities, and active access to information, that the public shall receive information, and the obligation of authorities to collect and disseminate information of public interest without the need for a specific request.<sup>276</sup>

Furthermore, both pieces of legislation set clear rules regarding legal remedies for failure to disclose information. They stipulate explicitly that citizen, legal person or other organization, if they think an administrative agency fails to fulfil its obligation to disclose information according to law, have the right to report or inform<sup>277</sup> its superior administrative department, supervisory department or other competent government department. The public can also apply for administrative

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<sup>272</sup> See, OGI Regulations, Articles 9, 10, 11, & 12.

<sup>273</sup> OEI Measures, Article 11.

<sup>274</sup> *Ibid.*, Article 19.

<sup>275</sup> OGI Regulations, Article 13; OEI Measures, Article 16.

<sup>276</sup> See, *Aarhus Convention-An Implementation Guide*, ECE/CEP/72, UN Economic Commission for Europe, 2000, 6; Wang 2010, NRDC working paper, 3.

<sup>277</sup> OEI Measures, Article 26; OGI Regulations, Article 33.

reconsideration (行政复议)<sup>278</sup> before the competent government department or bring an administrative lawsuit to the court if they believe that a specific administrative act committed by an administrative agency in carrying out government information disclosure work has infringed their legal rights and interests.<sup>279</sup>

The OGI Regulations and the OEI Measures together constitute a milestone in safeguarding access to environmental information, clearly stipulating who the information disclosure duty bearers and rights holders are, the broad scopes of information to be disclosed, and the procedures for access to information.

Nevertheless, no rules are without exceptions. Both pieces of legislation have exception rules stating that information involving state secrets, commercial secrets or individual privacy may not be disclosed.<sup>280</sup> Generally speaking, it is undisputable that these elements shall be regarded as exceptions concerning information disclosure. However, the problem under China's situation is that it is very difficult to delineate these exceptions according to current Chinese laws, particularly when related to state secrets and commercial secrets. In China, state secrets "shall be matters that have a vital bearing on state security and national interests and, as specified by legal procedure, are entrusted to a limited number of people for a given period of time"<sup>281</sup> and they can be determined by all levels of governments and their departments, and the basis on which something can be classified as state secret is very broad.<sup>282</sup> Therefore, any information could possibly be classified as a "state secret". The problem with the exception of commercial secrets is not as serious as that of state secrets; however, due to the secret nature of a commercial secret, it is difficult for information applicants to know if the commercial secret used by the

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<sup>278</sup> This dissertation uses the English translation of "administrative reconsideration" (行政复议), as it is the term used in the English version of the *Administrative Reconsideration Law of the PRC* (translated by lawinfochina). However it is argued that "administrative review" has closer meaning as 行政复议 in China, and "administrative review" is also used by scholars when discussing Chinese administrative law. See, e.g., Chen 2011; A discussion on the English translation of administrative law terms, please see, He Haibo 2011.

<sup>279</sup> OEI Measures, Article 26; OGI Regulations, Article 33.

<sup>280</sup> OGI Regulations, Article 14; OEI Measures, Article 12.

<sup>281</sup> State Secret Law, Article 2. Translated by lawinfochina.

<sup>282</sup> Wang Xixin 2011, 67-69; Wang Xixin, 2009, 6-8. It is important to note that according to the new *Implementation Regulations on State Secret Law* issued by the SC in January 2014, Article 5 stipulates that "State department shall not make issues that shall be disclosed according to law to be state secret, nor shall they disclose information that concerns state secret." This Article 5 seems progressive in the aspect that it takes open government information into consideration, but at the same time, it is still vague and ambiguous. It is said that "the beauty of its [China's] state secret regulations lies precisely in their vagueness". *The Diplomat*, 4 Feb 2014.

information holder to refuse an information disclosure request is a real legal reason or an excuse.<sup>283</sup>

It is also argued that a legislative defect exists with Article 8 of the OGI Regulations. Its stipulation of the “three securities one stability” created the risk of Article 8 being used as an additional exception of disclosure in that government information that might affect state security, public security, economic security and social stability shall not be disclosed.<sup>284</sup>

#### **2.4.2.2 Prevention and Control of Water Pollution Law**

The PCWP Law was adopted by the NPC Standing Committee on 28 February 2008, and entered into force as of 1 June 2008. Only one article in the PCWP Law stipulates open environmental information: Article 19 requires a list of local governments that fail to reach their indicators of the reduction and control of the total discharge of major water pollutants to be published by their higher-level environmental protection agencies; information of enterprises that seriously pollute the water environment in violation of the PCWP Law shall be disclosed by environmental protection agencies at or above the county level.<sup>285</sup>

Compared to its sister law—the PCAP Law, the PCWP goes further in requiring that it be made public if local governments fail to achieve their environmental protection targets. This imposes a pressure on local governments to take measures to fulfil their pollutant emission targets.

Both the PCAP Law and the PCWP Law are similar in that only active access to environmental information is stipulated. However, compared to the PCAP Law, stating that information about air pollution accidents shall be made public immediately,<sup>286</sup> no similar rules are stipulated by the PCWP Law. Moreover, unlike the PCAP Law, the air quality situation shall be disclosed periodically;<sup>287</sup> no requirement can be found under the PCWP Law on periodic disclosure of information about the water situation.

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<sup>283</sup> Wang Canfa & Cui Bin 2008.

<sup>284</sup> Wang Xixin 2011, 65-66; for detailed analysis, please see section 1.4.

<sup>285</sup> PCWP Law, Article 19.

<sup>286</sup> PCAP Law, Article 20.

<sup>287</sup> *Ibid.*, Article 23.

### 2.4.2.3 Circular Economy Promotion Law of the People's Republic of China

The CEP Law was issued on 29 August 2008 by the Standing Committee of the NPC and came into effect as of 1 January 2009. A circular economy refers to the process of “reducing, reusing and recycling activities conducted in the process of production, circulation and consumption”.<sup>288</sup> The CEP Law stipulates both active and passive access to environmental information. Passive access to information is stipulated by Article 10 (3), in that:

*citizens have the right to report acts of wasting resources and damaging the environment, and have the right to access to government information about the development of circular economy and propose their opinions and suggestions.*<sup>289</sup>

Although it is not clear how citizens can realize this right to obtain government information, it is nevertheless clear that the right to environmental information is embodied by the law. And moreover, it is a mutual-communication of information since citizens can also “propose their opinions and suggestions”.

Active access to information is stipulated by Article 17, in that:

*the state shall set up a circular economy statistical system, strengthen the statistical management of resource consumption, comprehensive utilization and waste production, and publish the major statistical indicators to the public on a regular basis.*<sup>290</sup>

It appears that this looks more like a guidance of statistical indicators rather than the situation of circular economy production. This corresponds with the purpose of the law in that it is formulated to promote a circular economy, improve the efficiency of resources, protect the environment and realize sustainable development,<sup>291</sup> but not to regulate and control enterprises' activities.

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<sup>288</sup> CEP Law, Article 2.

<sup>289</sup> English translation by lawinfochina.

<sup>290</sup> English translation by lawinfochina.

<sup>291</sup> CEP Law, Article 1.

#### 2.4.2.4 Plan Environment Impact Assessment Regulations

The PEIA Regulations came into effect on 1 October 2009. They set rules regulating environmental impact assessments on comprehensive and subject developing plans (综合规划和专项规划) made by governments and their administrative agencies. Access to environmental information is implied in the regulations in that a plan-drafting unit shall organize demonstration meetings, hearings or other means to consult the opinion of relevant entities, experts and the public before submitting a report on a subject plan, including plans for approval on industry, agriculture, husbandry, forestry, fishery, communications, city construction, tourism, and natural resources' exploitation.<sup>292</sup> Therefore, similar to the EIA law, access to information is only implied in the process of consultation when the public was informed about the plan before submitting their opinion; it is also possible that the public could request information disclosure when participating in the consultation period. Moreover, a dual-direction communication concerning access to information also seems possible from the stipulation that the drafting unit shall attach a statement on whether it adopts the public opinion and its reasons when submitting the report.

However, although the PEIA Regulations state that this concerns both comprehensive plans and subject plans, evidentially from the rules, access to information only applies to subject plans, such as industrial development plans, agricultural or tourism development, but not comprehensive plans, for example plans with regard to land use, regional development plans, and sea area or river area development plans.<sup>293</sup> This corresponds with the EIA law, which also does not apply to comprehensive plans.<sup>294</sup> On the one hand, although it is argued that this is due to government departments being afraid of public participation and causing trouble in environmental policy making, it is in conformity with its upper level law.<sup>295</sup> On the other hand, it shows the sole government control over drafting comprehensive plans in China.

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<sup>292</sup> PEIA Regulations, Article 2 & Article 13.

<sup>293</sup> *Ibid.*

<sup>294</sup> EIA Law, Article 11.

<sup>295</sup> *Keji bao*, 23 April 2008.

### 2.4.2.5 Summary

In brief, there has been visible legislative development since 2008 until now concerning open environmental information. Moreover, the promulgation of the OGI Regulations and the OEI Measures has become a landmark in establishing China's open environmental information mechanism. However, problems still exist with vague and unclear rules, and broad exceptions in both pieces of legislation. These problems have also been repeated or even augmented by normative documents issued by the SC as guidance for government agencies to carry out the work of open government information.

## 2.5 From State Council Opinions to the Supreme People's Court Judicial Interpretation on Open Government Information

Besides laws, regulations, and rules, several other legal documents also regulate the current situation of open environmental information by government agencies. They include the one notice and two opinions by the General Office of the SC, and the Supreme People's Court's (SPC) judicial interpretation on the adjudication of open government information litigation.<sup>296</sup>

### 2.5.1 One Notice and Two Opinions on OGI Regulations

In order to effectively implement the OGI Regulations, the General Office of the SC issued one notice and two opinions in August 2007, April 2008 and January 2010, respectively.<sup>297</sup> These documents are normative documents (规范性文件) that shall be used as a reference (参照使用) for all government agencies. In China, normative

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<sup>296</sup> There is also legal document regulating enterprise environmental information disclosure. For instance, in February 2008, SEPA issued the *Guidance on Strengthening Public-listed Companies Environmental Protection Supervision and Management*. It requires a mechanism of environmental information disclosure to be established with regard to public-listed companies, and companies whose environmental information is not disclosed according to the requirements shall be reported to the China Securities Regulation Commission. The Commission shall act according to the *Measures on Public-listed Companies Information Disclosure*.

<sup>297</sup> SC General Office, *Notice on Preparing Well for Implementing the Regulations of the People's Republic of China on Open Government Information*, 4 August 2007; SC General Office, *Opinion on Several Issues of Implementing the PRC Open Government Information Regulations*, 29 April 2008; SC General Office, *Opinion on Doing a Good Job of Disclosing Government Information on Request*, 12 January 2010.



documents, generally bearing government names in red as headers, are also called Redhead Document (红头文件); although not formal laws they play a very important function in government administration. It is argued that the growing importance of administrative normative documents in practice changes “administrative rule of law” to “rule of normative rules”.<sup>298</sup> The notice generally called all government agencies to make full preparation in order to implement the OGI Regulations. The opinions provided further guidance on how to implement the OGI Regulations.

Urging government agencies to disseminate government information and fulfil their obligation under the OGI regulations, it seems that the opinions also set requirements that may impede effective implementation of the OGI Regulations and the OEI Measures. For example, it is argued by Horsley that the SC’s opinion on handling OGI requests “appears to endorse a restrictive interpretation of the ‘special needs’ language of Article 13 of the [OGI] Regulations”.<sup>299</sup>

There are two points of views on “special needs of production, livelihood and scientific research” stipulated by Article 13 of the OGI Regulations.<sup>300</sup> The first holds that Article 13 provides the reason for information disclosure requests but does not impose restraints upon information requesters. Therefore, everyone has the right to request the government to disclose information.<sup>301</sup> The second is a more restrictive interpretation, stating that the clause limits the scope of information requesters, and so citizens, legal persons, and other organizations must have special needs related to their production, livelihood, or scientific research in order to request a governmental information disclosure.<sup>302</sup> There is also the argument that the restricted interpretation fits the present situation, within which governments at different levels in China are lacking sufficient capacity to fulfil their obligation concerning information disclosure.<sup>303</sup>

Both opinions issued by the SC General Office stated that government agencies may (可以) refuse to provide information if the disclosure does not relate to the

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<sup>298</sup> Guo Qingzhu, 2010, 36.

<sup>299</sup> Horsley 2010.

<sup>300</sup> OGI Regulations, Article 13.

<sup>301</sup> Jiang Bixin & Li Guangyu 2009.

<sup>302</sup> Qian Ying 2009; Luo Changqing 2009.

<sup>303</sup> Qian Ying 2009; See also Zhejiangsheng gaoji renmin fayuan ketizu, 2009; Zhang Jiansheng 2008.

applicant's special needs of production, livelihood and scientific research.<sup>304</sup> Although both opinions used "may" instead of "must", in theory and in practice there is a clear trend that Article 13 is interpreted restrictedly, by imposing constraints on information disclosure requesters.<sup>305</sup> Unlike the OGI Regulations, the OEI Measures does not have rules concerning the special needs of the applicants to request an environmental information disclosure.<sup>306</sup> However, while the opinions issued by the SC shall be applied to all government agencies, all environmental protection agencies must take into consideration the SC's opinions in their administering of environmental information disclosures.

In fact, the restricted interpretation of "special needs of production, livelihood and scientific research" has already been applied in cases concerning environmental information disclosures. For example, in the case of *Sun Nong v. Zhuhai EPB*, the appealing court dismissed the applicant's claim of action, stating that his request addressed to the EPB regarding used battery disposal information did not concern his special needs of production, livelihood and scientific research.<sup>307</sup> Nevertheless, the Supreme People's Court relaxed the requirement of "special needs" in its judicial interpretation, which will be discussed in the following section 2.5.2.

Both opinions also clearly excluded information that might affect "three securities and one stability" (三安全一稳定)<sup>308</sup> from the scope of what shall be disclosed.

*If disclosure of government information that is requested by a requester might endanger state security, public security, economic security and social stability, according to the stipulations information should not be disclosed and the requester may be notified that such information does not fall within the scope of open government information.*<sup>309</sup>

<sup>304</sup> SC General Office, *Several Issues of Implementing the PRC Open Government Information Regulations*, 29 April 2008, Article 14; SC General Office, *Opinion on Doing a Good Job of Disclosing Government Information on Request*, 12 January 2010, Article 1.

<sup>305</sup> More discussion, see, Chen Yongxi 2011.

<sup>306</sup> In the OEI Measures, Article 5 stipulates "[c]itizens, legal persons and other organizations may request environmental protection departments to disclose government environmental information".

<sup>307</sup> *Sun Nong v. Zhuhai EPB*, Guangdong Zhuhai City Intermediate People's Court Administrative Litigation Ruling, (2009) zhuzhongfaxingzhongzi No.50, 17 December 2009.

<sup>308</sup> More discussion about this, please see chapter 1.4.

<sup>309</sup> SC General Office, *Opinion on Several Issues of Implementing the PRC Open Government Information Regulations*, 29 April 2008; Similar requirements are stipulated by the 2010 Opinion, see, SC General Office, *Opinion on Doing a Good Job of Disclosing Government Information on Request*, 12 January 2010. The cited English translation is made by the China Law Center, Yale Law School.

Although it has been argued that the “three securities and one stability” is in fact more a criteria to balance whether the disclosure might affect them, but is not an exception of non-disclosure,<sup>310</sup> the opinions here clearly adopted the latter discourse.

The opinion issued in 2010 also has a clarification on the scope of state information as it stated that

*internal management information made or obtained by administrative organs during their day-to-day work or in-process information (过程性信息) under discussion, research or examination in general is not government information that should be disclosed as referred to in the Regulations.*<sup>311</sup>

Lastly, a new principle, “one issue one request” (一事一申请)<sup>312</sup> established by the SC opinion of January 2010 might impose potential obstacles concerning government information disclosure upon request. Article 3 of the opinion says that, in reality, sometimes one request asks for information compiled and kept by several government agencies, or some requests concern many categories of information and items (项目). Under these circumstances, it is difficult for government agencies to provide the required information. To increase working efficiency and to make it convenient for the information disclosure requester to obtain information, in requests containing many items (项目较多的申请) the addressed administrative agency can ask for the request to be adjusted according to the principle of “one issue one request”. In other words, one government information disclosure request shall only correspond to one government information item.<sup>313</sup> The principle thus allows government agencies, if considering that more than one item of information is being requested, to require information disclosure requesters to revise their requests. This might produce an additional burden for the public to make several requests if more than one piece or type of information is needed. Another problem with this principle is that there is no clear interpretation on what constitutes one issue or item.

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<sup>310</sup> Wang Xixin 2011, 65-66.

<sup>311</sup> Translated by the China Law Center, Yale Law School; When Friends of Nature requested the Ministry of Agriculture to disclose the information concerning adjustment of a nature reserve area at the upper reaches of the Yangtze River, the request was refused based on the reason that the information belongs to the category of information in process. Further discussion and analysis, please see Chapter 4.

<sup>312</sup> SC General Office, *Opinion on Doing a Good Job of Disclosing Government Information on Request*, 12 January 2010.

<sup>313</sup> *Ibid.*, Article 1.

## 2.5.2 Rules on Several Issues of Adjudicating Open Government Information Administrative Litigation

Along with the development of government information disclosure upon request, administrative lawsuits started to appear. However, the lack of a consistent and unified interpretation of the OGI Regulations and the OEI Measures made it difficult for courts to adjudicate administrative litigation concerning government information disclosures.<sup>314</sup> Moreover, inconsistent rulings have already appeared.<sup>315</sup> According to Shen Gui, deputy director of the Law School of Peking University, there is at least a lack of clear interpretation on three issues under the OGI Regulations: rules of exceptions, the scope of government agencies that can be requested to provide information disclosure, and who can request the government to disclose information.<sup>316</sup>

Aiming to clarify these issues, the SPC drafted a judicial interpretation—*Rules on Several Issues of Adjudicating Open Government Information Administrative Litigation* (OGI Judicial Interpretation). In China, in a strict sense, courts do not have the power to interpret either laws or regulations. Nevertheless, judicial interpretations do affect the implementation of laws and regulations since all courts must follow the interpretations from accepting cases to issuing judgments.<sup>317</sup> Generally, judicial interpretation aims to provide a unified basis and rules for accepting, adjudicating and deciding such cases;<sup>318</sup> it can also help to prevent government officials from using ambiguous rules to intervene in administrative lawsuits.<sup>319</sup>

On 2 November 2009, the SPC started to seek public opinion on the judicial interpretation. The public consultation lasted until 30 November 2009, a total of 29

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<sup>314</sup> *Fazhi ribao*, 4 March 2010.

<sup>315</sup> *Ibid.*

<sup>316</sup> *Caijing*, 10 March 2009.

<sup>317</sup> See, Keith & Lin 2009.

<sup>318</sup> *Fazhi ribao*, 4 March 2010.

<sup>319</sup> Jiang Ming'an 2009.

days.<sup>320</sup> The SPC received several hundred comments and suggestions,<sup>321</sup> and there was also academic discussion on the judicial interpretation.<sup>322</sup>

More than one year later, on 13 December 2010, the judicial interpretation was passed by the Judicial Committee of the SPC (最高人民法院审判委员会); another half a year later, it was made available to the public, on 29 July 2011. It then came into effect as of 13 August 2011.<sup>323</sup>

The interpretation clarifies some basic issues concerning adjudicating open government information litigation. It first specifies the scope of administrative litigation that shall be accepted by the court<sup>324</sup> as well as the situations that the court can refuse to accept.<sup>325</sup>

The judicial interpretation also tried to clarify other controversial rules in the OGI Regulations. Concerning the “special needs of production, livelihood and scientific research”, the new interpretation states clearly that “if the defendant refuses to provide the information based on the reason that the government information does not concern the applicant’s special needs of production, livelihood or scientific research, the people’s court may ask the plaintiff to make an explanation on the issue of special needs.”<sup>326</sup> Compared to the draft version of the judicial interpretation that required the information requester to prove his/her information disclosure request is based on his/her special needs of production, livelihood and scientific research,<sup>327</sup> its final version takes a more relaxed attitude towards the plaintiff (the information disclosure requester) and does not impose the strict burden of proof upon the plaintiff. The new judicial interpretation can thus, to a large extent, prevent state agencies simply using the special needs requirement to push away their obligation of disclosure.

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<sup>320</sup> The length of the consultation shows that the Supreme People’s Court takes public consultation seriously. A comparison with this is the public consultation on the *Opinion on Strengthening Household Waste Treatment and Pollution Control* in June 2010. The Opinion was drafted by the Ministry of Environmental Protection, the Ministry of Housing and Urban-Rural Development of the People’s Republic of China, and the National Development and Reform Commission. The consultation period was set for 7 days or only 5 working days originally; under public request, it was extended for another 7 days later.

<sup>321</sup> *Zhongguo qingnianbao*, 2 Nov 2009.

<sup>322</sup> Jiang Ming’an 2009.

<sup>323</sup> SPC, *Rules on Several Issues of Adjudicating Open Government Information Administrative Litigation* (SPC OGI Judicial Interpretation), Fashi [2011]No.17.

<sup>324</sup> SPC, OGI Judicial Interpretation, Fashi [2011] No. 17, Article 1.

<sup>325</sup> *Ibid*, Article 2.

<sup>326</sup> *Ibid*, Article 5.

<sup>327</sup> Draft version of the Supreme People’s Court *Rules on Several Issues of Adjudicating Open Government Information Administrative Litigation*, Article 8.

With regard to the controversial issues of “three securities and one stability” and “information in process, discussion or under review shall not be disclosed”, the new judicial interpretation did not give any explanation. However, on the one hand this can be seen as progress compared to the draft version that stipulated both as exceptions of disclosure,<sup>328</sup> though on the other hand it leaves these issues as pending problems. Will the courts simply follow the SC opinions that information that falls within them shall not be disclosed? Due to the limited courts cases about open government information, it is still too early to tell.

## 2.6 Concluding Remarks

This chapter mainly focuses on the development of Chinese law, particularly environmental law and the emergence of its open government information legislation. The development has shown that a legal framework of access to environmental information has been established and has shaped the possibilities that Chinese citizens and other entities can utilize if they wish.

Discussing the process of China’s legalization, Liang argues that it serves the aim of supporting the Chinese government to “legitimize the power control of the central state” and also controls power abuse through setting up “legal boundaries for all governmental functions”; nevertheless, he also states that law “has an important function of granting substantive rights to Chinese citizens within a modern system.”<sup>329</sup> The coming into effect of the OEI Measures and the OGI Regulations have, for the first time, explicitly granted the right to the public to request that government departments disclose environmental information. Moreover, it seems that the creation of the right to information by the OGI Regulations and the OEI Measures have also helped to revitalize the rules of environmental information disclosure in other laws and regulations, which have existed but remained mostly dormant before the official establishment of the open government information mechanism, to be utilized by the public.<sup>330</sup>

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<sup>328</sup> Draft version of the Supreme People’s Court *Rules on Several Issues of Adjudicating Open Government Information Administrative Litigation*.

<sup>329</sup> Liang 2008, 78-79.

<sup>330</sup> For instance, Greenpeace invoked rules from the PCP Law and the PCWP Law to request Zhuzhou EPB to disclose list of polluting enterprises, see Chapter 3, at 3.2.1.4; Yan Yiming also requested for environmental information disclosure based on the PCWP Law, see Chapter 4, at 4.2.2.

With regard to the newly promulgated regulations of open government information, Zhou Hanhua, professor of law at CASS, one of the drafters of the OGI Regulations, stated that:

《条例》的制定，将信息公开作为政府机关的一种义务规定下来。……实现了从少数人利益最大化向社会公共利益最大化的转变，是观念与制度的一次巨大飞跃。推行信息公开制度，可以说是与传统的治理方式彻底告别。

*The OGI Regulations stipulate access to government information as a legal obligation for government agencies ... They realize the transformation of the maximization of the interest from concerning a small group of people to public interest. They constitute a great leap in aspects of concept and system. To promote open government information is a complete farewell to the traditional governing means.*<sup>331</sup>

The ancient Chinese philosopher Mencius said that “laws alone cannot carry themselves into practice” (徒法不足以自行), law on paper can never become law in action automatically. The promulgation of new rights does not lead to their self-realization; the effect of laws mainly depends on those who apply the laws, and achieving an effective nationwide transparent mechanism of environmental information disclosure depends on various factors.

On the one hand, in the field of open environmental information, government agencies have been effortlessly striking a tough balance between environmental protection, economic development, public rights and interests, and social stability. On the other hand, in today’s China the law is not only a form of social control but a tool for the public to push for social and political change.<sup>332</sup> In the field of open environmental information, the public, from individuals to NGOs and other entities, have already been actively using rules from both the new legislation and old laws to request government information disclosures.<sup>333</sup> Have they succeeded in obtaining the information? Why and how have they been invoking the new legal rights? What impact on the social and political system have these actions made? The next

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<sup>331</sup> Zhou Hanhua 2007, 29.

<sup>332</sup> Diamant, Lubman & O’Brien 2005.

<sup>333</sup> See e.g., Chen Yi 2008, 75; Horsley 2010.

chapters endeavour to answer these questions by painting the picture of open environmental information law in action and in context.



### **3 ACCESSING TO ENVIRONMENTAL INFORMATION UPON REQUESTS: PRACTICES AND OBSTACLES**

As discussed above, in China, the OGI Regulations and the OEI Measures all came into effect in May 2008; together, they formally established China's open environmental information mechanism. Ever since they came into effect, citizens and organizations have been actively requesting that government agencies disclose environmental information. Based on the documented 28 cases and eight surveys compiled by the author, this chapter gives an overview of the actual situation of environmental information disclosure upon request and the factors impeding an effective realization of information disclosure in China.

This chapter first reviews the general situation with regard to the realization of environmental information disclosure upon request. Second, it further illustrates the interactions between the two lines of the socio-legal sphere and political system through case studies. Following this is a further analysis of how legal rhetoric is utilized by government agencies, mitigating the socio-legal power in challenging governmental authority. Lastly, the chapter concludes with the implications of these findings.

#### **3.1 An Overview of Environmental Information Disclosure Upon Requests**

According to the Ministry of Supervision, in 2011, 1.3 million OGI requests were submitted in 31 provinces and more than 85% of them resulted in information disclosures; 3,000 OGI requests were submitted to central government agencies, and more than 70% resulted in information disclosures.<sup>334</sup> It appears that compared to these official statistics, the cases and surveys in the following discussions show a

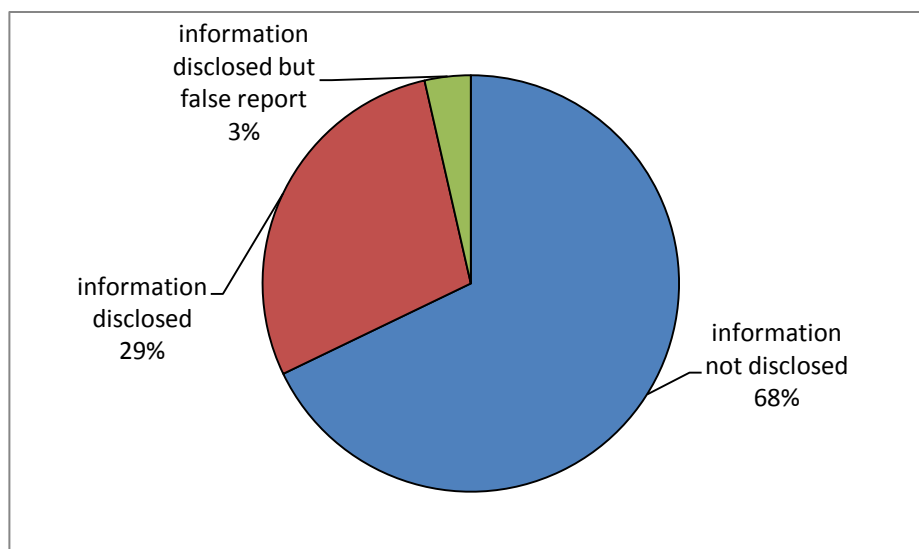
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<sup>334</sup> *Xinhua wang*, 24 October 2012.

rather different picture. It is difficult to say that the findings in this study, due to the limitation of the collection of the cases and surveys, represent the general situation. Nevertheless, they give us the reflection of the implementation of open environmental information mechanism in China. More importantly, most of the surveys cover a wide range of target environmental protection agencies, for instance, the survey by IPE covers 113 cities across China, and thus bear some representation of the general situation as well.

Among the author's own 28 cases analysed in this study, a large majority of the requesters did not get the information they requested. Specifically, there were 19 cases in which the requesters did not get the information requested, which equals to about 68% of the total cases; among the nine other cases, in eight cases, including three taken to court,<sup>335</sup> information was disclosed.<sup>336</sup> In the case of Huang Jianxin,<sup>337</sup> the EIA report was provided after he took the case to court but it was alleged to be a false report.

Chart 3-1 Result of information disclosure requests out of 28 cases



With regard to the few positive results, many of them were not obtained easily. The requests by lawyer Yan Yiming,<sup>338</sup> as one of the earliest environmental

<sup>335</sup> Cases 9, 13, & 19.

<sup>336</sup> Cases 8, 9, 13, 15, 18, 19, 23, & 28

<sup>337</sup> Case 5.

<sup>338</sup> Case 15.

information disclosure requests cases in China, have shown this clearly. Yan applied to Anhui EPD and Henan EPD. He requested environmental information disclosures concerning enterprises whose emission levels were higher than the national or local emission standard, enterprises causing serious pollution, etc. After several rounds of correspondence and a complaint to the MEP, he received some positive feedback from the Anhui EPD regarding lists of serious polluting enterprises and 132 key enterprises under wastewater monitoring at a provincial level. However, he only received one reply from the Henan EPD saying that there was only one enterprise in Henan Province not complying with the emission standard. Yan regarded the reply from Henan EPB as an intentional avoidance to provide the relevant environmental information.<sup>339</sup> Similar experiences were encountered by other requesters who got the information disclosed. Xu Taisheng, a Shanghai resident, spent three years fighting for the disclosure of the inspection record concerning Bao Steel Corporation, which was located only hundreds of metres away from his home. Only after his persistently using almost all available means, including administrative litigation and petitions to Beijing Supreme People's Court, his case was settled with a non-public hearing among all parties.<sup>340</sup>

Compared to individual cases, surveys conducted by different entities have also shown the ineffective realization of open environmental information upon request more clearly due to the sufficient amount and large scale of their disclosure requests.

The earliest experiment requests by Friends of Nature's Shanghai members mainly concerned water-related environmental information disclosures.<sup>341</sup> Between July 2008 and November 2009, Friends of Nature's Shanghai members submitted environmental information disclosure requests via various means, including emails, letters and on-site applications, to the Shanghai municipality EPB and its district EPBs. In total there were 32 requests, eight of which, or 25%, were provided with information; 24, or 75%, were refused the disclosure of information or had no reply. Among the 24 negative replies, two cited state secrets, business secrets and privacy as reasons for refusal; two stated that information disclosure was not within the government agency's scope of responsibility; seven replied that the information did not exist; two said that the information was not government information; three justified the refusal with other reasons; and eight others kept silent.<sup>342</sup> For example,

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<sup>339</sup> *Ershiyi shiji jingji baodao*, 6 November 2009.

<sup>340</sup> Case 13.

<sup>341</sup> Survey 1.

<sup>342</sup> The statistics were provided by Friends of Nature.

the Shanghai Municipality EPB refused to disclose the water monitoring report for the Shanghai drinking water preservation area and emission information of Sino-French Water Company stating, respectively, that the disclosure might cause “public fear” and concerned a business secret. Several other district bureaus refused to provide environmental information based on the reasons that information did not exist or information did not belong to the scope of government information.<sup>343</sup>

The information disclosure requests launched by Greenpeace towards 15 EPBs met with similar results. In 2009, Greenpeace published its report<sup>344</sup> concerning the information disclosure of 20 subsidiaries of 18 companies belonging to Global 500 or China’s top 100 listed companies.<sup>345</sup> While preparing the report, between June and August 2009, Greenpeace made 15 requests to different EPBs and received only three positive replies: two provided the link of their websites that contained the concerned enterprises’ information (Mudanjiang EPB, Heilongjiang EPD), and one provided the information by email (Ningbo EPB). Positive replies constituted only 20% of the total requests. There were various replies to the other 12 requests; among which, three stated that the information did not exist, (Tianjin Taida District EPB, Shanghai EPB, Shanghai Baoshan District EPB), one said there was no responsible person for the requested information disclosure (Shenyang EPB), eight did not answer the phone or email, or picked up the phone but hung up on discovering it was an information request or avoided answering the question of information disclosure (Zhuzhou EPB, Lanzhou EPB, Shiyang EPB, Hubei EPD, Hefei EPB, Dazhou EPB, Yulin EPB, Suzhou EPB).<sup>346</sup>

With regard to government information disclosure upon request, *Southern Weekend* (南方周末报), one of the prominent newspapers in China, conducted a survey between May and June 2010. On 20 May 2010, *Southern Weekend* sent out

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<sup>343</sup> *Friends of Nature website*, 22 April 2009.

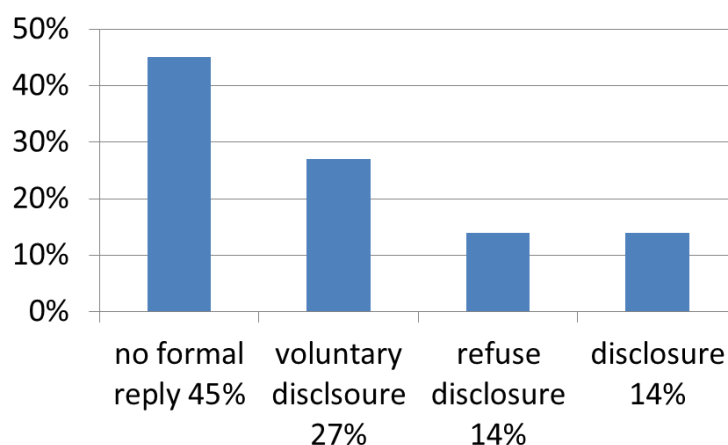
<sup>344</sup> Greenpeace 2009, report.

<sup>345</sup> The Global 500 is Global 500 of year 2008 according to *Fortune*’s evaluation; China’s top 100 listed companies is 100 companies of 2008 according to *Fortune* (Chinese version)’s evaluation.

<sup>346</sup> Analysis based on materials provided by Greenpeace. See also, Greenpeace 2009, report.

29 requests to provincial-level EPDs in China by fax.<sup>347</sup> It asked each EPD to provide lists of enterprises that had received environmental administrative penalties within its jurisdiction between January and May 2010 and the causes for imposing the penalties. As of 23 June 2010, 12 replied with a positive attitude, three refused to reply, one raised an unreasonable condition, and the other 13 remained silent without making a formal reply.

Chart 3-2 *Southern Weekend's* environmental information disclosure requests 2010<sup>348</sup>



The Institute of Public and Environmental Affairs (公众环境研究中心 IPE), an environmental NGO based in Beijing, conducts surveys and publishes annual reports concerning government environmental information disclosure in China.<sup>349</sup> During

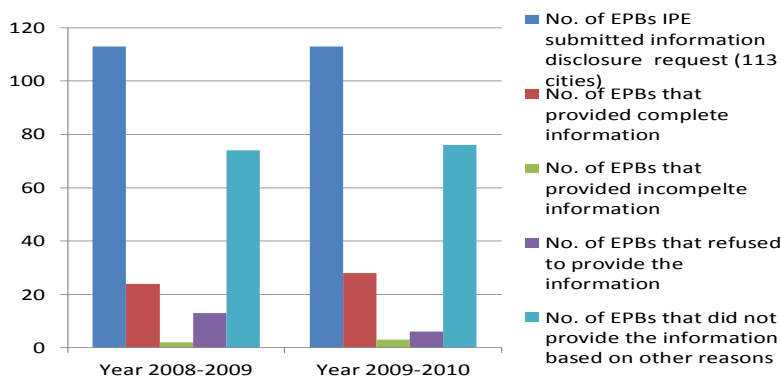
<sup>347</sup> In China, provincial level government refers to province, autonomous region and municipality governments that are directly under the administration of the Central Government. There are in total 31 Environmental Protection Departments (EPD 环保厅) at provincial level, including 22 province EPDs and five autonomous region EPDs, in mainland China. Environmental protection agencies in the four municipalities are named Environmental Protection Bureaus (EPB 环保局). EPB also refers to environmental protection agencies at city, district and county-level. In total, *Southern Weekend* sent out 29 faxes asking for environmental information disclosure. It did not send requests to Tibet Autonomous Region and Qinghai Autonomous Region due to lacking of sufficient contact information.

<sup>348</sup> The Chart is made based on the related news report. See, *Nanfang zhoumo*, 23 June 2010.

<sup>349</sup> To date 5 October 2013, there are four reports, respectively for the year 2008, 2009-2010, 2011, 2012, published by IPE and its collaborating partner Natural Resources Defense Council (NRDC), a non-profit environmental organization headquartered in New York, the United States. NRDC has an office in Beijing. The first three reports have Chinese and English versions. The references cited in this dissertation refer to the English version reports, unless it is otherwise indicated.

each survey, IPE requested 113 EPBs<sup>350</sup> to provide the information of lists of enterprises that received environmental administrative penalties.<sup>351</sup> According to the three annual reports: for 2008–2009, 44 replied with 27 city EPBs providing full or partial information requested;<sup>352</sup> for 2009–2010, 49 replied with 32 providing information;<sup>353</sup> for 2010–2011, 42 provided the requested information.<sup>354</sup> According to the statistics available, for the years 2008–2009 and 2009–2010,<sup>355</sup> less than 30% of the 113 environmental protection bureaus gave positive replies to IPE’s environmental information disclosure requests. A large majority of the EPBs did not provide the information; among them, some directly refused to provide the information and others used a multitude of excuses to justify their non-disclosure of the information.

Chart 3-3 Summary of IPE 2008–2009 and 2009–2010 Surveys<sup>356</sup>



<sup>350</sup> The 113 cities include 110 Key State Environmental Protection Cities, extensively distributed across the eastern, central and western regions of the country. These cities are designated in China’s 11th Five-Year Plan for Environmental Protection. Additionally, three other cities, Dongguan, Yancheng and Erdos, are also included. IPE & NRDC 2011, report, 52.

<sup>351</sup> There is slight change with regard to the information requested for disclosure, the information requested for disclosure for the first survey also includes public complains investigated by EPBs.

<sup>352</sup> IPE & NRDC 2008 report, 29.

<sup>353</sup> IPE & NRDC 2009-2010 report, 28.

<sup>354</sup> IPE & NRDC 2011, report, 17.

<sup>355</sup> The statistics available was not possible for a full comparison. Therefore, I only chose to compare the first two survey results here.

<sup>356</sup> The chart was made by the author based on statistics from IPE & NRDC’s annual reports on China’s environmental information disclosure. See, IPE & NRDC report, 2010, 24, 26; IPE & NRDC report, 2009, 28.

A comparison of the available statistics shows that there is progress with regard to environmental information disclosure upon requests. The full mark for disclosure upon request is 18, if divided by 2, 9 can be set as a middle mark. Between 2009 and 2010, 43 got 9 or over 9; in 2011, the number is 48. Nevertheless, in each year, the number that got less than 9 still prevails over the opposite group, between 2009 and 2010, it is 70, in 2011, it is 65.<sup>357</sup> This clearly shows that a large majority of EPBs is still unwilling to disclose information of polluting enterprises that got penalties.

The information disclosure requests submitted by Wang Xing, a journalist at the *Southern Metropolis Daily* (南方都市报), showed mixed results.<sup>358</sup> Between 7 and 9 December 2011, Wang submitted his information disclosure requests through the 31 official websites of all the provincial-level EPDs and municipality-level EPBs, and the MEP. The information he requested for disclosure was: whether a PM2.5<sup>359</sup> and Ozone monitoring system was established in the province; the annual average concentration data of PM2.5 and Ozone; since 1 October 2011, the daily average PM2.5 and Ozone; if a monitoring system was established, what changes were seen in the reports of city air quality.

According to the OGI Regulations and the OEI Measures, in general, government agencies should reply within 15 working days. One month later, on 10 January 2012, 11 requests had failed to be submitted for various reasons: for instance, registration was required and registration was waiting for approval, online submission forms could not be opened, identification was required or no online submission procedure existed.<sup>360</sup> Among the 21 requests successfully submitted online, 12 agencies replied, only the Shanghai EPB directly provided PM2.5 data and 11 stated that either they did not monitor PM2.5 or it was research data and could not be disclosed. Nine agencies either provided a reference number without further information or did not provide any reply.<sup>361</sup> As PM2.5 was not listed as part of the air quality monitoring system at that time, it was not surprising that the information requested was mostly not provided. However, Wang Xing's requests

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<sup>357</sup> These statistics are summarized by the author based on three reports by IPE & NRDC. (See IPE & NRDC 2009-2010 report, 13-15; 2011 report, 6-7.) In 2012, the number got 9 or over 9 increases to 59, and less than 9 is 61. (See IPE & NRDC 2012 report, 22-24.) It shall be clarified that the IPE & NRDC 2012 report is published after August 2012 when the author completed her case and survey collection. The reason of having it here is to illustrate the most recent situation of environmental information disclosure upon request in China.

<sup>358</sup> Survey 6.

<sup>359</sup> PM2.5 refers to particles less than 2.5 micrometres in diameter and it is believed to pose the greatest health risks.

<sup>360</sup> Please see Appendix 8.6 for detailed record of the requests and their submission results.

<sup>361</sup> *Ibid*; See also, *Nanfang dushibao*, 11 January 2012.

have shown more problems than simply this. First of all, the failures of request submissions have shown that by early 2012, about one third of the provincial-level EPDs and municipalities EPBs still did not have a functional online information disclosure request system. Second, some agencies chose not to provide any reply, also reflecting their inactive attitude towards information disclosure requests.

The two most recent surveys were conducted respectively by the Wuhu Ecology Centre in Wuhu City, Anhui Province (Wuhu Ecology Centre) and the Impact Law Firm based in Beijing. Considering incinerators as a hotly-debated issue, while incinerators are the major source of dioxin, Wuhu Ecology Centre decided to request the disclosure of dioxin-related information.<sup>362</sup> The Wuhu Ecology Centre's information disclosure requests were also submitted to all provincial-level EPDs and municipality EPBs, plus the MEP. The request is based on the MEP *Guidance Opinion on Strengthening the Work of Preventing Dioxin Pollution* that states all provincial-level environmental protection agencies, including municipality EPBs, should disclose the information of key enterprises that emit dioxin.<sup>363</sup> Since December 2011, they submitted information disclosure requests to 27 provincial-level EPDs, four municipality EPBs, and the MEP. They requested that the agencies disclose their 2011 list of key enterprises that emit dioxin.

After submitting the disclosures, they did not only wait and see but continuously made phone calls to confirm that the agencies would reply. As one officer of the Wuhu Ecology Centre said:

如果你不联系，他们不会来联系你的。

*If you do not contact them, they will never contact you.*<sup>364</sup>

For instance, the Wuhu Ecology Centre made three phone calls, and sent two couriers to submit the request to the Sichuan EPD. Until 6 June 2012, with regard to their requests, 23 agencies replied, eight did not respond, and no request was submitted to the Tibet EPD as no related disclosure request procedure could be found. Among the 23 that replied, two EPDs provided the list, one EPD provided a link from which already available information could be found on the Internet, all the others used various kinds of reasons stating that the information could not be

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<sup>362</sup> Interview with NGO officer, 15 June 2012.

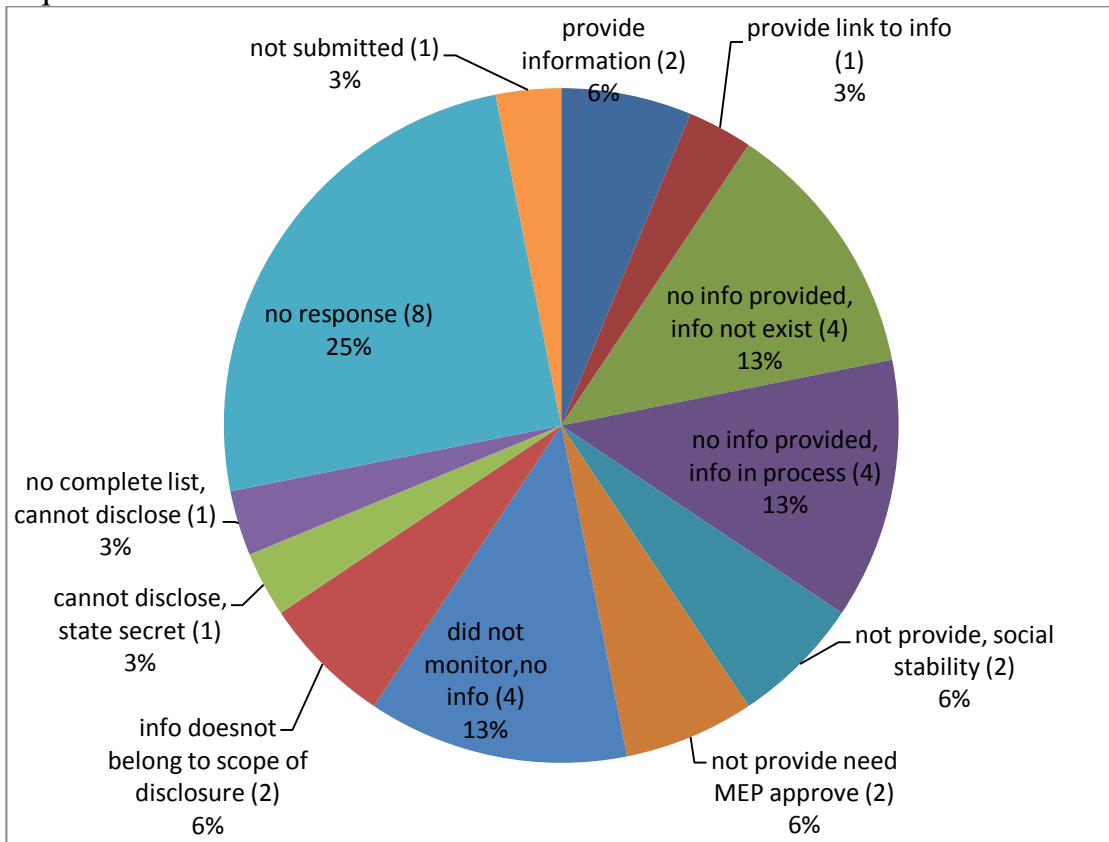
<sup>363</sup> MEP, *Guidance Opinion on Strengthening the Work of Preventing Dioxin Pollution*, 19 October 2010, Article 3(7).

<sup>364</sup> Interview with NGO officer, 15 June 2012.



disclosed.<sup>365</sup> The following chart shows the very inconsistent and various results of replies encountered by their requests.

Chart 3-4 Results of Wuhu Ecology Centre's 32 dioxin information disclosure requests<sup>366</sup>



The results of the Wuhu Ecology Centre's information disclosure requests also show the lack of coordination between the EPDs with regard to information disclosure. Some EPDs are not clearly aware of dioxin emission monitoring. For instance, while the list of enterprises that emit dioxin belongs to the category of mandatory disclosure, four provincial EPDs that already disclosed them still said that they did not have the list when encountering the request.<sup>367</sup> While some provided the requested information directly, others still used "state secret" or "social

<sup>365</sup> A detailed table of Wuhu Ecology Centres' information disclosure requests, please refer to Appendix 8.7.

<sup>366</sup> This chart is made by the author based on materials provided by Wuhu Ecology Centre.

<sup>367</sup> Interview with NGO officer, 15 June 2012.

stability” to refuse disclosure; this has also shown the inconsistent implementation of the MEP guidance. One NGO worker said:

是一个很好的渠道去公开，环保组织可以用来推动；让社会和公众对环境信息透明度有所知晓。四年了，普及度应当发挥地更大一些。……政府部门的工作让我们很失望。

[environmental information disclosure] is a very good channel for environmental organizations to push forward for disclosure, to make the public know more about environmental information transparency. Four years later, its function should have been more effective... we are very disappointed with the government agencies.<sup>368</sup>

Differing from the *Southern Metropolis Daily* journalist Wang Xing and the Wuhu Ecology Centre who requested provincial-level environmental protection agencies for information disclosure, the Impact Law Firm submitted its requests to city-level EPBs. Nevertheless, compared to provincial-level EPDs, city-level EPBs respond to information disclosure requests in a similar manner. In 2012, the Impact Law Firm conducted a survey of information disclosure requests made to 80 EPBs across China. The survey targets were carefully selected and the request procedure was well planned. First, the chosen cities belonged to cities that have the most density of waste-water enterprises according to the List of 2011 Key State-Monitored Enterprises. A hypothesis exists that as the MEP requires key monitoring to be carried out in cities where there are more enterprises that emit waste water, the EPBs in these cities should pay more attention to environmental information disclosures and environmental monitoring. Second, in order to understand the different results with regard to individually-submitted requests and entity-launched requests, during the process some requests were submitted under individuals’ names and others under the name of the Law Firm.<sup>369</sup>

Moreover, in order to avoid unclear and inconsistent content of the information requested for disclosure, the information content was decided based on the OEI Measures. Specifically, they requested for the disclosure of eight types of information from the 17 types of information under Article 11 of the OEI Measures.<sup>370</sup> The information requested for disclosure mostly related to the main

<sup>368</sup> Interview with NGO officer, 15 June 2012.

<sup>369</sup> Impact Law Firm 2012, report, 5.

<sup>370</sup> *Ibid.*

pollutant emission situations, enterprises with pollutant emissions above the national standard, enterprises that had received administrative penalties for pollution, enterprises with serious pollution incidents, and the whereabouts of pollutants.<sup>371</sup>

Among the 80 requests, eight were submitted under the name of the Law Firm, from which four were replied to directly, two were replied to after further communications, and two had no reply; 72 were submitted by individuals, with 16 direct replies, 41 replies after further communications, and 15 with no reply. In general, among the 80 requests, 20 were replied to within the time limit, 43 were replied to after further communications, and 17 were not replied to.<sup>372</sup> During the survey, after the requests were submitted, further communications were generally taken in order to facilitate a better result, they included: 12 phone calls to the monitor line of the MEP, 48 direct calls to EPBs, 41 applications for administrative reconsiderations and four times of bringing administrative litigation.<sup>373</sup> This probably contributed to the comparatively positive result in that in total 63 EPBs replied to the requests. However, this does not mean that all 63 EPBs provided all eight types of information. This number is only a summary of the EPBs that provided any information, including those that provided only one type of information. Therefore, it is necessary to read into the results with regard to each type of information request. Table 3-1 shows that, although all eight types of information requested for disclosure belong to the type covered by mandatory disclosure, most EPBs are unwilling to provide the full information on request.

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<sup>371</sup> Impact Law Firm 2012, report, 5.

<sup>372</sup> Statistics summarized by the author based on the Impact Law Firm 2012 report.

<sup>373</sup> Impact Law Firm 2012, report, 6

Table 3-1 Impact Law Firm 2012 Survey of 80 EPBs Information Disclosure Upon Requests<sup>374</sup>

	Information requested for disclosure	No. of Requestees	Replies	Note
1	Information on allocation of total emission quotas of major pollutants and its implementation.	80	45	
	Information on issuance of a pollutant emission permit.	80	43	
	Results of quantitative examination of comprehensive improvement of urban environment.	80	39	
2	List of enterprises with severe pollution and whose emission of pollutants is greater than the national or local emission standard or whose total emission of pollutants is greater than the quota of the total controlled emission determined by the local people's government.	80	8	Among those did not provide the list of enterprises, most answered "there was no enterprise that emitted over the standard".
3	Enterprises belonging to the above but also refusing to disclose the information regarding disposal of pollutants as required: what penalties they got.	80	8	Provided list as well as penalties.
4	List of enterprises that have incurred serious or extraordinarily serious environmental pollution accidents or events.	80	2	
5	List of enterprises that refused to enforce effective environmental administrative penalty decisions.	80	7	
6	Enterprises who voluntarily disclosed the information regarding the type, volume and disposal of pollutants emitted; what awards they got.	80	3	Provided list of enterprises that received awards, and types of awards.
7	If the EPB has implementable laws, regulations and other documents regarding main pollutants.	80	31	14 said to implement MEP Notice of Energy saving and Emission Under the 12th Five-year Plan; 16 state standards, laws and regulations; One said, there are no specific state laws and regulations regarding "main pollutants"
8	Please list the main pollutants in your jurisdiction.	80	32	17 provided the same four types of pollutants; others provided various lists of pollutants

<sup>374</sup> This table is compiled by the author based on the Impact Law Firm's 2012 report.

Based on the above table, it is clear that information disclosure with regard to the general situation of pollutant emissions, including the total emission quota and permits (1st type of information), related laws and policies (7th type of information) and types of pollutants (8th type of information), is easier to realize. On the contrary, information disclosures concerning specific polluting enterprises, including lists of polluting enterprises (2nd, 3rd, 4th types of information), and lists of enterprises that received penalties or awards (5th, 6th types of information), is more difficult to realize. With regard to the latter information, it was stated by most EPBs that there were no enterprises that emitted pollutants over the standards, caused serious or extraordinarily serious environmental pollution accidents, or received administrative penalties. However, with regard to enterprises that had caused serious pollution accidents, the Impact Law Firm found a reported pollution accident in Nantong, although the Nantong EPB replied that no accident had happened.<sup>375</sup> This shows clearly that either the Nantong EPB did not do a good job in monitoring environmental accidents or it did not want to disclose the information. When the law firm communicated with Tangshan EPB, one EPB official replied that:

不可能没有超标排污的企业，但是如果一旦公之于众，会影响这些企业的经济效益。所以环保局不愿意公布这样的信息。

*It is impossible that there is no enterprise with emissions over the standard, however, if this information was disclosed, the economic interests of the enterprises would be affected. Therefore, EPBs are not willing to disclose the information.*<sup>376</sup>

The survey by Impact Law Firm also corresponds with the report by ARTICLE 19, an international organization promoting freedom of information based in London, and the Centre of Legal Aid for Pollution Victims (污染受害者援助中心 CLAPV)<sup>377</sup> that the EPBs performed best in disclosing standard, non-sensitive information, such as the institutional setup of the organization, its duties and contact information, and performed worst in disclosing specific information of polluting enterprises, for instance, lists of heavily-polluting enterprises that had violated emission standards.<sup>378</sup> Moreover, most types of information requested for disclosure in the above surveys in fact belongs to the scope of information that government

<sup>375</sup> Impact Law Firm 2012, report, 10.

<sup>376</sup> *Ibid.*, 9-10.

<sup>377</sup> Survey 5.

<sup>378</sup> ARTICLE 19 & CLAPV 2010, report.

agencies should disclose on their own initiative based on the OEI Measures<sup>379</sup> or other laws. Therefore, the fact that NGOs were able to obtain the information upon request does not necessarily mean that other public information disclosure requests would be responded to in the same manner.<sup>380</sup> That specific environmental information not listed as mandatory disclosure is indeed more difficult to obtain has also been shown in individual requests that mostly concern a more specific enterprise's information.

On the other hand, with regard to the same information requested for disclosure, it is often that different government agencies reply very differently. The inconsistent responses reflect the argument of "fragmented authoritarianism"<sup>381</sup> in the implementation of open environmental information laws. The implementation of laws holds similarities with the implementation of policies in China, in that:

*policy made at the centre becomes increasingly malleable to the parochial organizational and political goals of the various agencies and regions charged with enforcing that policy. Policy outcomes result from incorporating the interests of the implementation agencies into the substance of the policy itself. The result is that policy outcomes are often at a considerable variance with the initial goals of the policy makers at the top.*<sup>382</sup>

With regard to environmental information disclosure policy implementation, local government agencies have still been manipulating their discretion to a large extent, shown in the above cases and surveys. Moreover, complicated interactions between the government agencies and the public with regard to information disclosure have shown the difficulties and obstacles for the realization of a smooth and efficient environmental information disclosure in China.

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<sup>379</sup> OEI Measures, Article 11 (11), (12).

<sup>380</sup> See, also IPE & NRDC 2011, report, 17.

<sup>381</sup> Lieberthal & Oksenberg 2010, 5.

<sup>382</sup> Mertha 2008, 5.

### **3.2 Information of Heavily Polluting Enterprises, Incinerator EIA, and Yangtse River Nature Reserve Proposal: Four Illustrative Cases**

Noticeably, we have a very negative picture here with regard to the realization of environmental information disclosure reflected by the cases and surveys of this study. How does this happen? Why is it as such? Further discussions of the obstacles and problems with regard to accessing environmental information are needed here. The following four cases are chosen mainly for their illustration of the interactions between the public and the government and their reflecting of citizen and organization's legal mobilization and counter-mobilization from the government side in the process of accessing environmental information. The first case happened between Greenpeace, an experienced international environmental organization, and the Zhuzhou EPB, with regard to information about polluting enterprises in the city of Zhuzhou, Hunan Province (湖南省株洲市). The subsequent two cases concern information about an incinerator, one of the most concerning issues for NGOs as well as the general public presently in China. The fourth relates to a broader environmental protection issue—a nature reserve—and thus constitutes a public interest related information disclosure request. Only the second request was submitted by an individual, the third and the fourth cases were submitted by environmental organizations, Green Beagle and Friends of Nature, respectively. In the first case of Greenpeace's information disclosure request, the processes and happenings between the ENGO and the Zhuzhou EPB are illustrated in detail in order to provide a complete picture of the interactions between the two parties. No such illustration is applied to the latter cases in order to avoid repetition. However, it must be remembered that in fact most environmental information disclosure requests are processed with difficulties and impediments during the interactions between the public and the authorities, as encountered by Greenpeace.

### 3.2.1 Three Rounds of Environmental Information Disclosure Requests Between Greenpeace and Zhuzhou EPB<sup>383</sup>

In October 2009, Greenpeace published its report *Silent Giants: an Investigation into Corporate Environmental Information Disclosure in China* concerning the information disclosure of 20 subsidiaries of 18 companies belonging to Global 500 or China's top 100 public listed companies.<sup>384</sup> After the compilation of the report, Greenpeace decided to launch a further information disclosure request to government agencies, aiming to test to what extent environmental information disclosure can be pushed forward in China.

Greenpeace decided to submit its environmental information disclosure request to the Zhuzhou EPB for two reasons. In 2009, serious heavy metal pollution causing health problems and collective incidents occurred frequently all over China, arousing attention both domestically and internationally.<sup>385</sup> Coincidentally, two metal companies, Zhuzhou Cemented Carbide Group Co. Ltd. (Zhuzhou Hard Metal Co.) and Zhuzhou Smelter Group Co. Ltd. (Zhuzhou Smelter Co.), are among the list of enterprises that did not disclose their pollutant discharge information in Greenpeace's report.<sup>386</sup> Both enterprises are located in Zhuzhou, a medium-sized city near its provincial capital city Changsha in Hunan Province.

#### 3.2.1.1 Six Information Disclosure Requests

In mid-December 2009, Greenpeace submitted in total six information disclosure requests to the Zhuzhou EPB.<sup>387</sup> Four requests were related to the environmental information of Zhuzhou Hard Metal Co. and Zhuzhou Smelter Co. Two asked for the disclosure of Pollutant Discharge Registration Forms filed by the two companies. Two other requests were related to environmental information that should have been made public by the two enterprises. The first two requests were made according to

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<sup>383</sup> A detailed case study of information disclosure requests between Greenpeace and Zhuzhou EPB, please see, Wang 2012.

<sup>384</sup> Greenpeace 2009, report, 5.

<sup>385</sup> See, *BBC News*, 14 August 2009; *BBC News*, 20 August 2009; *Xinjing bao*, 3 August 2009.

<sup>386</sup> Greenpeace 2009, report, 4, 9, 11.

<sup>387</sup> Greenpeace, Information disclosure requests submitted to Zhuzhou EPB, 16 December 2009. Environmental information disclosure requests and replies referred to in this dissertation are all on file with the author.



Article 21 of the PCWP Law and Article 6 of the *Management Regulations for Levying and Utilizing Pollution Discharge Fee* (排污费征收使用条例 PDF Regulations). Both of these pieces of legislation require enterprises that discharge pollutants to file the categories, volume and other discharge information about those pollutants to local EPBs. The two final requests were based on the OEI Measures that require enterprises whose pollutant discharge exceeds the regulatory standard to publish their environmental information in primary local media as well as file the information with the local EPBs.<sup>388</sup> The EPBs should disclose the lists of such enterprises to the public.<sup>389</sup> In 2008, each company received a notice from the Zhuzhou EPB to halt operation due to pollutant discharges higher than the regulatory standard and to make remediation in order to meet the environmental protection requirements. This means that both companies belonged to the above category of enterprises that should file their environmental information to the local EPB.

Besides the information concerning the two metal companies, Greenpeace also requested that the Zhuzhou EPB disclose information with regard to its evaluation result of local enterprises' environmental activities. This disclosure request was made according to the local government rules issued by Zhuzhou Government in 2004, *Trial Measures on Managing Information Disclosure Concerning Industrial Enterprises Environmental Activities* (工业企业环境行为信息公开化管理试行办法 Zhuzhou EA Measures). The Zhuzhou EA Measures require the evaluation result of local enterprises' environmental activities to be made public via the media. However, in reality it is difficult to find the complete list of these enterprises and other detailed environmental information relating to the enterprises, for example categories of pollutants or the volume of pollutant discharge.

Thus, based on Article 12 of Zhuzhou EA Measures—stating “the credit evaluation of enterprise environmental activities shall be carried out according to the principles of justice, publicity and equality, strict evaluation procedure, and under public supervision”—Greenpeace requested that the Zhuzhou EPB disclose the complete version of the document *Notice on Evaluation on City Industrial Enterprises Environmental Activities and Information Disclosure in 2008*.

In the sixth request, Greenpeace asked the Zhuzhou EPB to disclose the list of all local enterprises whose pollutant discharge or volume of pollutant discharge

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<sup>388</sup> OEI Measures, Article 20 & Article 21.

<sup>389</sup> *Ibid.*, Article 13.

exceeded regulatory standard. This request was made mainly based on the PCP Law stating that the government at provincial level shall publish a list of names of heavily-polluting enterprises in local primary media<sup>390</sup> and the OEI Measures stating that the environmental protection department shall disclose, on its own initiative, a list of enterprises creating severe pollution.<sup>391</sup> An enterprise whose pollution discharge exceeds national or local standards, or whose pollutant discharge in total volume exceeds the regulatory limits determined by the local people's governments, belongs to the category of enterprises generating severe pollution.<sup>392</sup>

Greenpeace submitted its environmental information disclosure requests in mid-December 2009. In general, government agency should reply to an information disclosure requester within 15 working days.<sup>393</sup> The whole information disclosure request by Greenpeace in fact lasted half a year, going through a complicated process consisting of three rounds.

### 3.2.1.2 The First Round

On 18 December 2009, Greenpeace submitted all six information disclosure requests by fax, and later also sent the request forms by courier. Until one month later, Greenpeace did not hear anything from the Zhuzhou EPB.<sup>394</sup> On 18 January 2010, Greenpeace called the Zhuzhou EPB. One official answered the phone and said he did not clearly know the matter of environmental information request submitted by Greenpeace. Greenpeace then asked about Director Y,<sup>395</sup> who signed the courier's acknowledgement of receipt; the official said that Director Y was in a meeting.

On the following day, Greenpeace called the Zhuzhou EPB again and asked for Director Y.<sup>396</sup> One official answered the phone and first said that Y was in another government office and he was not sure when Y would be back; later the same official changed his reply and said that Y was in his office. When asked whether the Zhuzhou EPB had received the information disclosure requests sent by Greenpeace, the official said that Greenpeace should directly call Y's office. Greenpeace said

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<sup>390</sup> PCP Law, Article 17.

<sup>391</sup> OEI Measures, Article 11(13).

<sup>392</sup> *Ibid.*

<sup>393</sup> OGI Regulations, Article 24; OEI Measures, Article 18.

<sup>394</sup> Greenpeace, footage of phone call dated 18 January 2010.

<sup>395</sup> In consideration of research ethics, I only used initials when referring to officials in this dissertation.

<sup>396</sup> Greenpeace, footage of phone call dated 19 January 2010.

that they had tried several times but nobody answered the phone. The official then said that people did not always answer office phones since there might be commercial telephone calls. Knowing that Y was in his office, Greenpeace asked the official to pass a message to him that Greenpeace would like to call him immediately, but this was refused. Nevertheless, Greenpeace called again moments later, and was told by the same official that Y said that the information disclosure request forms were in circulation to be read (传阅) in the EPB and they happened to be under review by one deputy director who was at the moment abroad for a study tour. The official therefore suggested that if Greenpeace wanted the issue to be proceeded quickly, it could resend the forms and the Zhuzhou EPB would try to reply soon. This Greenpeace did, refaxing the information request forms on the same day. However, no response from the Zhuzhou EPB was heard until two months later when Greenpeace called the Zhuzhou EPB again.

In March 2010, Greenpeace called the Zhuzhou EPB for the third time<sup>397</sup> and was told that the information disclosure request was being processed, to be dealt with, and Director F was in charge of the matter at the moment. Greenpeace then called F but again nobody answered the phone. Only after Greenpeace called the office again and informed them that they could not get through on the line, Greenpeace got F on the phone. F said that she was aware of the information requests; however, they could not provide the information to Greenpeace due to two reasons. First, they consulted their leaders concerning the matter and the leaders said that the information was sensitive, concerned public-listed enterprises, and constituted business secret. Second, the Pollutant Discharge Registration Forms were too long, about 200 pages, to be provided. When asked about the evaluation result concerning local enterprises' environmental activities, F replied that they did not have the information since the Information Centre was still in its preparation phase. Greenpeace said that pollutant discharge information was not a business secret, and insisted that the Zhuzhou EPB should reply according to the law. F replied that she would ask her leaders and reply later to Greenpeace. Again, neither she nor any other official from the Zhuzhou EPB replied until another two months later.

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<sup>397</sup> Greenpeace, footage of phone call dated 30 March 2010.

### 3.2.1.3 The Second Round

In order to place some pressure upon the Zhuzhou EPB, Greenpeace sued the Zhuzhou EPB before Zhuzhou Intermediate People's Court on 12 April 2010 and put forward two claims: first, the Zhuzhou EPB should reply to Greenpeace concerning the information disclosure requests within 15 days; second, it should provide Greenpeace with the required information. Zhuzhou Intermediate People's Court notified Greenpeace that it received the application and later informed Greenpeace that the case could not be accepted due to the reason that there was no causal relationship between Greenpeace and the Zhuzhou EPB's administrative act of information disclosure. Nevertheless, while the acceptance of the case was still pending, the Zhuzhou EPB replied to Greenpeace by fax on 13 May 2010 and provided corresponding answers concerning all six environmental information requests.<sup>398</sup>

As to the four requests concerning Zhuzhou Hard Metal Co. and Zhuzhou Smelter Co., the Zhuzhou EPB suggested that Greenpeace seek the information from the two companies directly. Regarding the environmental information of the two metal companies' pollutant discharge, the Zhuzhou EPB also emphasized that the two companies all made rectifications, and attached letters which were originally sent to the Zhuzhou EPB from the two companies addressing the rectification issue, with the corresponding replies.

With regard to the request concerning the evaluation result of enterprises' environmental activities, the Zhuzhou EPB briefly answered that they had already informed the result to all key industrial enterprises in Zhuzhou.

Finally, concerning the list of enterprises with severe pollution, the Zhuzhou EPB said that it did not inspect and assess enterprises' pollutant discharge since there was no law requiring them to do so.

### 3.2.1.4 The Third Round

Although Greenpeace received a reply from the Zhuzhou EPB, it did not get the information it requested. Facing this situation, Greenpeace wrote a letter to the

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<sup>398</sup> Zhuzhou EPB, Reply concerning Greenpeace's environmental information disclosure request, fax reply 13 May 2010.

Zhuzhou EPB on 7 June 2010, further clarifying their requests and reiterating the legal basis for the information disclosure requests.<sup>399</sup> Greenpeace particularly emphasized that information obtained by EPBs during their administrative operation constituted government information that should be disclosed upon disclosure request by the public according to law.

This time, within 14 working days, on 24 June 2010, the Zhuzhou EPB responded with further explanation that the information requested by Greenpeace could not be provided.<sup>400</sup>

With regard to the environmental information of Zhuzhou Hard Metal Co. and Zhuzhou Smelter Co., the Zhuzhou EPB said that it had not refused Greenpeace's request concerning the providing of the Pollutant Discharge Registration Forms of the two metal companies, but just clearly expressed that the information can be obtained by Greenpeace from the two metal companies directly, according to Chapter 3 of the OEI Measures.

With regard to the evaluation result concerning local enterprises' environmental activities, the Zhuzhou EPB explained that it was not certain whether the evaluation information could be disclosed. The Zhuzhou EPB was at that time undertaking a process of consultation.

Concerning the list of enterprises generating severe pollution, the Zhuzhou EPB replied that Greenpeace shall address the information disclosure request to the Zhuzhou EPB's higher level EPB, since Article 17 of the PCP Law only requires provincial-level government departments to publish such a list and it does not require city-level EPBs, for instance the Zhuzhou EPB, to carry out this work.

In short, although this time the Zhuzhou EPB responded quickly, it still did not provide any of the information requested by Greenpeace. So far, despite three rounds of interactions spanning half a year, Greenpeace had not received the information it requested from the Zhuzhou EPB.

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<sup>399</sup> Greenpeace, letter to Zhuzhou EPB, On "Reply concerning Greenpeace's environmental information disclosure request", 7 June 2010.

<sup>400</sup> Zhuzhou EPB, Reply concerning Greenpeace pollution prevention department's reply, 21 June 2010.

### 3.2.2 Xie Yong's Environmental Information Disclosure Requests concerning Huji Incinerator

Xie Yong's environmental information disclosure relates to his civil litigation against a local incinerator, which he claims caused his son's sickness.<sup>401</sup> Xie Yong's wife lived less than 200 metres away from Saite Tianying Huanbao Huji Incinerator (Huji Incinerator) in Hai'an County, Jiangsu Province (江苏省海安县) during and after her pregnancy. Xie Yong's son was diagnosed with cerebral palsy and epilepsy months after he was born.

With regard to Xie Yong's environmental information disclosure requests, more specifically, four levels of government agencies were involved, from lower to higher hierarchies in Chinese government administration: Huji Town, Hai'an county-level City, Nantong City, and Jiangsu Province (胡集镇、海安县、南通市、江苏省). In June 2010, Xie Yong submitted his first information disclosure request to the Hai'an EPB. In his information disclosure request letter, he stated clearly that: "according to the OEI Measures issued by SEPA with order No. 35 on 11 April 2007, I request Hai'an EPB to disclose the following information". Briefly, Xie Yong requested the disclosure of the following information: SEPA's approval document with regard to the Huji Incinerator; the Huji Incinerator's EIA approval, and the Huji Incinerator's approval document concerning city development planning and environmental hygiene; and the Hai'an EPB's and Nantong EPB's monitoring inspection reports of the Huji Incinerator from the beginning of its operation until the autumn of 2009.<sup>402</sup>

On 13 July, the Hai'an EPB replied that: "according to SEPA's OEI Measures (SEPA order No. 36), we answer as follows". In brief: the Huji Incinerator was approved by the Nantong EPB; its planning and environmental hygiene requirement was regulated by other administrative departments, and did not belong to the category of information that should be disclosed; and the inspection report did not belong to the scope of information that shall be disclosed according to the OEI Measures.<sup>403</sup>

Failing to obtain the requested environmental information from the Hai'an EPB, on 27 July 2010 Xie Yong submitted his information disclosure request to the

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<sup>401</sup> *Caixin wang*, 24 Dec 2011.

<sup>402</sup> Xie Yong, Information disclosure request submitted to Hai'an EPB, 25 June 2010.

<sup>403</sup> Hai'an EPB, Reply concerning Huji Waste Incinerator environmental information disclosure, 13 July 2011.

Nantong EPB, the upper-level EPB above the Hai'an EPB. Again, he clearly stated his legal claim was based on the OEI Measures. This time, he required the Nantong EPB to: first, disclose the Huji Incinerator's EIA Report; second, to order the Hai'an EPB to disclose its inspection report on the Huji Incinerator between 15 November 2005 and 7 October 2009; and third, to disclose the Nantong EPB's monitoring inspection reports.<sup>404</sup>

The Nantong EPB replied to Xie Yong in August:

谢勇同志：您《关于海安县胡集垃圾焚烧厂信息公开的申请》收悉，依据《环境信息公开办法（试行）》（国家环境保护总局第35号令），现答复如下：

根据原国家环境保护总局《关于公众申请公开建设项目环评文件有关问题的复函》（环函[2008]50号）：“公众向环保部门申请公开环境影响报告书（表）等建设项目环评文件时，环保部门可提供建设项目单位或评价单位的联系方式，告之其向项目建设单位或评价单位索取。”现告知海安县生活垃圾焚烧项目环评文件联系人和联系方式如下：.....

根据《环境检测管理办法》第四条第一款：“县级以上环境保护部门对本行政区域环境监测工作实施统一监督管理”，请您与海安县环境保护局联系。

*Comrade Xie Yong, We received your request of disclosing information concerning Hai'an Huji Incinerator. According to the OEI Measures (SEPA Order No.35), we reply as follows:*

*According to the Reply (Huanhan [2008] No.50), "when the public requests environmental protection departments to disclose environmental impact assessment reports or tables and other related EIA documents, environmental protection departments may provide the contact of the EIA project construction entity or EIA evaluation entity, and tell the public to request the information from the EIA construction entity or evaluation entity." We now notify you of the EIA document contact person ...*

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<sup>404</sup> Xie Yong, Environmental information disclosure request concerning Hai'an Huji Waste Incinerator, submitted to Nantong EPB, 27 July 2010.

... According to Article 4.1 of the *Environmental Inspection Management Measures* [EIM Measures] “county-level EPBs are responsible for managing environmental inspection work”, please contact Hai’an County EPB for the inspection report. ...<sup>405</sup>

Except for providing its approval document with regard to the EIA report as an attachment to the reply, the Nantong EPB *de facto* pushed Xie Yong to the project construction entity concerning the EIA report, as well as back to the Hai’an EPB with regard to the inspection statistics, despite the fact that the Hai’an EPB had already refused to provide the information requested.

Nevertheless, Xie Yong did not give up. In October 2010 he submitted a second information disclosure request towards Nantong EPB, and again asked for the disclosure of relevant information relating to the Huji Incinerator, its Pollutant Emission Permit, project completion environmental protection assessment result, and the Nantong EPB’s administrative penalty upon the Huji Incinerator.<sup>406</sup> Xie again listed his legal basis, including the *Administrative License Law*, the OGI Regulations, and the OEI Measures, together with his information disclosure request.

The Nantong EPB replied that the Nantong Environmental Inspection Centre had never inspected the Huji Incinerator, and it had never made any written penalty upon it.<sup>407</sup>

On 25 November 2010, Xie Yong also submitted his information disclosure request to the Jiangsu EPD. He requested for the disclosure of the Huji Incinerator’s EIA report approval and approval basis, issuance of pollutant emission permit, and information concerning relocation of households within 300 metres of the incinerator.<sup>408</sup> In the Jiangsu EPD’s reply letter, it stated that: “according to the OGI Regulations and the OEI Measures, we provide the information as follows”. In brief: first, the approval report was attached and the approval basis was the EIA Law; second, the Hai’an EPB issued a temporary permit for the incinerator’s operation and Jiangsu did not issue any permits; and third, the county government was

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<sup>405</sup> Nantong EPB, Reply to the environmental information disclosure concerning Hai’an Huji Waste Incinerator, 9 August 2010.

<sup>406</sup> Xie Yong, Government environmental information disclosure request to Nantong EPB, 7 October 2010.

<sup>407</sup> Nantong EPB, On the reply letter concerning Hai’an Huji Waste Incinerator information disclosure request, 14 Dec 2010.

<sup>408</sup> Jiangsu EPD, Provincial EPB Government Information Disclosure Request Notice, Suhuanguaozi [2010] no. 23, 8 December 2010.



responsible for residents' relocation, and Xie should contact the Huji township government.<sup>409</sup>

Lasting for almost half a year, with four information disclosure requests submitted, being pushed from one EPB to another, from the EPB to the construction company, and from the EPB to local government, except for a few documents stating EPB's approving the incinerator, Xie Yong practically failed to obtain any of the specific information relating to the pollutants emission of the incinerator or the documents—for example EIA documents based on which the incinerator was approved—that he requested.

Besides using the channel of environmental information disclosure, Xie Yong also sued the local incinerator for causing his son's illness, but he lost both in the first instance and the appeal court.<sup>410</sup> As the Huji Incinerator was already closed down, the EPB's inspection statistics in fact remained a key source for Xie and his lawyers to bear the burden of proof in the civil litigation. Nevertheless, Xie's lawyer also failed in his request to the court to obtain the relevant statistics from the Hai'an EPB.<sup>411</sup>

In February 2012, Xie Yong again submitted an information disclosure request towards the Jiangsu EPD. The Jiangsu EPD refused to disclose the requested information, stating that information with regard to the incinerator's qualification approval, including the preview opinion, project introduction, operation contract, and inspection report, was internal information according to the *Measures for the License Administration of Qualification for Operation of Environmental Pollution Control Facilities* (环境治理许可管理办法 EPC Measures).<sup>412</sup>

In 2012, Xie Yong submitted his information disclosure request to the MEP. He requested that the MEP disclose the Incinerator's permit approval, the introduction of the project, and its operation inspection reports. The MEP replied to Xie that the permit approval information can be found on the website of the MEP. As to the information about the introduction of the project, its operation contract and operation inspection reports, the MEP stated that according to Article 23 of the OGI

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<sup>409</sup> Jiangsu EPD, Provincial EPB Government Information Disclosure Request Notice, Suhuangaazi [2010] no. 23, 8 December 2010.

<sup>410</sup> *Caixin wang*, 24 Dec 2011.

<sup>411</sup> *Fazhi ribao*, 11 Oct 2011.

<sup>412</sup> *Xie Yong v. Jiangsu EPD*, Jiangsu Province Nanjing Intermediate People's Court, Administrative Litigation Judgment, 2012, 13 August 2012, 6.

Regulations that it concerned business secret thus needed to consult the incinerator company.<sup>413</sup>

Failing to get the information, Xie Yong also used his wife's name and submitted a new information disclosure request towards the MEP. This time, the request only related to the disclosure of the inspection report. Nevertheless, the same result happened, with the MEP stating that the information concerned business secrets, and the enterprise needed to be consulted.<sup>414</sup>

### 3.2.3 Environmental Information Disclosure Requests Between Green Beagle and Jiangsu EPBs

In 2011, to support Xie Yong's lawsuit as well as impose external pressure upon local EPBs to take open environmental information seriously, Green Beagle, a Beijing-based ENGO, submitted information disclosure requests towards the three environmental protection agencies in Jiangsu Province from which Xie Yong had failed to obtain environmental information. Learning from the lessons of Xie Yong, that it took months to get a reply from each environmental protection agency requested to disclosure information one by one, Green Beagle submitted its three requests at the same time to three environmental protection agencies, hoping to get a faster reply.<sup>415</sup>

The information requested by Green Beagle for disclosure includes: the EIA Report of the Huji Incinerator, the EIA report and its approval concerning a sewage treatment plant for the new Huji Incinerator Energy Plant that will replace the Huji Incinerator, and inspection statistics and reports about the Huji Incinerator between June 2006 and October 2009.<sup>416</sup>

The Jiangsu EPD replied that concerning the EIA report, Green Beagle should ask the project construction entity or the EIA compiling entity according to SEPA's reply letter.<sup>417</sup> With regard to the inspection statistics, both the Jiangsu EPD and the Nantong EPB replied that it was the responsibility of the county-level EPB, and

<sup>413</sup> *Zhongguo qingnianbao*, 7 June 2012.

<sup>414</sup> *Ibid.*

<sup>415</sup> Interview with NGO officer, 29 May 2011.

<sup>416</sup> Green Beagle, Information disclosure requests to Hai'an EPB, Nantong EPB and Jiangsu EPD, dated 23 February 2011.

<sup>417</sup> SEPA, *Reply Letter to Public Request to Disclosure Construction Project EIA Report*, Guojia huanbao zongjuhan [2008] no.50.

Green Beagle should ask the Hai'an County EPB.<sup>418</sup> The Hai'an EPB's reply was only one sentence, briefly stating that the Huji Incinerator Energy Plant was approved by the Jiangsu EPD.<sup>419</sup>

Both the OGI Regulations and the OEI Measures stipulate that citizens, legal persons and other organizations have the right to report or inform the superior administrative organ, supervisory organ or the competent government organ if they consider an administrative organ fails to fulfil its obligation to disclose information according to law.<sup>420</sup> This can be realized by applying for an administrative reconsideration (行政复议). Green Beagle thus brought an administrative reconsideration before the Nantong EPB. It required the Nantong EPB to order its lower-level Hai'an EPB to disclose the requested information of inspection statistics. On 4 May 2011, the Nantong EPB accepted Green Beagle's application.<sup>421</sup> Nevertheless, the Hai'an EPB still refused to provide the requested information. It stated that EIA reports and waste fluid treatment methods were business secrets. As to the inspection statistics concerning pollutants emission, the answer was the same as it was stated in the reply to Xie Yong, that according to the EIM Measures, they were not required to be disclosed; moreover, this information also concerned business secrets. Additionally, the Hai'an EPB suggested that the purpose of Green Beagle's information disclosure request was for scientific research, which was against the original purpose of the OGI Regulations based on the 2010 SC opinion,<sup>422</sup> and thus Green Beagle's application did not belong to the scope of administrative reconsideration.<sup>423</sup>

Green Beagle later consulted the Nantong EPB. The Nantong EPB replied that it needed to consult its higher-level EPB to decide if the information should be disclosed or not.<sup>424</sup> Nevertheless, the final result of the administrative reconsideration seems positive in that the Nantong EPB revoked the reply by the

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<sup>418</sup> Nantong EPB, Reply to Green Beagle, 18 March 2011; Jiangsu EPB, Reply to Green Beagle, 16 March 2011.

<sup>419</sup> Hai'an EPB, Email reply to Green Beagle, 28 February 2011.

<sup>420</sup> OGI Regulations, Article 33; OEI Measures, Article 26.

<sup>421</sup> Nantong EPB, Administrative Reconsideration Acceptance Notice, Tonghuafushou[2011] no. 2, 4 May 2011.

<sup>422</sup> SC General Office, *Opinion on Doing a Good Job of Disclosing Government Information on Request*, 12 January 2010.

<sup>423</sup> Hai'an EPB, Written defence in reply to administrative reconsideration, 10 May 2011; Hai'an EPB, Government Information Disclosure Upon Request Reply, Haihuanfu[2011] no.01, 22 July 2011.

<sup>424</sup> *Fazhi ribao*, 11 Oct 2011.

Hai'an EPB and ordered it to make another information disclosure.<sup>425</sup> But the order from its superior did not make the Hai'an EPB change its reply. In its reply after the administrative reconsideration, it insisted again that they were not sure if the inspection statistics should be disclosed according to the EIM Measures and they needed to consult their higher-level EPB.<sup>426</sup>

### 3.2.4 Friends of Nature and the Yangtze River Nature Reserve Readjustment

In early 2011, the MEP made public a list of nature reserves for public consultation. The document showed that the Rare and Endemic Fish Nature Reserve in the upper reaches of the Yangtze River (Yangtze River Nature Reserve) was approved by the State Review Committee on Nature Reserves (Review Committee) to be decreased by 1460.4 hectares.<sup>427</sup>

Friends of Nature regarded the information provided for public consultation to be insufficient, and requested the MEP to disclose the following information: the Yangtze River Nature Reserve's readjustment application letter; its readjustment investigative report; and its assessment opinion made in the 2010 assessment meeting and the meeting minutes. About one month later, the MEP replied to Friends of Nature that the first two types of information were under the responsibility of the Ministry of Agriculture (MoA);<sup>428</sup> as to the assessment opinion, the Review Committee applied a voting system, and the meeting minutes only recorded the assessment result, which can be consulted via the MEP's website.<sup>429</sup> The website turned out to be the one on which the notice of the promotion and readjustment of nature reserves were posted.<sup>430</sup>

Based on the MEP's reply, on 17 February 2011, Friends of Nature requested that the MoA disclose the first two types of information. Since the MEP's reply concerning the assessment opinion did not provide anything new, Friends of Nature

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<sup>425</sup> Nantong EPB, Administrative Reconsideration Decision, Tonghuanfujuezi [2011] No.2, 8 July 2011.

<sup>426</sup> Hai'an EPB, Government Information Disclosure Reply, Haihuanfu [2011] No.1, 22 July 2011.

<sup>427</sup> MEP 2011, Announcement 2011 No. 1 on the Promotion and Readjustment of National Nature Reserves, 14 January 2011.

<sup>428</sup> MEP, Environmental Information Disclosure Notice, 2011 No. 8, 10 Feb 2011; MEP, Environmental Information Disclosure Notice, 2011 No. 9, 10 Feb 2011.

<sup>429</sup> MEP, Environmental Information Disclosure Notice, 2011 No. 10, 10 Feb 2011.

<sup>430</sup> MEP, Announcement 2011 No. 1 on the Promotion and Readjustment of National Nature Reserves, 14 January 2011.

again requested that the MEP disclose the information of the voting result concerning the Yangtze River Nature Reserve, and the list of Review Committee members.

By 9 March, the MoA replied that the information requested was “information in process” (过程中信息) that should not be disclosed.<sup>431</sup> It seems that the MoA adopted the explanation about “information in process” made by the 2010 SC opinion.<sup>432</sup> With regard to Friends of Nature’s second information disclosure request concerning the list of Review Committee experts, the MEP replied that the information should not be disclosed until the members complete their term in the position. The MEP also stated that if Friends of Nature had any suggestions or requirements, it could help by forwarding them to the Review Committee.<sup>433</sup>

Facing this situation, Friends of Nature applied for administrative reconsideration before the MoA. The decision was the same. Friends of Nature then applied for administrative reconsideration before the SC. Nevertheless, to date, 21 August 2012,<sup>434</sup> Friends of Nature had not received a decision from the SC, despite the Nature Reserve readjustment already being officially approved by the SC on 12 December 2011.<sup>435</sup>

### 3.3 In the Political Sphere: Legal Rhetoric as Counter-mobilization?

The above cases have demonstrated that citizens and organizations have been actively and persistently using the law to request government agencies for environmental information. Nevertheless, their effort still resulted in vain of getting the information. While pointed out by experts of China studies that legal activism in an authoritarian state such as China, “whether by individual or by groups, and with or without a support structure, is likely to produce counter-mobilization from the state’s coercive organs”,<sup>436</sup> the above cases are no exceptions.

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<sup>431</sup> MoA, Reply on environmental information disclosure concerning Yangtze River Upper Reaches Rare and Endemic Fish Nature Reserve adjustment, 9 March 2011.

<sup>432</sup> SC General Office, *Opinion on Doing a Good Job of Disclosing Government Information on Request*, 12 January 2010.

<sup>433</sup> MEP, Government Information Disclosure Notice, 2011 No. 31, 23 March 2011.

<sup>434</sup> Email correspondence with Friends of Nature officer, 21 August 2012.

<sup>435</sup> SC General Office, Notice on Readjusting Hebei Dahaituo etc. National Nature Reserves, Guobanhan [2011] no.156.

<sup>436</sup> Diamant, Lubman and O’Brien 2005, 8.

Undoubtedly, counter-mobilization can appear in various forms. While a direct crack down or repression of activists are the most visible, counter-mobilization can also appear in implied manners such as using legal rhetoric by government agencies to discourage, therefore deactivate, legal mobilization. No matter whether it concerns information relating to the local incinerator or the nature reserve, in the above four cases refusals were also made based on legal reasons. Moreover, legal reasons not only made the non-disclosure legal and unchallengeable, but also effectively depoliticized the issues and masked the discretionary choices of the government agencies.

The OEI Measures explicitly stipulate that its enactment is to promote and standardize the environmental disclosure work of government environmental protection agencies and enterprises, and to safeguard the rights and interest of citizens, legal persons and other organizations to obtain environmental information, and to promote public participation in environmental protection.<sup>437</sup> The failures of Xie Yong and the three ENGOs have suggested the failure of the achievement of this aim.

As the above cases demonstrate, the aim of the laws—to realize transparent government by empowering the public and imposing restraints upon government actors—has been strategically offset by the utilization of legal rhetoric, reflected with applying rules based on laws, regulations, rules, and normative documents, by government agencies to refuse the disclosure of the information. In other words, the law has become the counter-argument for government agencies, obstructing the legal mobilization in the field of environmental information disclosure. Specifically, the counter-argument is mostly based on legislative exceptions, inconsistent rules and government normative documents.

### **3.3.1 Legislative Exceptions: Legal Basis or Excuse?**

Both the OGI Regulations and the OEI Measures stipulate that information involving state secrets, business secrets or individual privacy may not be disclosed.<sup>438</sup> The major problem is that these exceptions are very difficult to be delineated according to current Chinese laws. In China, state secrets can be

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<sup>437</sup> OEI Measures, Article 1.

<sup>438</sup> OEI Measures, Article 12; OGI Regulations, Article 14.

determined by all levels of governments and their departments, and the basis for classifying a state secret is very broad.<sup>439</sup> Business secrets are also difficult to determine due to their nature of secrecy, especially for the public.<sup>440</sup> Wang Canfa, director of the CLAPV and a professor of environmental law at the Chinese University of Political Science and Law, has noted that: “although the regulations list 17 types of information that should be disclosed and only one short clause on exemptions, that one short clause has become a catch-all.”<sup>441</sup>

This “catch-all” appeared within the communications between Greenpeace and the Zhuzhou EPB, when they replied that the information of polluting enterprises information was sensitive, concerned public-listed enterprises, and constituted a business secret. It also happened in the Hai’an EPB’s reply to Green Beagle as the EPB stated the definition of business secrets should be applied to EIA reports, waste fluid treatment methods, and inspection statistics.<sup>442</sup> It is in fact not rare that EPBs use these exceptions to refuse an information disclosure, even when the information requested is mandatory information; for instance, lists of enterprises that received environmental administrative penalties, which should be disclosed by government agencies on their own initiative. However, when IPE requested that EPBs disclose this type of information, the idea of business secrets was applied by several agencies as a basis of non-disclosure.<sup>443</sup>

“Business secrets” also appeared often in non-disclosure of pollutant emission information. For example, in other known cases, the Shanghai Municipality EPB used the “business secret” reason to refuse disclosing emission information of Sino French Water.<sup>444</sup> And the Pudong EPB told Greenpeace that BASF said its emission pollution was a business secret. As BASF disclosed the same type of information in the EU, America and Canada, it remains rather dubious that it should be regarded as business secret only in China.<sup>445</sup>

“State secrets” did not appear as often as “business secrets”. Nevertheless, when Mao Da, an environmental activist, requested that Beijing EPB disclose information concerning household waste landfill pollution risk in Beijing, their answer was that

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<sup>439</sup> Deng Zhi 2010, 38; On how to determine these exceptions, Zhang Jiansheng 2009.

<sup>440</sup> Wang Canfa & Cui Bin 2008.

<sup>441</sup> See, Meng Si 2011.

<sup>442</sup> Hai’an EPB, Government Information Disclosure Upon Request Reply, Haihuanfu [2011] No.01, 22 July 2011.

<sup>443</sup> IPE & NRDC 2009 report, 28; *Nanfang zhoumo*, 24 June 2010.

<sup>444</sup> Survey 1; Interview with NGO officer, 2 August 2010; Jin Di 2011.

<sup>445</sup> Case 25; Greenpeace website, 30 June 2008.

the information was a state secret.<sup>446</sup> In fact, Mao's information submission was based on a news report titled *Beijing Household Waste Landfill Pollution Risk Report Freshly Came Out, Half With Medium to High Level Poisonous Pollution Risk*.<sup>447</sup> Moreover, a doctoral dissertation titled *Landfill Pollution Risk Assessment in Beijing-China* can be found on the Internet.<sup>448</sup> The same also happened with the Wuhu Ecology Centre with regard to their disclosure requests related to dioxin information; while some EPDs provided the requested information directly, others stated that it was a state secret and could not be disclosed.<sup>449</sup>

Clearly, a broad margin of appreciation existed when the government agencies applied these exceptions in order to refuse information disclosure requests.

Besides the above-stipulated exceptions, the controversial Article 8 of the OGI Regulations<sup>450</sup> has also been utilized as a legal basis to refuse information disclosure. Article 8 stipulates that:

*no administrative organ may endanger national security, public security, economic security or social stability when disclosing government information.*<sup>451</sup>

Although it is argued that this article shall be regarded as the criteria of discretion but not exception,<sup>452</sup> in practice this clause of “three securities one stability” has already become a justification for government agencies to refuse information disclosure.<sup>453</sup> For instance, the Tianjin EPB replied that to disclose the list of enterprises that received penalties would affect their commercial reputation, business secrets, economic stability, and social stability.<sup>454</sup> The same reasoning also appeared in the Tianjin Wuqing Forestry Bureau's reply concerning an information disclosure request related to the Dahuangbao Wetland Nature Reserve.<sup>455</sup> When a few EPDs disclosed information of enterprises that emit dioxin to the Wuhu

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<sup>446</sup> Case 7; *Zhongguo qingnianbao*, 13 May 2011.

<sup>447</sup> *Zhongguo huanjingbao*, 25 July 2006.

<sup>448</sup> Rothich 2006.

<sup>449</sup> Survey 7.

<sup>450</sup> Discussion of Article 8, please see 1.4, see also Wang Xixin 2011.

<sup>451</sup> Translated by lawinfochina.

<sup>452</sup> Wang Xixin 2011, 65-66.

<sup>453</sup> *Nanfang zhoumo*, 24 June 2010.

<sup>454</sup> *Ibid.*; Survey 4; OEI Measures, Article 12; OGI Regulations, Article 14.

<sup>455</sup> Case 11; Wuqing Forestry Bureau, Information Non-disclosure Notice, No. (2011-001), 15 April 2011.



Ecology Centre, the reply from Xinjiang and Chongqing was “the disclosure might affect social stability”.<sup>456</sup>

### 3.3.2 Inconsistent Rules in Various Laws and Their Obfuscation

Scholars have argued that Chinese environmental laws are “general and often intentionally ambiguous”, giving leeway for local governments to “interpret them in ways that are as consistent as possible with local objectives.”<sup>457</sup> And this often results in the phenomena of “national policies, local countermeasures” (上有政策, 下有对策) to evade strict environmental regulations.<sup>458</sup> The vagueness and ambiguity of Chinese law in fact also appears in the inconsistency of rules in different laws and regulations. Most inconsistent rules *de jure* and *de facto* do not conflict with each other; however they do bear different content that provides more alternatives for government departments to pick and choose, or to interpret as they wish. For instance, with regard to Greenpeace’s information disclosure request, the Zhuzhou EPB’s final reply stated that the disclosure of the list of enterprises generating severe pollution shall be requested from the provincial-level EPD according to Article 17 of the PCP Law and, as a city-level EPB, the Zhuzhou EPB was not under the legal obligation to carry out this work.<sup>459</sup> However, according to the OEI Measures, the information of seriously polluting enterprises comes under mandatory information disclosure:<sup>460</sup> does this mean that only provincial-level EPDs are under this obligation and other EPBs are excluded? Regardless of this, the unclear inconsistency makes environmental information disclosure more difficult to enforce.

Some inconsistent rules also directly conflict with each other. In Green Beagle’s information disclosure request concerning the inspection statistics of the local incinerator,<sup>461</sup> the Hai’an EPB refused to disclose them based on the EIM Measures that

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<sup>456</sup> Survey 7.

<sup>457</sup> Ma & Ortolano 2000, 91-93; Beyer 2006, 205.

<sup>458</sup> Ma & Ortolano 2000, 92; Economy 2004, 102.

<sup>459</sup> Zhuzhou EPB, Reply concerning Greenpeace pollution prevention department’s reply, 21 June 2010.

<sup>460</sup> OEI Measure, Article 11 (13).

<sup>461</sup> Case 22.

*environmental inspection information shall not be made public or disclosed without approval according to law. And environmental monitoring inspection statistics, documents and result, if belong to the scope to be kept secret, shall be managed according to state security regulations.*<sup>462</sup>

The OGI Regulations and OEI Measures require government agencies to disclose information upon receiving a disclosure request unless the information belongs to the exceptions. If it is not stipulated by any law that inspection information belongs to the exceptions, then it clearly belongs to the information that shall be disclosed upon request. Thus, stating that the disclosure of inspection information needs to be approved, the EIM Measures seem rather contradictory to the OGI Regulations and the OEI Measures.

Moreover, it appeared that the Hai'an EPB's use of the EIM Measures was also not supported by others. Responding to Green Beagle's information disclosure requests, both the Nantong EPB and the Jiangsu EPD stated that the information about inspection statistics should be sought by Green Beagle from the Hai'an EPB; neither of them mentioned that this kind of information should not be disclosed. In fact, the same type of information—the inspection report of Baosteel, the largest steel corporation in China—was provided to Xu Taisheng, a Shanghai resident after his persistent fight requesting the Shanghai EPB to disclose the information.<sup>463</sup>

However, the inconsistency of rules *de jure* is not an unsolvable problem. The EIM Measures came into effect as of 1 September 2007, and the OEI Measures became effective from 1 May 2008; both are ministry-level rules. The OGI Regulations became effective on 1 May 2008 and belong to a higher-level hierarchy of SC administrative regulations. Thus, according to the principle that, regarding legislation at the same level, new law prevail over old law<sup>464</sup> and, when concerning all laws, regulations, and rules, the legislation at a higher level of hierarchy prevails over legislation at a lower level,<sup>465</sup> the OGI Regulations prevail over the OEI Measures and both prevail over the EIM Measures. Therefore, inconsistencies among them should be decided accordingly.

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<sup>462</sup> EIM Measures, Article 7.

<sup>463</sup> Interview with pollution victim and information disclosure requester, 8 May 2011; See also, Xu Kezhu, Liu Xiang, et al. 2011.

<sup>464</sup> Legislation Law, Article 83.

<sup>465</sup> Legislation Law, Article 71 & Article 86.

### 3.3.3 The Effect of Normative Documents

In China, government departments can issue normative documents (规范性文件) to be used as reference (参照使用) by their subordinate government agencies.<sup>466</sup> It is argued that the growing importance of normative documents in practice changes “administrative rule of law” to “rule of normative provisions”.<sup>467</sup>

In order to effectively implement the OGI Regulations, the SC has so far issued one notice and two opinions providing further guidance for government departments.<sup>468</sup> Both opinions stated that government agencies may refuse to provide information if the disclosure does not relate to the applicant’s special needs of production, livelihood, and scientific research.<sup>469</sup> This is argued to be a restrictive interpretation of Article 13 of the OGI Regulations, which imposes constraints on information disclosure requesters.<sup>470</sup>

“Special needs” appeared indirectly in the Hai’an EPB’s reply to Green Beagle’s administrative reconsideration, stating that according to the 2010 SC opinion, information disclosure requests for scientific research did not belong to general applications.<sup>471</sup>

Another problem relates to the 2010 opinion saying that:

*internal management information made or obtained by administrative organs during their day-to-day work or in-process information under discussion, research or examination in general is not government information that should be disclosed as referred to in the Regulations.*<sup>472</sup>

When Xie Yong requested that the Jiangsu EPD disclose the information about the local incinerator, although without mentioning the 2010 opinion, “internal

<sup>466</sup> Guo Qingzhu 2010, 36.

<sup>467</sup> *Ibid.*

<sup>468</sup> SC General Office, *Notice on Preparing Well for Implementing the Regulations of the People’s Republic of China on Open Government Information*, 4 August 2007; SC General Office, *Opinion on Several Issues of Implementing the PRC Open Government Information Regulations*, 29 April 2008; SC General Office, *Opinion on Doing a Good Job of Disclosing Government Information on Request*, 12 January 2010.

<sup>469</sup> SC General Office, *Opinion on Several Issues of Implementing the PRC Open Government Information Regulation*, 29 April 2008; SC General Office, *Opinion on Doing a Good Job of Disclosing Government Information on Request*, 12 January 2010, Article 1.

<sup>470</sup> Horsley 2010. More discussion, please refer to 2.5.1.

<sup>471</sup> Case 22; Hai’an EPB, Written defence in reply to administrative reconsideration, 10 May 2011.

<sup>472</sup> SC General Office, *Opinion on Doing a Good Job of Disclosing Government Information on Request*, 12 January 2010. The English translation is made by the China Law Center, Yale Law School.

information” was applied by the EPD as the reason for non-disclosure, stating that the documents and inspection reports belonged to internal management information and should not be disclosed.<sup>473</sup>

In the MoA’s reply to Friends of Nature concerning the Nature Reserve readjustment, “in-process information” was used to justify its non-disclosure of the review committee’s decision due to the fact that the final decision had not then been made by the SC.<sup>474</sup>

“In-process information” also appeared indirectly in Mao Da’s information disclosure requests concerning the risk assessments of household waste landfill pollution in Beijing.<sup>475</sup> The Beijing EPB stated that the information could not be disclosed since the data was not complete and still needed further investigation. In fact, the assessment started in 2006 and Mao submitted his request in 2009. The effect of the SC opinion also appeared in another request by Mao concerning waste management. The MEP replied that information of organic pollutant management was “internal management information” and could not be disclosed.<sup>476</sup>

In 2012, the same basis was used to refuse Green Beagle’s request to the MEP for the disclosure of a report with regard to PCBs<sup>477</sup>-containing electrical equipment and wastes in eight key provinces.<sup>478</sup>

Besides the SC opinions, SEPA’s reply letter concerning the disclosure of EIA report<sup>479</sup> constitutes a normative document as well. The problem with SEPA’s letter is that it *de facto* forms an effective approach for EPBs to pass disclosure of EIA documents to EIA compiling entities, construction entities, and enterprises. Several EPBs in Jiangsu replied to both Xie Yong and Green Beagle that they should seek the EIA information from the project construction entity or EIA compiling entity.<sup>480</sup> Although SEPA’s reply does not state that EPBs do not bear the obligation to provide EIA reports, it nevertheless supports the idea that EPBs can tell information

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<sup>473</sup>Case 12; *Xie Yong v. Jiangsu EPD*, Jiangsu Province Nanjing Intermediate People’s Court Administrative Litigation Judgment, (2010) Ningxingchuzi No. 26, 13 August 2010, 7.

<sup>474</sup>Case 20.

<sup>475</sup>Case 7.

<sup>476</sup>Feng Yongfeng 2011; Friends of Nature open environmental information seminar, 27 April 2011.

<sup>477</sup>PCBs refers to polychlorinated biphenyls. They all belong to persistent organic pollutants.

<sup>478</sup>Case 23; *Zhongguo kexuebao*, 23 April 2012.

<sup>479</sup>SEPA, The Reply Concerning Issues on Disclosing EIA Documents for Construction Projects Upon Public Request, *Guojia huanbao zongjuhan* [2008] no.50, 30 January 2008.

<sup>480</sup>Case 12, Case 22; Nantong EPB, Reply to Green Beagle, 18 March 2011; Jiangsu EPB, Reply to Green Beagle, 16 March 2011; Nantong EPB, Reply to the environmental information disclosure concerning Hai’an Huji Waste Incinerator, 9 August 2010.

requesters to seek the information from enterprises first hand. Even if SEPA did not intend to transfer the obligation of disclosing EIA documents from government agencies to private entities, it at least alleviates the government agencies' obligations to disclose information.<sup>481</sup> This can only be seen as discouraging the public from seeking EIA information from government agencies. An EPB official said that without the SEPA letter, they would at least consider providing EIA reports upon disclosure requests; however, it was now their first natural choice to tell requesters to seek EIA reports from an EIA compiling entity or construction entity.<sup>482</sup> Another problem connected to the function of SEPA's letter, of passing EPBs' obligations to private entities, is that enterprises are not under any legal responsibility to provide EIA reports upon information disclosure requests. Therefore, the public succeeding in obtaining the information from enterprises instead of EPBs remains less promising.

More problematically, it is difficult to rectify the situation if these normative documents violate laws and regulations. According to the Administrative Reconsideration Law of the P.R.C. (行政复议法 AR Law), citizens, legal persons or other organizations, when filing an administrative reconsideration on a specific administrative act, may also file an administrative reconsideration to review the provisions on which the administrative act was based, if they consider that the provisions are not legitimate.<sup>483</sup> The provisions here refer to normative documents.<sup>484</sup> The applicability of this rule is limited to the condition that filing for an administrative reconsideration on normative documents must be done together with filing regarding a specific administrative act, simultaneously. That is, the law does not allow any independent filing for an administrative review on normative documents *per se*.

Moreover, the issuance of normative documents by central government agencies and its consequent utilization by government agencies in refusing to disclose environmental information have indicated that in these cases of environmental information disclosure, "fragmented authoritarianism" is not the single picture. While fragmented practices with regard to open government information still exist that it is very often that different replies are made by government agencies with

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<sup>481</sup> More discussion about the SEPA letter and its effect upon public access to information, see, Zhao 2010, 25-26.

<sup>482</sup> Interview with NGO officer and lawyer, 31 May 2011.

<sup>483</sup> AR Law, Article 7.

<sup>484</sup> Zhu Mang 2000, 13.

regard to a same information disclosure request, local practices sometimes are also consistent when a certain type of practice is favourable to them all, for instance, to apply SEPA's reply letter to push away their disclosure obligation.

### 3.3.4 Behind the Legal Rhetoric

Noticeably, government agencies have not been making all efforts to realize environmental information disclosure. Instead, all kinds of justifications have been adopted to push away their obligation of disclosure, to provide a reply with no concrete content, or to simply direct the requesters from one government department to another—the question is why the information requested in the above cases is so difficult to get disclosed.

Naturally, the “historical tension between economic growth and environmental protection” also exists in China: in fact, with the former frequently taking priority.<sup>485</sup> In general, environmental protection plans and environmental quality statuses, or information concerning the general situation of the environment, is easy to obtain through a disclosure request. Information concerning waste management and disposal, polluting enterprises and pollutant emission statistics is more difficult to access.<sup>486</sup> The latter type of information mainly relates to enterprises that form the backbone of the economy.

So far, economic development is still regarded as *hard* policy in China. There is no doubt that maintaining high annual GDP growth has been one major factor in safeguarding the legitimacy of the party-state.<sup>487</sup> Although there have been gradual changes in environmental policy in China, environmental protection nevertheless does not precede economic growth.<sup>488</sup> A higher rate of economic growth is still the main indicator of local government performance assessment. A research based on

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<sup>485</sup> Carter 2001, 168-169.

<sup>486</sup> This is roughly in compliance with the report, *Access to Environmental Information in China: Evaluation of Local Compliance*, compiled by ARTICLE 19 and CLAPV, though the report did not include information disclosure request about pollutant emission statistics. See, ARTICLE 19 & CLAPV, 2010 report, 19-20.

<sup>487</sup> Heberer & Senz 2011.

<sup>488</sup> Edmonds 2011.

283 Chinese cities has shown that spending on environmental amenities has a negative effect on government officials being promoted.<sup>489</sup>

Under this situation, a pro-enterprises strategy becomes a natural choice for local governments when facing the conflict of business interests, environmental protection and public interest. In China, environmental protection agencies are under a vertical management system (垂直管理). In other words, each environmental protection agency is under the supervision of its upper-level environmental protection agency. However, environmental protection agencies are also under the administration of local governments and directors of environmental protection agencies are appointed by local governments. Thus, a dilemma is faced by environmental protection agencies in strictly enforcing enterprises to curb environmental pollution while at the same time considering the interests of the local governments and their economic growth. This has resulted in the unwillingness of local EPBs to disclose inspection statistics of local enterprises or to impose administrative penalties upon them, particularly with regard to enterprises that constitute a major part of local GDP growth. The failure of Greenpeace in obtaining the information relating to the heavy metal enterprises from the Zhuzhou EPB could thus be partly due to the fact that the major economy of Zhuzhou city is metal industry. In another case, villagers failed to obtain information about a sewage plant that belongs to the largest local textile corporation which is also the dominant business in the locality.<sup>490</sup> The steel company Baosteel, about which Xu Taisheng requested the information disclosure, is the largest steel corporation in China.<sup>491</sup>

One lawyer summarizes this as follows:

*环保局对于信息公开的态度很明确，要保护当地企业。把环境问题曝露出来，主要曝露了两个问题，一他们以前工作没有做好，二以后的GDP会受到影响。*

*The attitude of local EPBs is very clear, to protect local enterprises. If environmental problems get disclosed, two problems will be disclosed:*

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<sup>489</sup> Specifically, according to the working paper, “one standard deviation increase in average GDP scaled environmental improvement investment lowers the probability of promotion by 8.5 percentage points for secretaries and 6.3 percentage points for mayors.” See, Wu, Deng, & et al. 2013, 23.

<sup>490</sup> Case 5.

<sup>491</sup> Case 13.

*first, they did not do a good job; second, the local GDP will be affected.*<sup>492</sup>

Concerning Friends of Nature's information disclosure request, the reduction in the area of the Nature Reserve is mainly to pave the way for the construction of the Xiaonanhai Dam (小南海水电站), a USD3.8 billion project,<sup>493</sup> and the largest project of Chongqing city during the 11th five-year plan.<sup>494</sup> Research results already show that the dam will seriously affect the living environment of several rare and endemic fish;<sup>495</sup> nevertheless, it is the same as many other dam projects, local governments take all measures to promote them for poverty alleviation and economic development amid strong opposition from NGOs.<sup>496</sup>

Information concerning incinerators is more complex. In recent years, building more incinerators has been regarded as an effective means to solve the problem of rapidly growing house waste in China. Until 2008 there were 86 incinerators in China, and for the year 2010, 41 new incinerators were planned for construction.<sup>497</sup> At the same time, mass incidents against incinerators were happening unprecedentedly all over China.<sup>498</sup> In the summer of 2008, thousands of Beijing residents protested against the Gao'antun incinerator in Beijing; in November 2009, hundreds of residents went to the street, voicing their opposition against a planned waste incinerator in Panyu, Guangzhou;<sup>499</sup> and in 2011, tens of thousands villagers blocked the road with barricades to oppose against the Huangtutang incinerator to operate near Wuxi City, Jiangsu Province.<sup>500</sup> There is clearly distrust about the safety of living near incinerators among the public. Does this explain why the EPBs in Jiangsu Province were not willing to disclose inspection statistics about

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<sup>492</sup> Interview with lawyer 1, 6 May 2011.

<sup>493</sup> Case 20; *New York Times*, 29 December 2011.

<sup>494</sup> Qin Weihua, Liu Lujun, Xu Wanglu et al. 2008.

<sup>495</sup> *Ibid.*

<sup>496</sup> Nujiang hydro power dam is the most typical example. See, Magee 2006; Mertha, 2008.

<sup>497</sup> *Zhongguo xinwen zhoukan*, 19 March 2010.

<sup>498</sup> *Ibid.*

<sup>499</sup> Yu Dawei 2012; See also, *Guardian*, 23 Nov 2009.

<sup>500</sup> In early 2011, when the incinerator started its trial operation, residents nearby smelt very strong odour in the air and found, then started to organize protests and block the road to stop the incinerator. The major problem with this incinerator is its locating in a place with very dense population. In 2007, village leaders told villagers that there would be a temple to be built and 77% thus signed on a document of land expropriation that was later used to approve the construction of the incinerator. Villagers did feel the project suspicious during its construction but only started to protest when it started ignition for burning garbage and emitting unbearable odour. Interview with pollution victim, 10 May 2011; see also, *Greening-China.com*, 7 September 2012.



incinerators? Although it is difficult to answer such a question in this dissertation, Xie Yong and Green Beagle's experiences do suggest that it is unlikely that inspection statistics of incinerators will be disclosed. This is, nevertheless, not the only exception; in 2009 Yang Zi met a similar situation by failing twice in obtaining inspection statistics of Gao'antun Medical Waste Incinerator from the Beijing EPB.<sup>501</sup>

Another perceptible conflict between government agencies and public access to environmental information is that disclosure might expose government fault. It is not rare that EIA reports are defective but still get approved by EPBs.<sup>502</sup> With regard to projects that need to have environmental impact assessments, a production chain has emerged that project constructors, environmental impact assessors and local government agencies are all involved in. In June 2010, the MEP published its *Notice on 2009 EIA Entities Spot Check*; from 75 EIA entities, quality or management problems were found within 30.<sup>503</sup> The approval of EIA reports is controlled by local governments instead of environmental protection agencies. A director of a local environmental protection bureau has complained that as long as EPBs belong to the local government, with regard to both salary and officials' positions, the independence of project approval cannot avoid being affected by the government.<sup>504</sup> It is not rare that some unqualified EIA reports were also approved by environmental protection agencies. This probably explains why some EPBs are hesitating to disclose EIA reports—they do not want to “lift a rock to smash their own foot”.

This is probably also one of the reasons why the Hai'an EPB did not want to disclose the inspection statistics of the Huji Incinerator. In Nantong, enterprises that completed all operation procedures are filed with local monitoring agencies to be monitored. However, it is not clear whether an enterprise that does not complete

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<sup>501</sup> Case 16; *Yang Zi v. Beijing EPB*, Beijing Haidian District People's Court Administrative Ruling, Haixingchuzi No.00093, 21 May 2010; *Xinjingbao*, 24 May 2010; After the case collection of this dissertation, in 2013, Green Beagle requested Jiangsu EPD again for information of Huji Incinerator and was replied that the information concerned the third party, and it did not belong to the information to be disclosed by the EPD. (See, Jiangsu EPD, Notice on government information disclosure upon request, 15 January 2013) In 2013, Green Beagle also requested Guangzhou EPB to disclose the EIA report of Likeng Incinerator in Guangzhou, and was replied that the EIA report contained too much information and was not convenient to provide, the requester was recommended to read it personally at the EPD. Guangdong EPD, Reply on government information disclosure upon request, Yuehuanyigong (2013) No. 9, 10 April 2013.

<sup>502</sup> Feng Yongfeng 2011; *Fazhiribao*, 15 June 2011.

<sup>503</sup> Feng Yongfeng 2011.

<sup>504</sup> *Ibid.*

administrative procedures can be put into the system. According to a lawyer, the Huji Incinerator probably started its operation without completing its assessment procedure, and thus was not included in the monitoring list. From this perspective, the key evidence of inspection statistics in Xie Yong's civil litigation could not even exist.<sup>505</sup>

Undoubtedly, open government information relates to the political environment in China. Lagerkvist's argument that the Internet in China is at the same time "unlocking and containing the public sphere"<sup>506</sup> also exists with access to government information. As a stepping stone, access to government information can lead to more, and deeper, democratic participation in government affairs; nevertheless, some government officials still adhere to the out-dated view that there is no need for public access to government information on administrative management.<sup>507</sup> As it is pointed out by Horsley,

*But they see it as a double-edged sword. While loosening the reins on day-to-day governance and encouraging a more open style of governance with "supervision" by the people and the media, the Party still attempts to retain tight control over information flows and media reportage, issuing directives prohibiting or limiting reporting on corruption scandals, farmer protests, and other sensitive news from time to time.*<sup>508</sup>

Clearly, in China, open government information still faces the obstruction of a lack of democratic environment in public administration. While transparency in governance is being promoted, it is also controlled and restricted, reflecting the paradox of introducing open government information into a non-democratic political system.<sup>509</sup>

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<sup>505</sup> Friends of Nature blog, 24 April 2012.

<sup>506</sup> Lagerkvist 2006.

<sup>507</sup> The statement was made by an environmental government officer, who worked in the field of environmental protection for more than three years. See, *Fazhi ribao*, 4 June 2010.

<sup>508</sup> Horsley 2007b, 79.

<sup>509</sup> Hubbard 2008, 4.

### 3.4 Concluding Remarks

Applying the approach of understanding the implementation of international environmental regimes by Neil Carter,<sup>510</sup> the effectiveness of laws concerning open environmental information can be understood from two perspectives. One is to assess whether the laws are changing the behaviours of their implementers; the other is to evaluate whether the objectives of the laws have been achieved. It is true that government agencies have been changing from a secrecy-government to gradually regarding government information disclosure as their routine administration; this can be seen in the Zhuzhou EPB's attitude development alongside with Greenpeace's information disclosure request. Although when it began nobody was really in charge of the issue of information disclosure, later the Zhuzhou EPB was in fact using legal rules to counteract the requests by Greenpeace. Nevertheless, based on the case studies in this chapter, it is also clear that the purpose of obtaining information under the regulations is mostly obstructed due to effective counter-mobilization, also based on legal rhetoric, from the government's side. Nevertheless, a paradox exists that citizens and organizations are still active in requesting that government agencies disclose environmental information, despite their failures in getting that information. The following chapters will further discuss why and how information disclosure requesters have been endeavouring to use the mechanism, and how this makes the legal mobilization of environmental information disclosure go beyond its end aim of obtaining the information *per se*.

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<sup>510</sup> Carter 2001, 244-245.

## **4 INFORMATION DISCLOSURE REQUESTS: LEGAL MOBILIZATION BY CITIZENS AND ENTITIES**

In spite of the obstacles and impediments, Chinese citizens and organizations have been actively using the law to request for government information disclosure. This study argues that with regard to information disclosure requests, it is not the ends but the means that matters. In other words, while citizens and organizations invoke the law to access government information, a legal mobilization occurs in the social-legal sphere and results in social and political changes that go beyond information disclosure *per se*.

This chapter mainly focuses on why and how the public invokes the law to request that government agencies disclose environmental information despite the existence of all kinds of obstacles. It first explores the purposes, tactics and framing of the public's invoking of the law to access government information through disclosure requests. Second, it briefly examines the effects their actions have brought out and how they have formed a new challenge that imposes pressure on governmental authorities. Lastly, it summarizes the major findings and its theoretical implications.

### **4.1 Invoking the Law to Access Environmental Information Upon Disclosure Requests**

According to Zemans, a legal mobilization happens when “a desire or want is translated into a demand as an assertion of one's rights.”<sup>511</sup> This legal mobilization can be individually initiated or a collective action. In China, citizens and organizations requesting government information disclosures are exercising their right to access government information, thus constituting a new legal mobilization

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<sup>511</sup> Zemans 1983, 700.

where legal rights of access to information have been translated into a demand upon the government to disclose information.

Generally, environmental information disclosure requests can be divided into two categories: one is for public interest, the information disclosure requesters are not pollution victims, and the information they request does not concern themselves specifically, but the general public and the environment; the other is related to private interest, for instance when the family life or health of the requester is affected by environmental pollution. Regardless of whether it is for public good or private interest, in all these cases, citizens and entities invoked legal norms, requiring government departments to act accordingly. By doing so they have transformed themselves “from objects to wilful participants” in politics,<sup>512</sup> whether purposefully or unintentionally, holding the government to its own words. In other words, in the socio-legal sphere, it is clear that the law has been empowering the public to challenge government agencies and push government agencies to enforce the law and fulfil their obligations.

#### **4.1.1 Public-interest Oriented Environmental Information Disclosure**

A large majority of environmental information disclosure requests concern the public interest. Out of the 28 cases, 10 individually-launched requests and 10 entity-launched requests were for public interest, which accounts for about 71% of the total cases (Table 4-1); only eight were initiated for private interest, which equals 29% (Table 4-3 under section 4.1.2). All survey-related requests (Table 4-2) aiming to monitor and push forward government implementation of the new law were public interest related.

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<sup>512</sup> Zemans 1983, 695.

Table 4-1 List of cases concerning information disclosure requests for public interest

Case No.	Information disclosure requester(s)	Summary of information requested for disclosure	Result of Disclosure	Time
Requests submitted by individuals				
1	Beijing netizen Yu Ping	PM2.5 inspection	No	2011
2	Ding Jinkun	Qiandao lake water diversion project proposal etc.	No	2012
3	Hangzhou resident	Qiandao lake water diversion project proposal	No	2012
6	Mao Da	Result of the 2006-2008 National Survey on Persistent Organic Pollutants	No	2011
7	Mao Da	2006 report on Beijing Domestic Waste Landfill Risk Evaluation	No	2009
8	Mao Da	Plastic bags usage fee	Yes	2009
10	Sun Nong	Used battery disposal information	No	2008
11	Tianjin blogger "Wandering Sky"	Dahuangbao Wetland Nature Reserve plan maps	No	2011
15	Yan Yiming	List of polluting enterprises	Yes	2008
18	Zhang Tao	Pollution situation of Bohai oil field leaking	Yes	2011
The following requests were submitted by organizations				
19	All China Environmental Federation	Haoyiduo Diary Co. daily inspection, EIA report and pollutants emission	Yes	2011
20	Friends of Nature	Yangtse River upper reaches fish preservation area readjustment	No	2011
21	Green Beagle	Sujiatuo Incinerator EIA public participation section	No	2011
22	Green Beagle	Hai'an Incinerator EIA and pollutant emitting data	No	2011
23	Green Beagle	2010 investigation result on PCBs-containing electrical equipment and waste electricity equipment in eight key provinces	Yes	2012
24	Green Beagle	Emergency Plan for Heavy-polluted Day	No	2012
25	Greenpeace	BASF pollutants emission	No	2008
26	Greenpeace	Zhuzhou polluting enterprises	No	2009
27	Green Watershed	Chromic slag pollution enterprises loan, regulations	No	2012
28	Tianxiagong (Justices for all)	List of cities where water quality below requirement standard	Yes	2012

Note: The case number corresponds with the case number documented by the author (See, Appendix 8.3).

Table 4-2 List of surveys concerning information disclosure requests for public interest

Survey No.	Information requester(s)	Summary of information requested for disclosure	Result of disclosure	Time
1	Friends of Nature Shanghai members	water-related environmental information	partly	2008
2	IPE&NRDC	list of enterprises received environmental penalty	partly	2008-2011
3	Greenpeace	information of polluting enterprise	partly	2009
4	Southern Weekend	list of enterprises received environmental penalty	partly	2010
5	ARTICLE 19 & CLAPV	17 types of government information as listed in Art. 11 of OEI Measures	partly	2010
6	Southern Metropolis Daily journalist	PM2.5 & Ozone inspection statistics	partly	2011
7	Wuhu Ecology Centre	List of key enterprises that emit dioxin	partly	2011-2012
8	Impact Law Firm	eight types of information as listed in Art. 11 of OEI Measures, i.e., pollutants emission	partly	2012

The information requested for disclosure covered a wide range, from general environmental information of water and air quality to specific environmental information of the pollutant emissions of a particular incinerator, and from nature reserves to health-related environmental information.

The following categorization is based on the content of the information requested; it chooses the most direct and immediate content of the information as the categorizing basis if the request concerns two or more overlapping types of information.

Among the 28 individual requests, most concern information about polluting enterprises. Twenty requests relate to this category: to subdivide them, 10 relate to incinerators and waste management,<sup>513</sup> and 10 requests relate to other types of polluting enterprises.<sup>514</sup> The other requests include: general information of water or air quality,<sup>515</sup> information of environmental protection work,<sup>516</sup> information of projects and environmental plans,<sup>517</sup> and information of nature preservation.<sup>518</sup>

<sup>513</sup> Cases 5, 6, 7, 10, 12, 16, 17, 21, 22, 23.

<sup>514</sup> Cases 4, 9, 13, 14, 15, 18, 19, 25, 26, 27.

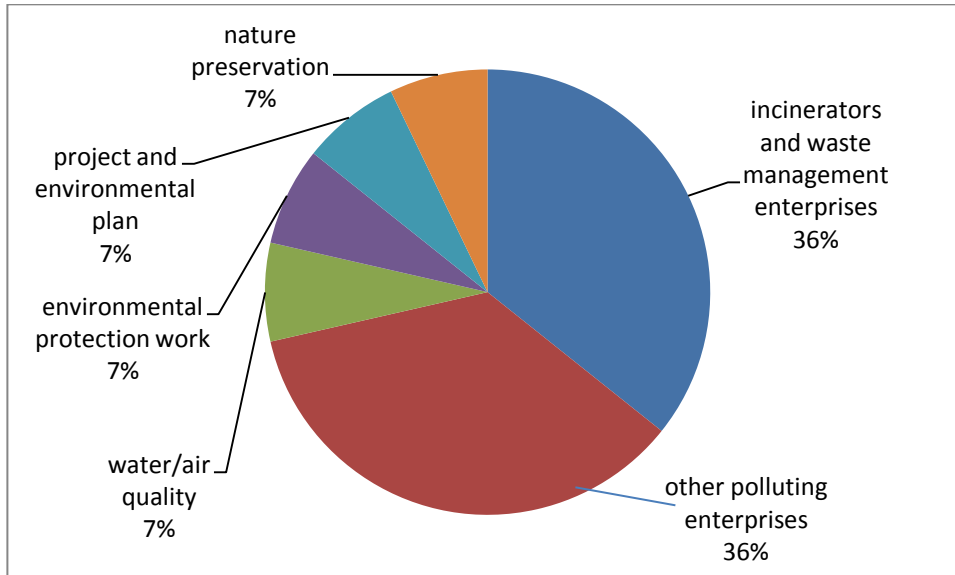
<sup>515</sup> Cases 1, 28.

<sup>516</sup> Cases 8, 24.

<sup>517</sup> Cases 2, 3.

<sup>518</sup> Cases 11, 20.

Chart 4-1 Types of information requested for disclosure



It is clear that information requested for disclosure in individual cases mostly relates to environmental information about specific enterprises. Among the top ranking types of information requests concerning incinerators and waste management and other polluting enterprises, most also relate to environmental pollution incidents or pollution-caused health problems. This shows that environmental problems that relate directly and closely to people's daily lives are the most related to these requests.

Among all the surveys, four concern lists of polluting enterprises,<sup>519</sup> two concern various types of information that are listed under the OEI Regulations as mandatory disclosure information,<sup>520</sup> and two concern general information of water or air quality.<sup>521</sup> Compared to individual requests, survey-based requests concern information that covers broader scope or general environmental situation, instead of specific enterprises.

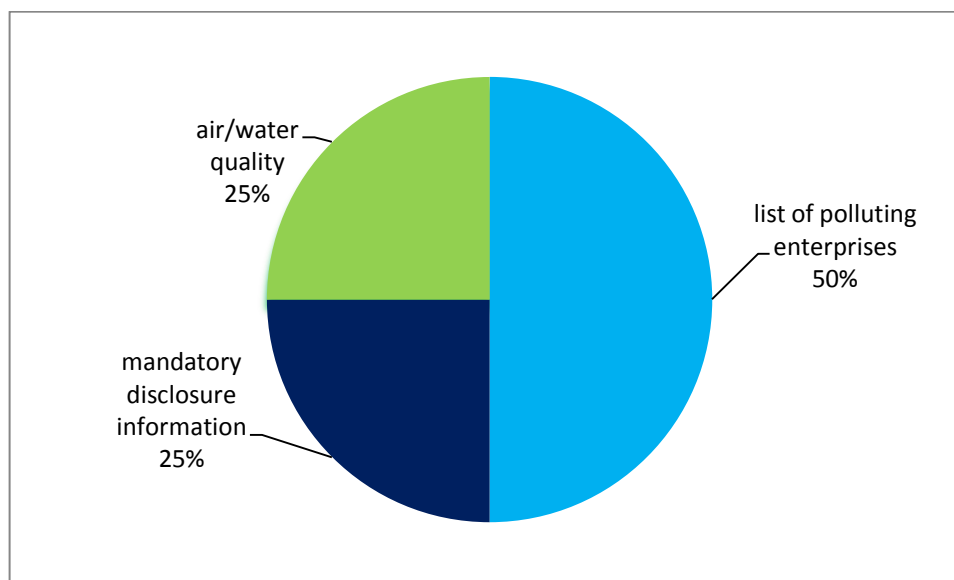
<sup>519</sup> Surveys 2, 3, 4, 7.

<sup>520</sup> Surveys 5, 8.

<sup>521</sup> Surveys 1, 6.



Chart 4-2 Information requested in surveys



It should also be pointed out that among all eight surveys, half<sup>522</sup> request the disclosure of information that is clearly stipulated under the OEI Measures as mandatory disclosure information. In other words, these types of information should be disclosed on the government agencies' own initiatives without any public disclosure requests. This has shown the cautiousness and the strategic choices of the organizations in conducting their surveys. Furthermore, as discussed in Chapter 3.1, even after public disclosure requests, a large majority of government agencies still refuse to disclose the information that belongs to the scope of mandatory disclosure.<sup>523</sup> Thus, it is more likely that it could only be more difficult for the public to obtain information that does not belong to the scope of mandatory disclosure through disclosure requests.

#### 4.1.2 Environmental Information Disclosure Requests by Pollution Victims

While the new legislation provides citizens and organizations with a new tool to request government agencies to disclose for public interest, it also provides a new channel for pollution victims to obtain information to support their environmental

<sup>522</sup> Surveys 2, 4, 5, 8.

<sup>523</sup> See, Chapter 3.

claims or to be aware of their surrounding environmental risks. In the eight documented environmental information disclosure requests for private interest, all requesters happen to be pollution victims as well.

Table 4-3 List of cases concerning information disclosure requests for private interest

Case No.	Information disclosure requester(s)	Summary of information requested for disclosure	Result of disclosure	Time
4	Huai'an residents	Huaigang Special Steel Co EIA report	No	2011
5	Huang Jianxin	Sewage plant EIA report	false doc	2009
9	Sun Bin	Neighboring telecommunications base approval information	Yes	2011
12	Xie Yong	Hai'an Incinerator approval and inspection information	No	2010-2012
13	Xu Taisheng	Bao Steel Plant approval and inspection record etc.	Yes	2008
14	Xu Yu et al.	Water quality inspection report relating to chemical plant pollution	No	2010
16	Yang Zi	Gao'antun Incinerator annual inspection statistics	No	2009
17	Zhang Changjian etc.	Houlong village dumping site approval info etc.	No	2008

Note: The case number corresponds with the case number documented by the author.

This shows that all individual requests directly concern pollution enterprises, ranging from heavy industry such as steel plants<sup>524</sup> and chemical plants,<sup>525</sup> radiation enterprises,<sup>526</sup> and waste-treatment enterprises.<sup>527</sup> Information of waste-treatment enterprises ranks the highest in private-interest related requests, partly reflecting the severity of environmental problems caused by China's rapidly growing sector of incinerators and the waste-management industry.

<sup>524</sup> Cases 4, 13.

<sup>525</sup> Case 14.

<sup>526</sup> Case 9.

<sup>527</sup> Cases 5, 12, 16, 17.

## 4.2 The Agents of Legal Mobilization: Citizen Actors, Environmental Organizations, and Other Entities

Among the 28 individual cases, 18 were submitted by individuals and 10 by organizations. It appears that both individuals and organizations are active in utilizing the new channels for their causes. While all eight requests concerning private interests were submitted by individuals, including both city residents and villagers, the situation concerning the 20 public-interest related requests is more complicated.

Among the 20 requests for public interest, 10 were submitted by individuals and 10 by entities. Among the 10 individual-submitted environmental information disclosure requests, four were submitted by lawyers,<sup>528</sup> three by an environmental activist (also a scholar on environmental history),<sup>529</sup> two by “netizens”,<sup>530</sup> and one by a resident of Hangzhou.<sup>531</sup> Lawyers rank the highest in requesting information disclosure for the public good, reflecting their capacity to utilize the new legal channel and their concern for environmental protection.

Among the entity-submitted cases, a large majority, nine out of 10, were by environmental organizations<sup>532</sup> and only Case 28 relates to an organization<sup>533</sup> whose main focus is not only environmental protection. Among the eight surveys of environmental information disclosures, four were by environmental organizations,<sup>534</sup> two were media-related surveys,<sup>535</sup> Survey 7 was by an international organization focusing on freedom of information and a legal aid centre, and Survey 8 is by a law firm. Clearly, environmental organizations have been the most active in requesting government agencies disclose environmental information.

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<sup>528</sup> Cases 2, 10, 15, 18.

<sup>529</sup> Cases 6, 7, 8.

<sup>530</sup> Cases 1, 11; Case 1 is launched by a person who works in media, but appears under the identity of a micro-blogger with account name as 奇异的恩典 (Amazing Grace) in most reports about his information disclosure request; Case 12 is initiated by a blogger who has a blog titled 流浪的天空 (Wandering Sky), through which the author located the corresponding case.

<sup>531</sup> Case 3.

<sup>532</sup> Cases 19-27.

<sup>533</sup> This organization is 天下公 (Justice for All). Established in 2011, Justice for All is a policy advocacy NGO based in Nanjing. Its main focuses include: issues of discrimination against people with disabilities, Hepatitis, and HIV/AIDS, food and medication safety standards etc. <http://www.tianxiagong.org>

<sup>534</sup> Surveys 1, 2, 3, 6.

<sup>535</sup> Surveys 4, 6.

Moreover, it appears that the IPE, Friends of Nature,<sup>536</sup> and Green Beagle<sup>537</sup> have taken a leading and dedicated role in conducting environmental information disclosure requests since the coming into effect of the new legislation. According to the collected statistics by the author, the members of Friends of Nature are among the first to request information disclosure. IPE, a young Beijing based environmental organization focusing on environmental information disclosure, has conducted annual surveys on environmental information disclosures in 113 cities in China since 2008. Green Beagle is involved in a total of four cases of information disclosure requests among the documented materials by the author.

International organizations have also been active in environmental information disclosure requests, such as Greenpeace, ARTICLE 19 and Natural Resources Defence Council (NRDC). Greenpeace is one of the international ENGOs that first started to carry out environmental information disclosure work after the OEI Measures came into effect in China.<sup>538</sup> It continued and resulted in the report about enterprise information disclosure in 2009.<sup>539</sup> ARTICLE 19 is an international organization headquartered in London, focusing on “defending freedom of expression and information”;<sup>540</sup> it conducted joint investigative research with CLAPV in 2010.<sup>541</sup> NRDC,<sup>542</sup> an environmental organization headquartered in New

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<sup>536</sup> Friends of Nature (自然之友) is the earliest and one of the most influential ENGOs in China. It was established in 1994 with approval from the Ministry of Civil Affairs. Since its creation it has been active in promoting environmental education, organizing green activities and conducting exchanges with foreign green NGOs. See Jiang Wandu 1996.

<sup>537</sup> Based in Beijing, Green Beagle (达尔问自然求知社) was established in April 2009. This organization’s Chinese name 达尔问 is partly after Charles Darwin (达尔文); its English name is derived from the HMS Beagle, the sloop-of-war on which the great naturalist Darwin was on board. (Geall 2013, 15-16) Green Beagle’s work focuses on three aspects of environmental protection: city environmental quality testing and researching, China’s environmental situation investigation, and environmental protection education. Its main initiator is Feng Yongfeng (冯永锋), a journalist of one of the largest state media, *Guangming Daily*. Feng has long been regarded as one of the most influential environmental journalists in China.

<sup>538</sup> *Greenpeace website*, 30 June 2008.

<sup>539</sup> Greenpeace 2009, report.

<sup>540</sup> ARTICLE 19 was founded in 1987 in London, the UK. Its mission is to promote freedom of expression and freedom of information, protected by international human rights law, such as Articles 19 of the *Universal Declaration of Human Rights*. <http://www.article19.org/index.php>.

<sup>541</sup> Survey 5.

<sup>542</sup> NRDC was founded in 1970 by a group of law students and attorneys. It has offices at present in New York, Washington, Chicago, Los Angeles, San Francisco and Beijing. The mission of NRDC is to “safeguard the Earth: its people, its plants and animals and the natural systems on which all life depends.” <http://www.nrdc.org/>

York, jointly developed the Pollution Information Transparency Index (PITI)<sup>543</sup> for environmental information disclosure assessment with IPE.

Lastly, besides environmental organizations, domestic media and law firms have also become part of the community requesting environmental information disclosures, reflecting the diversity of actors that have been working with this newly emerging mechanism of open government information. While the former has more capacity to report the results of their requests and arouse more public debate, the latter has professionals who are rich in legal knowledge and techniques in taking legal action. Both of these factors play important roles in pushing legal mobilization forward in China.

#### 4.2.1 Purposes of Environmental Information Disclosure Requests

As mentioned above, the general aim of information disclosure requests is either for environmental protection out of concern for public interest or for individual interests affected by environmental pollution. Besides these general purposes, disclosure request actions also relate to other purposes. The specific purposes of the information disclosure requests in the documented cases are rather multiple and diverse, and clearly they are not only about obtaining the information *per se*. They are submitted to push government agencies to enforce the new legislation, to evaluate the implementation of the new regulations, to impose pressure upon local governments, to obtain information for public participation such as requests relating to environmental pollution accidents or environmental projects, to obtain evidence for environmental litigation, to arouse public environmental awareness, or simply for personal interests of loving nature. Most of all, under most situations, these purposes are overlapping but do not exclude each other.

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<sup>543</sup> The PITI Index is a standard to assess the level of disclosure of pollution information by city government and city environmental protection agencies through a review of eight metrics, including: records of enterprise violations (28 points), results of “enforcement campaigns” against polluting facilities (8 points), clean production audit information (8 points), enterprise environmental performance ratings (8 points), disposition of verified petitions and complaints (18 points), environmental impact assessment (EIA) reports and project completion approvals (8 points), discharge fee data (4 points), response to public information disclosure requests (18 points). Each criterion has certain points and the full points are 100. The evaluation establishes a quantitative score for each city. The eighth item concerns environmental information disclosure upon public requests directly. (See, IPE & NRDC 2008, report, 10-11.) To understand the situation of the eighth item, NGO officials and volunteers submit disclosure requests to local EPBs directly for information disclosure, and then evaluate the performance of the local EPBs based on their replies.

Chinese organizations mostly tend to be cooperative with government agencies instead of directly challenging the authorities.<sup>544</sup> This also appears clearly with regard to environmental information disclosure requests. When a few Shanghai members of Friends of Nature first started to request information disclosures in China, they put their reasons as follows:

之所以要申请环境信息公开，……就是因为《政府信息公开条例》和《环境信息公开办法（试行）》在2008年5月1日实施了，公民有义务有责任配合实施该法规，依法向政府部门申请公开环境信息。

另外我们相信，环境信息公开不能解决任何环境问题，但环境问题的解决离不开充分的信息公开。

*The reason why we want to request environmental information disclosures ... is because the OGI Regulations and the OEI Measures (for trial implementation) came into effect as of 1 May 2008, citizens have a duty and responsibility to coordinate with the government for the implementation of the new laws and to request environmental information disclosure according to law. Second, we believe that environmental information disclosure cannot solve all environmental problems; however, solving environmental problems requires sufficient information disclosure.*<sup>545</sup>

Clearly, using the concept of citizens' responsibilities and coordination, pushing government agencies to enforce their own policy constitutes one purpose of Friends of Nature's information disclosure requests. Regardless of whether it is worded as "coordinate" or not, to request government agencies for information disclosure does constitute an action of citizenship, instead of being only passive subjects under the government.

To push the government to fulfil its obligations of environmental information also appears as an implied purpose of the IPE in conducting its annual survey. Although it is stated that the PITI survey is to "systematically evaluate the ... implementation for these regulations",<sup>546</sup> what IPE does indeed also pushes government agencies to fulfil their obligation to disclose information from all aspects. Since 2008 onward,

<sup>544</sup> Ho 2008b, 14; Ho 2001.

<sup>545</sup> *Friends of Nature website*, 22 April 2009.

<sup>546</sup> See, e.g., IPE & NRDC 2008 report, 2.

while summarizing the experiences and lessons of implementation, the reports made by IPE also give recommendations on how open environmental information can be improved. By doing this, clearly it has the purpose of pushing government agencies towards better performance.

A statement made by the Impact Law Firm represents well the trend of pushing government agencies to act according to law.

为掌握《政府信息公开条例》及《环境信息公开办法(试行)》和环保部办公厅“关于印发《2011年国家重点监控企业名单》的通知”的执行和落实情况；为督促和帮助相关部门加强政府信息公开工作、履行污染源监控工作；为了解我国相关立法与实践中的成就与不足、并提出相应建议，北京市义派律师事务所开展本次公益行动。

*In order to understand the implementation situation of the OGI Regulations, the OEI Measures and the Notice on 2011 Key State-Monitored Enterprises by the MEP; to push and help related government agencies to strengthen their information disclosure work and pollution sources monitoring; to know the achievements and weakness between the legislation and its practice, and make relevant proposals, Beijing Impact Law Firm launches this public interest campaign.<sup>547</sup>*

Moreover, to use the official channel to make the government fulfil its obligation and be more accountable is not only the aim of NGOs, but also of individuals. Yan Yiming, a lawyer based in Shanghai, regarded as China's "King of Torts" (诉讼之王),<sup>548</sup> is one of the earliest individuals to request an environmental information disclosure in China. In 2005, Yan began to pay attention to environmental problems caused by small-scale factories and mines in Shanxi Province. He found it difficult to bear the burden of proof since there was almost no way to analyse the polluted water. This made him confused and worried, until 2007, when the OGI Regulations and the OEI Measures were issued. He found that he could use the channel of environmental information disclosure. Noticing that the Huai River was highly polluted, and Henan and Anhui provinces, both located around the upper reaches of

<sup>547</sup> Impact Law Firm 2012, report, 5.

<sup>548</sup> Xu Linling 2009. It shall be pointed out that Yan in fact is not a lawyer doing only environmental lawsuits. His most famous rights defence cases are lawsuits relating to his representing small shareholders against public-listed corporations.

the river, blamed each other for causing the pollution, Yan thought of requesting the disclosure of the related information. In May 2008, almost as soon as the regulations came into effect, Yan submitted his requests towards the Henan EPD and Anhui EPD, asking for the disclosure of key polluting enterprises.<sup>549</sup> Yan wrote in his blog that:

本人申请政府信息公开，不是根本目的，根本目的是希望通过个人的行为能够唤醒公民参与的权利意识，更多的公众能参与到社会生活的各个方面，进而推动政府执政能力的提升，最终实现国家政治、经济、文化的稳定、健康发展。

*To request a government information disclosure is not my fundamental purpose. My purpose is to awake the consciousness of citizen participation, and make more people participate in all aspects of social life, to push the government to improve its governing capacity, and ultimately realize a stable and developing national politics, economy and culture.*<sup>550</sup>

Besides pushing the government to fulfil its obligation, the purposes of Yan Yiming's requests clearly extend to other aspects: raising public awareness of social and political participation. This also appears in Beijing citizen Yu Ping's requests for the disclosure of PM2.5 related information.

光骂没有用，得把现有能用的渠道和方法利用起来，督促政府做些事情。

*It is useless to merely criticize the government, [one should] make use of the available channels and methods, to push the government to take actions.*<sup>551</sup>

A second goal of requesting government environmental information is to create public pressure on local governments. In 2011, Green Beagle, a Beijing based environmental organization, submitted several information disclosure requests with regard to the local incinerator in Hai'an, Jiangsu Province, aiming to impose pressure upon local government<sup>552</sup> and to show support for Xie Yong's case.<sup>553</sup>

<sup>549</sup> Interview with lawyer 1, 6 May 2011.

<sup>550</sup> Yan Yiming blog, 23 February 2009.

<sup>551</sup> Case 1; *Zhongguo zhoukan*, 21 August 2012.

<sup>552</sup> Case 22.

<sup>553</sup> Case 12.



需要一个正面的交流的过程，不管结果如何，还是要把法律程序都走一下。当初做这件事情，我们还想敲开和他们交流的渠道，另外让他们知道，除了当地老百姓诉苦之外，也有外面的声音关注他们。

*We need to communicate with the government in a proper process. It does not matter what the result will be, we want to take a legal procedure. When we choose to do so, we want to knock the door open and start a conversation; additionally, we want them to know, besides the complaints of local people, there is also the voice of outsiders that concern them.*<sup>554</sup>

To discover more about environmental pollution incidents constitutes the third purpose of several information disclosure requests. Although this seems more related to the end result of obtaining the information, it shows that citizens and organizations do not want to stop at the stage of being informed but intend to know more through actively requesting related information. In 2011, 5,000 tons of chromic slag was disposed of on a hillside and later it was found that the same enterprise also disposed of tens of thousands tons of chromic slag along the Nanjiang River in Yunnan Province. This directly aroused the attention of Green Watershed, an environmental NGO that has long been interested in Green Credit, a policy that required banks to assess enterprises' pollution situations when allocating loans. The NGO thus submitted information disclosure requests with regard to the banks' regulations over the polluting enterprise.<sup>555</sup>

The information disclosure requests relating to PM2.5 disclosures, submitted by both Beijing netizen Yu Ping<sup>556</sup> and the journalist of *Southern Metropolis Daily*,<sup>557</sup> are also typical examples of requests stemming from public concern and public debate. They also reflect the purpose of furthering public participation in environmental issues. Both requests relate to the heated discussions about PM2.5 on Internet forums and microblogs in late 2011. The debate was originally caused by the disputed issue of air quality monitoring by the U.S. Embassy in Beijing. In October 2011, the U.S. Embassy published on Twitter, via the account @BeijingAir,

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<sup>554</sup> Interview with NGO officer, 29 May 2011.

<sup>555</sup> Case 27; *Zhongguo qingnian bao*, 17 February 2012.

<sup>556</sup> Case 1.

<sup>557</sup> Survey 6.

the data of air quality with regard to PM2.5. Twitter is blocked in China;<sup>558</sup> Pan Shiyi, a real estate tycoon who has more than 10 million followers on Sina Weibo (新浪微博), a twitter-like Chinese microblog, reposted the Embassy's tweet on Weibo.<sup>559</sup> At that time, China did not monitor PM2.5. Although according to the US Embassy's statistics, the air quality in Beijing was "extremely dangerous", the Beijing EPB stated that it was "slightly polluted". This sharp contrast angered netizens and aroused heated discussion and criticism towards the Beijing EPB. Citizen discussion did impose pressure upon the Chinese government. While denouncing the foreign embassy's publishing of air quality monitoring as interference in China's internal affairs and against international conventions and Chinese laws,<sup>560</sup> by December 2011, the MEP announced its plan with regard to PM2.5 inspection and information disclosure in China.<sup>561</sup> And the central government passed revised air quality standards which included an index for PM2.5, aiming to gradually establish the monitoring system of PM2.5 in major cities in China.<sup>562</sup> In 2013, the SC issued *Air Pollution Prevention Actions Plan*, and 74 cities including Beijing started to have real time PM2.5 monitoring according to new air quality standard. In February 2014, the MEP announced that another 87 cities will start to have PM2.5 real time monitoring.<sup>563</sup>

To facilitate public participation in environmental decision-making is one of the purposes of obtaining environmental information about projects. In 2011, the Beijing EPB published a notice concerning a new incinerator project that would be built in Sujiatuo, a town under the administration of the Haidian District in Beijing. Green Beagle conducted on-site investigations and found that many villagers in Sujiatuo did not know about the project. Questioning the accuracy of the content with regard to public participation in the project's EIA report, Green Beagle requested that the Beijing EPB disclose the chapter of public participation in the project's EIA report.<sup>564</sup> Yet it is not only environmental organizations that have shown their concern for environmental decision making, individuals have done

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<sup>558</sup> This does not mean that Twitter is completely inaccessible to people within China. Using VPN and other softwares, some can flip over the government blocking system-the great fire wall and use twitter. However this is nevertheless not easy, so most Chinese netizens do not use Twitter anyway.

<sup>559</sup> *Nandu zhoukan*, 15 November 2011.

<sup>560</sup> *Xinhua net*, 5 June 2012.

<sup>561</sup> *Jinghua shibao*, 22 December 2011.

<sup>562</sup> *China Daily*, 29 Feb 2012.

<sup>563</sup> *Xinhua net*, 12 Feb 2014.

<sup>564</sup> Case 21; *Fazhi ribao*, 15 June 2011.

likewise. In 2012, when the lawyer Ding Jinkun noticed that Hangzhou was going to construct a new project diverting water from Qiandao Lake to Hangzhou, he submitted his information disclosure requests to the Hangzhou Forest and Water Bureau (FWB). He asked the Hangzhou FWB to disclose the project proposal and project investigative report and related records.<sup>565</sup> Moreover, he also wrote in his blogs about the information disclosure request, as well as the impact on the surrounding nature of the new proposed water diversion plan.<sup>566</sup> To request related information constitutes the first step in participating in environmental decision making. Inevitably, an increasing concern over government environmental policies and environmental plans has been happening in China.

The fourth purpose of information disclosure requests is to obtain evidence to support other legal claims. For instance, in April 2011, Sun Bin, a resident in Changde, Hunan Province, requested that the Hunan EPD disclose its approval document for the establishment of a telecommunication base in his neighbouring apartment. His request constitutes part of his rights defending. In May 2011, he sued the telecommunications company, the housing company and the owner of the apartment for installing the base without informing other residents, and thus making them living in an environment of potential radiation pollution. Sun Bin asked for the removal of the base and also claimed for economic damages.<sup>567</sup> The same purpose was behind Xie Yong's environmental information disclosure request. Xie Yong's information disclosure requests relating to a local incinerator acted partly as a search for evidence to support his civil litigation against the local incinerator.<sup>568</sup>

Xie explained his persistence in fighting for his sick child:

*我们的目的一是给小孩拿到赔偿，提供生活来源；再就是刺激社会对环境污染的思考，对环境的关注。*

*Our purpose is to get compensation for the child to support his living, and also to make the society aware of environmental pollution and have more concern over environmental protection.*<sup>569</sup>

<sup>565</sup> Ding Jinkun, Qiandao Lake water diversion project information disclosure request letter, 4 May 2012.

<sup>566</sup> E.g., Ding Jinkun, Rebuttal on Hangzhou FWB not disclosing the water diversion information, 10 May 2012, Ding Jinkun blog.

<sup>567</sup> Case 9; *Hunan guangbo dianshi tai-fazhi zhoubao*, 28 Feb 2012.

<sup>568</sup> Case 12.

<sup>569</sup> Interview with pollution victim and information disclosure requester, 23 June 2012.

The fifth purpose of obtaining environmental information is simply for personal interests, of loving nature or a general concern for environmental protection. In 2011, a blogger based in Tianjin requested for the disclosure of maps of the wetland preservation area in Tianjin, since he loves lakes and wants to know more about wetland protection.<sup>570</sup> Mao Da, a scholar of environmental history, submitted three information disclosure requests<sup>571</sup> over his concern of environmental protection.

While citizens, organizations, and other entities have been actively utilizing the new legislation to request that government agencies disclose information, they have been imposing a demand upon government agencies; according to Zemans, active demand based on legal norms constitute actual legal mobilization,<sup>572</sup> an actual legal mobilization thus happens.<sup>573</sup> Inevitably, to obtain the information *per se* is not the single purpose of this legal mobilization. Instead, various and multiple purposes, out of environmental concern, raising public awareness, pushing government agencies to enforce their own policies and laws, and imposing pressure upon government agencies, are behind the actions. These purposes have clearly moved disclosure requests far beyond their original meaning of obtaining information. From another perspective, these purposes, probably even unknown to some requesters, have in fact turned them into, in Frances Zemans' words, "active, assertive participatory citizenry that is central to a democratic society".<sup>574</sup> Furthermore, these purposes have facilitated this group of assertive and participatory citizens to take various legal tactics.

#### 4.2.2 *From Legal Tactics to the Forming of a Supporting Structure*

While the purposes of requesting environmental information disclosures are multiple, the tactics taken are strategic. Moreover, during the processes, both individuals and entities have been increasingly gaining capacities in utilizing the law for their purposes.

The process of an individual requesting an environmental information disclosure has constituted a process of the accumulation of citizen consciousness of legal

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<sup>570</sup> Case 11.

<sup>571</sup> Cases 6, 7, 8.

<sup>572</sup> Zemans 1983, 701.

<sup>573</sup> Zemans 1983.

<sup>574</sup> *Ibid.*, 701.

knowledge and legal tactics. In China, when disputes rise, people tend to approach the government for settlement first through mediation or negotiations. The same happens with several cases in this study. In most of the above individual-submitted requests, people sought other channels—for instance, negotiation with governments and enterprises, or petitioning<sup>575</sup>—before they ultimately took up the legal weapon of an information disclosure request.

Sometimes, approaches taken before the legal channel are contentious. For instance, before the Houlong villagers used the channel of an information disclosure request,<sup>576</sup> they blocked the road to the waste dump site under construction; villagers were beaten, and one got seriously injured. In June 2008, when the OGI Regulations and the OEI Measures came into effect for one month, villagers requested that the local EPB disclose information concerning the dump site. Ironically, the local EPB only started to respond to the information disclosure request when villagers again blocked the road to the construction site.<sup>577</sup>

The tactic of approaching government offices for solutions was also adopted by Xie Yong before he took the incinerator to court.<sup>578</sup> Xie Yong contacted the government offices under Huji Town Government, Nantong City Government, and Jiangsu Provincial Government, trying to solve the issue through negotiation. He also submitted his petition to the State Petition Agency. Nevertheless, he did not get a solution from the government authorities at the early stage.<sup>579</sup> Similar strategies were used by Huang Jianxin and residents in Hongqiao village, where villagers have been suffering from the air and noise pollution created by a sewage plant,<sup>580</sup> and Xu Taisheng and his neighbouring residents fighting against pollution caused by Bao Steel in Baoshan district, Shanghai.<sup>581</sup>

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<sup>575</sup> The petitioning system is also called 信访制度 (literally translation is “letters and visits”). Under this system, each government department shall have a letters and visits office that accept public’s complaints and solve their problems. The establishment of this system is for the central government to better control and supervise the local governments. But it becomes a mechanism that people use to ask for redress of their problems that cannot be solved locally or grievances caused by corrupted officials. When people fail to get their grievances redressed by local “letters and visits” offices, they sometimes take their complaints to Beijing and petition to the corresponding higher level government departments. Local government officials try to stop these people going to the higher level government departments by all means (截防), including putting petitioners into black jails. More about petitioning in China, see, Pils 2011.

<sup>576</sup> Case 17.

<sup>577</sup> Zhang Changjian 2009.

<sup>578</sup> For more detailed study of this case, please see section 3.2.2.

<sup>579</sup> Case 12.

<sup>580</sup> Case 5.

<sup>581</sup> Case 13.

The same experiences were encountered by Yang Zi and residents affected by the Gao'antun incinerator.<sup>582</sup> Before Yang Zi requested that the Beijing EPB disclose information about the incinerator, thousands of residents went on demonstrations right before the Beijing Olympics started in 2008, resulting in the detention of a few organizers.

According to Xie Yong, by negotiating with local government, he wanted to give some “face” (面子) to, literally meaning not to embarrass the local government who regarded the incinerator as a model project. This also shows that at the very beginning he had hope in, and was dependant on, the government to solve the problem for his family. After failing to get a meaningful response from the local government, he then started to use the law as a weapon to request government information. This clearly transformed him from being a passive subject seeking solutions granted by the government into an active citizen actor, using the law to safeguard his rights while at the same time challenging the local government.

In today's China, petitioning is likely to be restrained and even cracked down for the sake of “maintaining stability” (维稳), emphasized by the Chinese government, and sometimes even bringing danger to the petitioners; negotiation depends more on the government's willingness for a settlement and is also likely to be of no avail if no external pressure from the media or public opinion is imposed. Although a request for environmental information disclosure cannot really solve the problems directly, compared to petitioning and negotiating with government offices, it provides a new channel for citizens to demand their rights based on the law. Moreover, it practically enables citizens to seek more information to act as supporting evidence for their legal claims.

The process of utilizing the channel of an information disclosure request has also constituted a process of learning and experience accumulating. Some citizens have self-studied Chinese law in order to assert their legal claims and have changed themselves from environmental victims to quasi-legal experts. Xu Taisheng is an ordinary Shanghai resident. While getting involved into the rights defending for their residential area against pollution caused by Bao Steel Corporation, he was provided legal aid by CLAPV. During his rights-defense process, he self-studied law and drafted legal complaints. He also helped other pollution victims in Shanghai to communicate with Shanghai environmental protection agencies for solutions. Some information disclosure requesters, for instance Yang Zi and Xie

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<sup>582</sup> Case 16.

Yong, were invited by ENGOs to give presentations and share their experiences with other people in seminars and conferences. It is clear that a growth of citizenship has been accompanying the development of environmental information disclosure requests.

With regard to entities, it is also a process of experimenting, learning, practicing, experience-gaining and capacity building. This can be seen with Friends of Nature's requesting of environmental information disclosures. When the OGI Regulations and the OEI Measures came into effect in May 2008, a few members of Friends of Nature in Shanghai thought it was a good opportunity to participate in environmental matters and proposed that they could use the new legislation to request that government agencies disclose environmental information. However, some members expressed their opposition, fearing it might be a challenge to the authority and would affect the development of Friends of Nature.<sup>583</sup>

Facing this situation, four members in Shanghai decided to launch a project "shangshanruoshui" (上善若水, a Chinese idiom, literally meaning "the highest virtue is like water") in the name of individuals but not members of Friends of Nature, and to request that the Shanghai EPBs disclose water-related environmental information.<sup>584</sup>

*做这件事情也没有什么策略，但不知道政府部门对此有什么反应，为了不使政府部门对自然之友有什么看法，我们决定用“行为艺术”的形式，以公民个人的身份提出申请。*

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*从2008年7月开始，上海部分会员分四组（上、善、若、水）分别向市环保局和区环保局申请公开环境信息，全过程记录在<http://shanghaiwater.blogbus.com/>上。*

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*对于我们来说，是打破了和政府部门打交道的神秘感和恐惧感。虽然说是依法申请公开，可是一开始，很多人都很恐惧，总觉得这是和政府作对，会不会被打击报复，并且还要用“行为艺术”的幌子来遮掩，感觉是偷偷摸摸地做事情，也不敢公开自然之友会员的身份。后来发现完全不是这样的，没有受打击报复的事情，*

<sup>583</sup> Interview with NGO volunteer, 7 May 2011.

<sup>584</sup> Friends of Nature website, 22 April 2009.

可以大大方方地做，光明正大地履行公民义务，也可以声明自然之友会员身份了。

*We did not really have strategies for launching the project of information disclosure request. However, without knowing how government agencies would react to it, in order not to cause them to hold [bad] opinion towards Friends of Nature, we decided to use the form of “performance art” and submit the requests as citizens.*

*Since July 2008, we divided some members in Shanghai into four categories of shang, shan, ruo, shui, and started our requests towards city and district EPBs in Shanghai. We also record our requests and results at <http://shanghaiwater.blogbus.com/>.*

*For us, [information disclosure request] breaks the mystery and fear of dealing with government agencies. Although it is request according to law, at the very beginning, many felt worried and thought it was acting against the government and might cause retaliation; we hid the action under the cover of “performance art” and felt it was something sneaky; we also did not dare to publicize our identity of members of Friends of Nature. Later we realized that it should not be like this. There was no retaliation. We can fulfil a citizen’s duty without hiding anything and declare loudly that we are members of the Friends of Nature.<sup>585</sup>*

It is interesting to note that contrary to the initiators saying that no strategy was taken, the pioneer requesters of Friends of Nature applied “performance art” and formed themselves under the Chinese idiom “*shangshan ruoshui*”, consisting of four characters, representing four persons. When it became clear that the legal action of requesting information disclosure was accepted by government agencies, they started to make known the identity of members of the environmental organization. The process has shown a trajectory of requesting government agencies to disclose environmental information: from hesitating to taking legal action through performance art, to the final explicit and direct interaction with government agencies.

Most of all, the experience of the members of Friends of Nature also shows that a transition has been happening: environmental information disclosure requests have

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<sup>585</sup> Friends of Nature website, 22 April 2009.



changed citizens from being fearful to being confident in directly interacting with government agencies. Today, Friends of Nature is one of the leading ENGOs in requesting that government agencies disclose environmental information in China. They have in-house lawyers specializing in providing legal consultation and professional work for information disclosure requests. They have also extended their concern to environmental information directly relating to people's living environment and natural protection.<sup>586</sup> Moreover, failing to get the information requested, Friends of Nature has also applied for administrative reconsideration to China's highest government administrative authority—the SC.<sup>587</sup>

Clearly, from hesitating to submit information disclosure requests by some members to directly challenging the legality of the normative documents through administrative reconsideration before the highest executive power, the attitude of Friends of Nature with regard to environmental information disclosure has changed sharply, showing its increasing willingness, capacity and confidence to use the law to interact with the Chinese government.

On the other hand, the interactions between environmental organizations and government agencies have made the latter change as well. Moreover, the changes on the government side, from the other perspective, provide more opportunities for environmental organizations and citizens.

When members of Friends of Nature first went to the Shanghai EPB with an information disclosure request, they were mistakenly regarded as “petitioners” (上访人员),<sup>588</sup> however, later they started to cooperate with each other. When they first went to the Jiading District EPB, nobody in the EPB knew about environmental information disclosure, but later, the Jiading EPB did disclose all the information as requested.<sup>589</sup>

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<sup>586</sup> Case 20. In fact, Friends of Nature also took part in the case of Xie Yong. The lawyer of Friends of Nature went to Hai'an for further on-site investigation about the Huji incinerator.

<sup>587</sup> *Friends of Nature blog*, 30 March 2011; In the administrative reconsideration, Friends of Nature requested the SC to withdraw the MoA's reply to Friends of Nature refusing to disclose the information and order MoA to make new replies. It also asked the SC to review the legality of the normative documents issued by the General Office of the SC on 12 January 2010, *Opinion on Doing a Good Job of Disclosing Government Information on Request*. It particularly requested for the review of the opinion with regard to its explanation that internal management information made or obtained by administrative agencies during their day-to-day work or in-process information under discussion, research or examination in general is not government information that should be disclosed as referred to in the Regulations.

<sup>588</sup> *Friends of Nature website*, 22 April 2009.

<sup>589</sup> *Ibid.*

It is argued here that the attitude of government agencies plays an important role in encouraging more public requests for environmental information disclosures; a positive attitude by the government agencies towards public requests can make people feel that there is no need to fear challenging the government. Nevertheless, it is more important to understand that this changing of attitude is in fact facilitated by the public, but not delivered automatically by the government agencies. It is clear that the core argument in the approach to opportunity structures is that the opportunity, either in its constraints, possibilities or threats, matters in collective actions.<sup>590</sup> However, it must also be emphasized that public action can cause the opportunity structure to change towards providing more possibilities. Accordingly, the positive responsiveness of government agencies will thus encourage more citizens to take actions. This development could be gradual and slow; nonetheless, in the field of environmental information disclosure, a cycle of requesting and responding, more requesting and more responding has been happening in China. And more importantly, this cycle is evolving around utilizing legal rules and legal tactics, making it difficult for the government to directly reject this new type of public participation.

In the cases documented by the author, information disclosure requesters, whether individuals or entities, almost always clearly make their requests based on law. As was discussed in Chapter 3, when Xie Yong requested an information disclosure he always clearly cited his legal basis, based on the laws and regulations.<sup>591</sup> Other individual requesters do likewise, from ordinary citizens to professional lawyers. In one of the lawyer Yan Yiming's information disclosure requests, he stated as follows:

*依据《水污染防治法》第23条规定，重点排污单位应当安装水污染物排放自动监测设备，与环境保护主管部门的监控设备联网。贵局作为环境主管部门有义务对重点排污企业排污状况进行监测，并采取相应措施，申请人请求贵局公开监测数据及整治情况。*

*根据《政府信息公开条例》第13条、第20条及相关规定，申请人有权就上述申请公开事项向贵局申请获取，故申请人依法提出申请，请求贵局依法以书面方式提供上述申请公开事项。*

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<sup>590</sup> Vanhala 2011a, 10.

<sup>591</sup> See, Chapter 3, at 3.2.2.

*According to Article 23 of the Prevention and Control of Water Pollution Law, key polluting entities shall have water pollutant emission monitoring equipment that connects with the environmental protection government agency's monitoring system. As the agency in charge of environmental protection, your bureau is under the obligation to monitor the polluting situation of key polluting enterprises and take corresponding measures. The requester asks for the disclosure of the inspection statistics and measures for pollution prevention and treatment.*

*Based on Article 13, Article 20 and related rules of the Open Government Information Regulations, the requester has the right to request your agency to disclose the above items of information. I therefore submit my application to your agency to disclose the above information in written form.<sup>592</sup>*

Although it is not required by law, clear legal basis has always been referred to by ENGOS—from Greenpeace and IPE, to Friends of Nature and Green Beagle—as well as other entities when submitting environmental information disclosure requests, to make their requests more authoritative.

Since late 2011, Wuhu Ecology Centre in Wuhu City Anhui Province has requested provincial-level and municipality-level environmental protection agencies to disclose information about the enterprises that emit dioxin. Volunteers at Wuhu Ecology Centre made their requests based on the OEI Measures as well as the *Guidance Opinion on Strengthening the Work of Preventing Dioxin Pollution*. The guidance stated that:

*by the end of each year, all provincial level EPDs/EPBs shall disclose the names of dioxin emission key enterprises that shall undergo compulsory clean production inspection.<sup>593</sup>*

In 2012, the Beijing-based Impact Law Firm conducted a survey of environmental information disclosure by requesting that 80 city EPBs disclose eight types of information. The requested information included pollutant emissions, lists of polluting enterprises, lists of polluting enterprises that had received an

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<sup>592</sup> Yan Yiming blog, 20 November 2009.

<sup>593</sup> MEP et al., *Guidance Opinion on Strengthening the Work of Preventing Dioxin Pollution*, Huanfa[2010]No.123, 19 October 2010, Article 3(7).

administrative penalty, and enterprises that voluntarily disclosed their pollutant emissions. The types of information were chosen out of the 17 types of information that is required to be disclosed voluntarily under Article 11 of the OEI Measures.<sup>594</sup>

Not only national laws and regulations are used as the basis for environmental information disclosures, China's international obligation was also questioned by Green Beagle. In 2001, China signed the *Stockholm Convention on Persistent Organic Pollutants* (POPs). According to the treaty:

*Each Party shall report to the Conference of the Parties on the measures it has taken to implement the provisions of this Convention and on the effectiveness of such measures in meeting the objectives of the Convention.*

*Each Party shall provide to the Secretariat: (a) Statistical data on its total quantities of production, import and export of each of the chemicals listed in Annex A and Annex B or a reasonable estimate of such data.*<sup>595</sup>

PCBs are mixtures of some chemical substances and belong to POPs. In its *2010 Annual Report on the State of Environment*, the MEP stated that it completed an investigation with regard to PCBs-containing electrical equipment and wastes in eight key provinces.<sup>596</sup> In 2012, Green Beagle requested that the MEP disclose this investigation report based on the Stockholm Treaty.<sup>597</sup>

Aiming for multiple outcomes and by taking legal tactics, citizens, environmental organizations and other entities have been launching a legal mobilization of environmental information disclosure requests in China. Although mainly this legal mobilization appears to be sporadic and contingent, it should nevertheless be regarded as completely separate and only related to the idea of individual action. Similar to the SULNAM activities narrated by Kate Zhou,<sup>598</sup> cumulatively, these actions can indeed play a more powerful role. Together, when more act in similar measure, they have been formed an individualized collective action<sup>599</sup> of environmental information disclosure request in China. Moreover, a supporting

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<sup>594</sup> Impact Law Firm 2012 report.

<sup>595</sup> *Stockholm Convention on Persistent Organic Pollutants*, Article 15.

<sup>596</sup> MEP, *2010 China Annual Report on the State of Environment*, 29 May 2011, 79.

<sup>597</sup> Case 23; See also *Zhongguo kexuebao*, 23 April 2012.

<sup>598</sup> Zhou 2009.

<sup>599</sup> van Deth & Maloney 2013.

network has also started to emerge, linking NGOs, lawyers, scholars, journalists and citizens through a common concern over environmental information disclosure.

This professional supporting structure can be seen in several cases. While cooperating with the international organization ARTICLE 19 in reporting environmental information disclosure in China, CLAPV, affiliated with the Chinese University of Political Science and Law, provided direct legal assistance for four of the seven individuals' information disclosure requests that resulted in administrative lawsuits.<sup>600</sup> Furthermore, while the Impact Law Firm was conducting its survey covering 80 information disclosure requests, its lawyers also acted as legal representatives for both Green Beagle<sup>601</sup> and Friends of Nature<sup>602</sup> in their information disclosure requests.

An environmental community focusing on environmental information disclosure has also started to emerge. As incinerators and waste management has become a controversial issue in China,<sup>603</sup> both ENGOs and individuals have started to request information disclosure about this aspect, including Mao Da, as an environmental history scholar, Xie Yong and Yang Zi as ordinary citizens, Friends of Nature and Green Beagle, based in Beijing, and Wuhu Ecology Centre in Anhui Province. Moreover, by attending meetings and seminars, citizens, lawyers, professors and ENGOs have worked together in exchanging experiences as well as making their voice stronger and more widely heard.

In April 2012, Friends of Nature organized a seminar in Beijing, particularly focusing on the three-year implementation of the OGI Measures. The seminar attracted participants from all walks of life, from law professors, lawyers, NGO officials and environmental activists to journalists. In the seminar, people exchanged their experiences of seeking environmental information through disclosure requests, and discussed the problems and obstacles they encountered. In early 2012, the Impact Law Firm conducted a project, requesting EPBs to disclose information. A report based on Impact Law Firm's experience was also compiled and sent to interested parties, and a related seminar was held. These activities generally helped more people to understand the OGI Measures, and thus become capable of using the law to also request government information disclosures themselves.

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<sup>600</sup> Cases 5, 12, 13, 14. Please see table 5-1 at Chapter 5.1.

<sup>601</sup> Case 23.

<sup>602</sup> Case 20.

<sup>603</sup> See, e.g., Johnson 2013.

Another important source of support comes from the media. First, there have been quite a few active journalists who have directly got themselves involved in environmental protection activities.<sup>604</sup> The founders of two of the most active ENGOs in open environmental information, IPE and Green Beagle, are both journalists.<sup>605</sup> It is also important to note that many Chinese journalists are pro environmental protection.<sup>606</sup> This makes cases related to environmental protection more likely to be reported.<sup>607</sup> Moreover, some journalists directly participated in the process of requesting government agencies to disclose environmental information. Wang Xing, a senior journalist of *Southern Metropolis Daily* (南方都市报), wrote his report on PM2.5 information disclosure based on his own experience of submitting the requests under his own name.<sup>608</sup> Among the other surveys, one was also conducted by the *Southern Weekend* (南方周末),<sup>609</sup> one leading open media in China.

Lastly, it must be emphasized that the Internet has been playing an unprecedented role in shaping the supporting structure and forming a larger community that has been pushing forward environmental information disclosure. While all owning official websites, and some also with blogs, almost all ENGOs use microblogs to exchange information with each other, and also to inform and educate a wider online audience. As of 12 November 2012, Greenpeace had 85,366 followers on Sina weibo, Friends of Nature had 34,020 followers, Ma Jun, director of IPE, had 21,000 followers, Feng Yongfeng, the founder of Green Beagle had 31,706 followers. Additionally, they also have individual accounts updated by other staff members who have hundreds to tens of thousands followers, for example the account of Li Bo,

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<sup>604</sup> For study on media and civil society in China, see, Svensson 2012.

<sup>605</sup> Ma Jun, used to be a media journalist, he is now the director of IPE. Feng Yongfeng, the founder of Green Beagle, still acts as a journalist for *Guangming Daily*.

<sup>606</sup> A very active environmental NGO, Green Earth Volunteers (绿家园), co-founded by journalist Wang Yongchen in 1996, organized monthly Green Journalists Salon (绿色记者沙龙) in Beijing. The salon is open to the public. It provides a platform for journalists and environmental activists to discuss environmental issues since 2007. The founder of Green Earth Volunteers, Wang Yongchen is a journalist of the China National Radio; she is chosen as one of the 32 Heroes of the Environment by Time in 2008. Wang is also one of the main actors involved in the campaign to oppose the building of 13 dams along the Nu River in China. See *Time*, 24 September 2008.

<sup>607</sup> This nevertheless does not mean that all environmental cases will be reported. Censorship exists with reporting about large-scale environmental demonstrations and protests. For instance, the tens of thousands villagers demonstrated against the incinerator in Huangtutang, Nantong, Jiangsu Province in spring 2011 in fact can not be found in official media.

<sup>608</sup> Survey 6.

<sup>609</sup> Survey 4.

the director of Friends of Nature, has 38,204 followers. In fact, one of the first information disclosure requests launched by Friends of Nature's Shanghai members was initiated through the Internet. When a few members of Friends of Nature wanted to try the new OGI mechanism in Shanghai, they first exchanged their thoughts via email discussions, and later also established a blog recording their requests, processes and the results of their information disclosure requests.<sup>610</sup>

The Internet has also been utilized by individual requesters and lawyers. The four lawyers who submitted information disclosure requests for the public interest all have microblog accounts and three of them also have blogs.<sup>611</sup> When netizen Yu Ping requested that the Beijing EPB disclose PM2.5 information, he updated his microblog<sup>612</sup> and posted his requests in his blog.<sup>613</sup> Yu Ping had 78,925 followers on the NetEase microblog (网易微博).<sup>614</sup> His blog post titled "Beijing EPB Refused to Disclose PM2.5 Upon My Request, I submitted Administration Reconsideration to MEP" got 13 recommendations, seven reposts, 8,879 readings and 50 comments.<sup>615</sup> Moreover, he was also invited to one NetEase online discussion where netizens were invited to ask him questions with regard to information disclosure requests. In total, 64 questions were posted and answered during the online interaction. He received support from many of the participants for requesting the PM2.5 information. For instance, one netizen commented:

支持你。让大众都知道自己生活在一个什么样的环境里。这些数据应当公布出来，让市民做好适当的防护措施。这是环保局的责任。不能以研究为名，而对广大生活在其中的老百姓不负责。对环保局的监督，每一个民众都拥有的。

*I support you. The public should be made aware of the environment they live in. To disclose the data can help the public to take appropriate safety measures. This is the duty of the EPB who shall not*

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<sup>610</sup> Survey 1; Interview with lawyer 2, 6 May 2011; See, also Friends of Nature's water information project blog, <http://shanghaiwater.blogbus.com/>

<sup>611</sup> This online research was completed by 12 November 2012.

<sup>612</sup> In news media about Yu Ping's requests, he is mostly mentioned as 奇异的恩典 (Amazing Grace), which is the ID of his NetEase microblog (网易微博) account.

<sup>613</sup> *Yu Ping blog*, 9 December 2011.

<sup>614</sup> Data collected dated 24 October 2012.

<sup>615</sup> Data collected dated 27 November 2012.

*use research as an excuse and be irresponsible for the public. Everyone should have the right to monitor the EPB.*<sup>616</sup>

In another case where newly-weds sued the Hunan provincial-level EPD for not disclosing the information about the telecommunications base which was installed next door to them,<sup>617</sup> their representative lawyer, Lei Zhifeng, an environmental protection volunteer particularly focusing on radiation pollution, posted the case, relevant laws and regulations, his administrative reconsideration application and government reply letters on his blog.<sup>618</sup>

Guobin Yang argues that in a restrictive political environment, the Internet “enables voluntary environmental activity with minimal financial resources” and it “plays a crucial role in providing environmental groups a presence and creating public visibility”.<sup>619</sup> Inevitably, the Internet has made environmental information disclosure requests not only visible, but also cost effective in raising public awareness and garnering public debate and support. Moreover, the development of microblog has also enabled information that is likely to be censored by the official media finds an alternative to be disseminated.<sup>620</sup> It also overcomes the political constraints of strictly controlling collective activism, and helps to form a network that appears unorganized. Furthermore, the development of Internet technology from forum and mailing list to blog and microblog have changed China’s green public sphere from being a “deliberative enclaves” that only include activists, intellectuals, students, and other like-minded urbanites<sup>621</sup> to a platform for a broader audience.

Although these legal tactics have not in reality made all government agencies disclose the information requested, as discussed in Chapter 3, they have imposed a pressure on government agencies to adjust their attitudes towards the public and respond with more legal reasoning.

This situation is summarized well by Wang Qiuxia, a project officer of Green Beagle, as follows:

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<sup>616</sup> NetEase online discussion dated 6 December 2011.

<sup>617</sup> Case 9.

<sup>618</sup> *Lei Zhifeng blog*, 25 May 2012.

<sup>619</sup> Yang 2003, 91.

<sup>620</sup> Government censorship applies to microblogs as well. However due to the sporadic and scattered information that can be shared and reshared on microblogs at a fast pace, comparatively it is difficult for the government to censor it as effectively as it does with the traditional media of newspapers, or official state media website.

<sup>621</sup> Sima 2011, 492.



最明显的进步：越来越多的人去做这件事情，尤其是有一些 NGO 把这个作为日常工作，一个是去获取信息，另一个是评估或者作出建议；公众意识提高，知道自己有权利去申请信息，给政府和企业压力，不会跟以前一样对公众的请求不管不问，应当根据相应的法律，需要对信息申请作出相应答复。

*It is clear that more and more people have started to invoke the law to access government information, including some NGOs taking this as their routine job, either for the purpose of obtaining information, to assess government performance or to make proposals. While environmental awareness has been raised, the public knows that they have the right to request information disclosure, and to impose pressure upon the government and enterprises. [Government agencies] shall not simply ignore public requests as before; instead [they] should make an appropriate reply with regard to information disclosure requests according to the law.<sup>622</sup>*

### 4.3 Effect of Environmental Information Disclosure Requests

According to Zemans, a dependence relationship exists between law enforcement and how citizens use the law; citizens although acting largely in their own interest, in an aggregation can strongly influence the implementation of public policy.<sup>623</sup> Although there is the happening of individualized collective activism with regard to environmental information disclosure requests in China that more and more people start to do it, it suggests that this aggregation has not been forming in China at present due to the fact that most people still have not got used to challenging government authorities. Generally, Chinese citizens and environmental organizations are mostly reactive, rather than proactive, in taking action. In the words of a Chinese lawyer:

心理障碍，挑战政府，和政府对着干... 这个申请是法定的权利，并且还没看到谁去申请被抓起来的。这种担忧其实没有必要，但

<sup>622</sup> Interview with NGO officer, 9 June 2012.

<sup>623</sup> Zemans 1983, 690.

是在习惯观念上，认为挑战政府是有风险的。很多人不太了解法律的，会有一个心理上的惯性吧。

*[There is] a psychological barrier, that to request an information disclosure is to challenge the government and act against the government... This request is a legal right and we did not see anyone detained for an information disclosure request. There is no need to worry about it. However, it has been an old habit to think that to challenge the government is risky. Many people do not really understand the law, thus this customary concept exists.*<sup>624</sup>

Nevertheless, along with increasing utilization of the new channel to request that government agencies disclose information, visible changes have been happening in both the social and political system. First, a legal channel has been established for citizens and entities to request information disclosure and more importantly, this channel has enabled Chinese citizens and entities to participate in environmental matters and “communicate with the government in a proper process”.<sup>625</sup>

Second, upon disclosure requests, government agencies have started to change their attitude towards the public and an interaction between the social-legal system and the political-legal structure occurs. It appears that although the regulations were issued from top to bottom, their implementation is mostly from bottom up, and many government agencies have begun to be aware of environmental information disclosure when encountering public information disclosure requests.

Thirdly, our cases have also shown that environmental information disclosure can also result in specific policy changes. Undoubtedly, the pressure imposed by public opinion and environmental information disclosure requests has made the Chinese government start to monitor PM2.5 as one standard of air quality. Thus, it can be predicted that if more requests for environmental information disclosures are made, more pressure will be imposed upon government agencies, and more changes will be created as a result.

The lawyer Zhang Tao, who requested the Ministry of Ocean to disclose the information concerning a major incident of oil-leak in 2011, says:

*有的申请和建议可能短时间内起了作用，有的申请和建议可能暂时没起作用，但不能因为暂时没起作用就否定先前所做的努力。*

<sup>624</sup> Interview with lawyer 2, 6 May 2011.

<sup>625</sup> Interview with NGO officer, 29 May 2011.

我认为公众面对不平之事，只要采用适当的途径、适当的技巧、适当的尺度就一定能起到作用。这就好比历史剧中经常出现的攻城门一幕，攻城的人拿粗壮的圆木用力撞击，门纹丝不动，但随着撞击的次数逐渐增多，虽然门还没打开，但从微观物理上来讲，它已经在慢慢变化了，你不能说这种变化对攻下最后城门没有作用，很多事情的作用都需要靠时间和事实来证明。

*Some requests and suggestions may make a difference within a short time, others may not. However, the effort shall not be negated because of this. I believe that when injustice happens, as long as the public take appropriate means, appropriate techniques, and appropriate consideration, they will make difference. This can be regarded as the scene of attacking a city gate in a historical drama. Attackers use a strong log to strike hard on the city gate, the gate remains still; however, with more strikes going on, though the gate is still not opened, physically it is already gradually changing. You shall not say that this change does not make any difference to the ultimate conquest of the city gate; the impact of many issues needs to be proved with time and events.*<sup>626</sup>

#### 4.4 Concluding Remarks

The events in the field of environmental information disclosure have shown that the changes in the legal system have shaped and disseminated a new concept of access to government information in Chinese society. This has changed not only the individuals and entities in the social field, but has also affected the policy field of environmental administration and environmental decision making. In spite of the fact that it is still not easy for the public to obtain environmental information through disclosure requests, legal mobilization in the field has nevertheless strengthened the public's environmental awareness, made government agencies act more responsibly, and helped to nurture social and political change. Moreover, during this process, empowered by law, the public has been gaining more capacities to interact with government agencies. This has successfully made citizens' requests

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<sup>626</sup> *Xin fazhibao*, 12 August 2010; See also Zhangtao blog, 12 August 2012.

for information disclosure beyond their end goal of obtaining the information *per se*; instead, the legal mobilization of environmental information disclosure requests turns the requesters into “both sites and agents of political change”.<sup>627</sup> This has made the action of environmental information disclosure requesting more significant and thus deserves careful scrutiny and better understanding.

Besides the interaction between the public and the government agencies, environmental information disclosure requesting has also lead to interactions between the public and the judicial system. If citizens and organizations fail to get information disclosed through their requests, they can apply for administrative reconsideration to a competent higher-level government agency or they can bring an administrative lawsuit before the Chinese court. Focusing on administrative litigation, the next chapter aims to find out why citizens and entities take cases to court and what changes such administrative litigation has brought to the legal system in China.

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<sup>627</sup> Yang 2005.

## 5 ADDRESSING FAILURES OF ENVIRONMENTAL INFORMATION DISCLOSURE THROUGH ADMINISTRATIVE LAWSUITS

In the previous chapter, legal mobilization in open environmental information is generally reflected in the interactions between the public and government agencies. Despite the obstacles and impediments to obtaining information through disclosure requests, individuals and entities have been actively using the new channel of information disclosure for various purposes and with different tactics, based on law. This has been forcing government agencies to take open government information more seriously and has also raised more public consciousness on environmental issues.

This chapter focuses on the narrowest sense of legal mobilization—“high-profile litigation efforts” for social change.<sup>628</sup> Specifically, how has administrative litigation been developing in redressing failures of access to environmental information in China? Instead of emphasizing the end result of winning or losing the case, I argue that it is the process of administrative litigation itself that matters. To put it another way, regardless of whether the plaintiff wins the case or not, the process of taking the legal action plays its role in creating changes in social, legal and political aspects. The process of litigation has been forming a “reversed pressure” (倒逼), or a repercussion, on government agencies to take information disclosure seriously.

This chapter first gives a general review of the administrative lawsuits concerning environmental information disclosures, the results of these lawsuits, and the composition of the plaintiffs. Second, it discusses the actors, including plaintiffs and lawyers, their aims and tactics for taking the legal procedure of administrative litigation. Third, it further analyses what changes administrative lawsuits have brought about. Lastly, it concludes that although visible progress has occurred along with the development of administrative litigation related to environmental

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<sup>628</sup> Vanhala 2011b.

information disclosure, the constraints of the legal system have impeded Chinese courts in being a strong pillar in pushing forward open environmental information through adjudicating administrative cases.

## 5.1 An Overview of Environmental Information Disclosure Related Administrative Litigation

Administrative litigation is not the only way to redress a failure of environmental information disclosure upon request. Generally, there are three ways to redress failures of access to environmental information: to report to a higher-level administrative agency (举报), administrative reconsideration (行政复议) and administrative litigation (行政诉讼). Specifically, legal persons and other organizations have the right to report or inform<sup>629</sup> a superior administrative organ (行政机关), supervisory organ (监察机关) or the competent government department (主管部门) if they consider an administrative agency fails to fulfil its obligation to disclose information according to law. Citizens, legal persons and other organizations can also apply for administrative reconsideration before a competent administrative organ or bring an administrative lawsuit before a court if they believe that a specific administrative act committed by an administrative agency in carrying out government information disclosure work has infringed their legal rights and interests.<sup>630</sup> Both reporting and administrative reconsideration are

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<sup>629</sup> OEI Measures, Article 26; OGI Regulations, Article 33.

<sup>630</sup> *Ibid.*

approaches within the administrative system;<sup>631</sup> administrative litigation is within the judicial system.

Chinese courts in administrative lawsuits are only concerned with the legality, but not the merits of reasonableness of the administrative actions being challenged by the plaintiffs.<sup>632</sup> Nevertheless, through administrative litigation, the courts can exercise its authority of rectifying wrong doings of administrative agencies, and thus affecting the relationship between the public and the government as well. As the last resort of redressing failures in accessing government information, administrative litigation plays an important role in safeguarding the realization of access to information.

### 5.1.1 Result of the Lawsuits

In the 28 cases collected by the author, 10 resulted in attempts to use administrative litigation. Among them, seven were brought up by individuals and three by ENGOs. Four other lawsuits were initiated by the Impact Law Firm during its process of conducting a survey. In total, 14 administrative lawsuits are documented and form the basis for the study in this chapter.

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<sup>631</sup> Reporting to superior government agencies and taking up administrative reconsiderations have also been used by both individuals and entities in the cases collected by the author, for instance, Yan Yiming reported to the MEP about his request to local EPDs for information disclosure of polluting enterprises. (See, *Ershiyi shiji jingji baodao*, 4 November 2009) Impact Law Firm concludes in its report that administrative reconsideration plays an effective role in making government agencies to respond to information disclosure requests. In total 63 out of 80 government agencies responded to Impact's environmental information disclosure requests, among them, 32 reacted after Impact Law Firm filed administrative reconsideration. In total, Impact Law Firm filed 41 administrative reconsideration applications. The Impact Law Firm concludes that administrative reconsideration is one effective remedy for environmental information disclosure failures, and it appears that higher-level authority's supervision is one factor that administrative agencies consider the most important. (Impact Law Firm 2012 Report, 2, 6, 13) Friends of Nature and Green Beagle also applied for administrative reconsideration to redress their failures in obtaining environmental information through disclosure requests. Both did not get any response from the respective government agency. This makes it thus difficult to say whether administrative reconsideration is always effective. In fact in 2012, when Green Beagle failed to get the PCBs-containing wastes information from the MEP, it was recommended by Friends of Nature that an administrative litigation instead of administrative reconsideration should be taken. Interview with NGO officer, 9 June 2012.

<sup>632</sup> AL Law, Articles 5, 54; see also, Chen 2011, 302.

Table 5-1 List of information disclosure administrative lawsuits

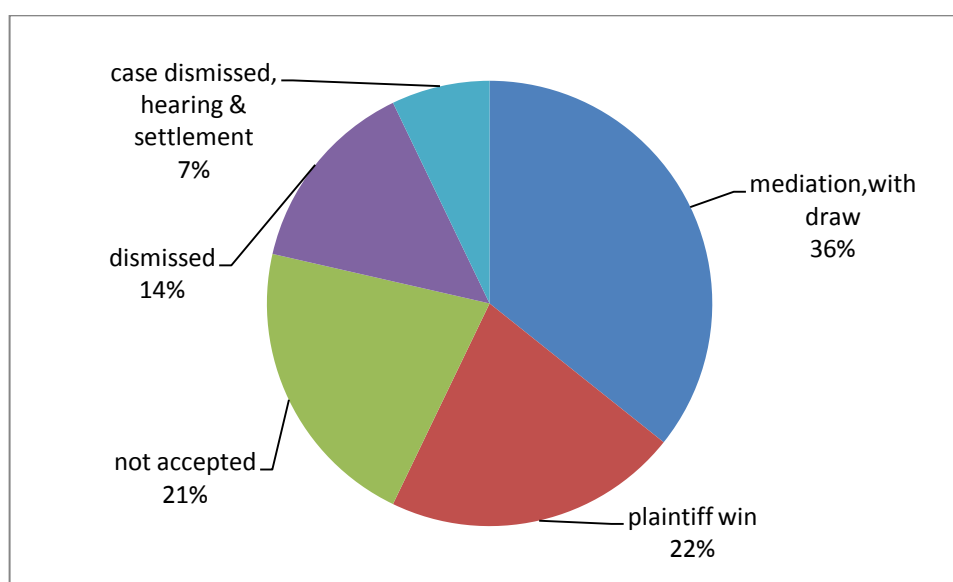
Case No.	Plaintiff	Defendant	Information requested for disclosure	Time	Result
5	Huang Jianxin	Suzhou EPB	Sewage plant EIA report	2009	reconciliation, withdraw
13	Xu Taisheng	Shanghai Pudong District EPB, Shanghai EPB	Bao Steel Plant approval and inspection record etc.	2008-2009	dismiss, hearing
10	Sun Nong	Zhuhai EPB	Used battery disposal information	2009	dismiss
14	Xu Yu et al.	Liaoning Chuyang City & Jianping County government agencies	Water quality inspection report relating to chemical plant pollution	2010	not accept
16	Yang Zi	Beijing EPB	Gao'antun Incinerator annual inspection statistics	2010	dismiss
26	Greenpeace	Zhuzhou EPB	Zhuzhou polluting enterprises	2010	not accept
9	Sun Bin	Hunan EPD	Neighbouring telecommunications base approval information	2012	filing accepted, information provided, withdraw
12	Xie Yong	Jiangsu EPD	Hai'an Incinerator approval and inspection information	2012	plaintiff win
19	ACEF	Xiuwen EPB	Haoyiduo Dairy Co. daily inspection, EIA report and pollutants emissions	2012*	plaintiff win
23	Green Beagle	MEP	2010 investigation result on PCBs-containing electrical equipment and waste electricity equipment in eight key provinces	2012	information provided, withdraw
Survey 8	Impact Law Firm	Anqing EPB	eight types of information as listed in Art 11 of OEI Measures, i.e., pollutants emissions	2012	plaintiff win
Survey 8	Impact Law Firm	Shijiazhuang EPB	Ditto	2012	accepted, respond, withdraw
Survey 8	Impact Law Firm	Qingdao EPB	Ditto	2012	accepted, respond, withdraw
Survey 8	Impact Law Firm	Xinxiang EPB	Ditto	2012	not accept

Note: Time is recorded as the court deciding time if the filing of the case and deciding are in different years. If no court decision, the time is the filing time. Case No. and Survey No. correspond to Appendix 8.3



Among the 14 cases in which the information requesters used administrative litigation to rectify their failures in obtaining government information through requests, the results are roughly divided into five types: in five cases, reconciliation<sup>633</sup> was sought and the plaintiffs withdrew the lawsuits; in three cases, the plaintiffs won the lawsuits; in another three, the filing of the lawsuit was not accepted; in two other cases, the filing was dismissed; in one case, a public hearing was organized and a settlement was reached between the parties.

Chart 5-1 Divided results of the attempted administrative lawsuits



### 5.1.2 The Plaintiffs

The plaintiffs in the administrative lawsuits include individuals, organizations and a law firm. Specifically, seven cases were brought by individuals including one by a lawyer and six by either city dwellers or villagers. Three cases were brought by environmental organizations, and four were filed by a law firm.

<sup>633</sup> Strictly speaking, mediation (调解) is not applicable to administrative lawsuits, except for administrative compensation cases. However, an alternative, reconciliation (和解) acts in similar way that the court acts as a go-between and facilitates the two parties for a settlement of the dispute until the plaintiff withdraws the lawsuit. See, Chen 2011, 301, ft329.

Most individual plaintiffs were direct victims of environmental pollution. Some had been persistently mobilizing the law to request government agencies to disclose environmental information for years, such as Huang Jianxin, Xie Yong and Xu Taisheng.

Huang Jianxin is a resident of Hongqiao Village, Jinfeng County, Zhangjiagang City. Huang's house is located less than 60 meters away from Hexing Wastewater Treatment Plant. The plant is in charge of waste-water treatment for Zhangjiagang Shazhou Textile Printing and Dyeing Import and Export Co., Ltd. The textile company was expanded in 2009. Since then, Huang Jianxin and other villagers found that Hexing Wastewater Treatment Plant started to make a thundering noise and discharge foul smelling waste water and the village was filled with irritating chemical odours and smoke.<sup>634</sup>

Worrying about the noise, waste water and waste gas affecting the villagers' livelihood and their living environment, the villagers submitted an information request to the Zhangjiagang EPB, asking the EPB to disclose the Textile Company's EIA Report. In May 2009, the EPB replied that the project was approved by the Jiangsu EPD. The Jiangsu EPD, after receiving Huang's information request, replied in August that the project's expansion EIA Report was first approved by the Suzhou City EPB, and their approval was based on the Suzhou EPB's opinion.<sup>635</sup> Huang then submitted his request to the Suzhou EPB. The Suzhou EPB replied that it was the Jiangsu EPD who approved the project expansion, and the Suzhou EPB did not have the information to disclose.<sup>636</sup> Failing to obtain the information, Huang sued the Suzhou EPB in Suzhou Canglang District Court, claiming the Suzhou EPB's refusal to disclose the information he requested infringed his right to information.<sup>637</sup>

Similarly to Huang Jianxin, Xie Yong also failed repeatedly in obtaining information through disclosure requests.<sup>638</sup> Although failing to obtain any information from several environmental protection agencies, he did not give up. With the help of CLAPV, Xie Yong brought his administrative lawsuit before the

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<sup>634</sup> *Zhongguo Jiangsu wang*, 28 Dec 2009.

<sup>635</sup> Zhangjiagang is a county-level city under the jurisdiction of Suzhou city, which is under the jurisdiction of Jiangsu Province.

<sup>636</sup> *Zhongguo Jiangsu wang*, 28 December 2009.

<sup>637</sup> *Ibid. Huang Jianxin v. Suzhou EPB*, Suzhou City Canglang District People's Court Administrative Ruling, (2009) cangxingchuzi No. 0094, 17 December 2009.

<sup>638</sup> For detailed process of environmental information disclosure requests by Xie, please see Chapter 3, at 3.2.2.

Nanjing Intermediate Court and the filing was accepted. In this lawsuit, Xie claimed that the Jiangsu EPD failed its obligation to disclose information upon request. In August 2012, Xie Yong won his administrative litigation against the Jiangsu EPD.

Xu Taisheng is a resident living in Baoshan District, Shanghai. Xu's administrative litigation relates to his environmental information disclosure requests concerning Baosteel Group Corporation (宝钢 Baosteel), the largest state owned steel plant in China.<sup>639</sup> Xu's apartment is located in a residential block consisting of several apartment buildings within a distance of hundreds of metres from the No. 2 steel mill, No. 3 hot rolling plant and a cold rolling plant of Baosteel. Noise and air pollution caused by the plant prompted Xu Taisheng and other residents to try various approaches to negotiate with the plant, including sit-ins and petitions. With the promulgation of the OGI Regulations and the OEI Measures, Xu Taisheng felt that environmental information disclosure could be a new tactic for them. In September 2008, four months after the new regulations came into effect, Xu requested that the Shanghai EPB disclose a total of 17 pieces of information about Bao Steel. Fourteen of these requests resulted in the information being provided, and three did not.<sup>640</sup> The three pieces of information that were not provided were the administrative reconsideration reply submitted by the Baoshan District EPB to the Shanghai EPB, the reply letter concerning the approval of Baosteel's third phase engineering construction by SEPA, and an on-site Inspection Record of Baosteel.<sup>641</sup> In light of the non-disclosure of the three pieces of information, on 10 November 2008 Xu sued the Shanghai EPB before Shanghai Huangpu District People's Court. He brought up two claims: first, to revoke the three replies made by the Shanghai EPB, second, to order the Shanghai EPB to provide the information.

All other individual plaintiffs, except the lawyer Sun Nong, were also pollution victims. Sun Bin lives in an apartment which has a neighbouring apartment that hosts a telecommunications base, potentially creating radiation pollution. Yang Zi lives in a residential complex that is affected by air pollution caused by a nearby incinerator. Xu Yu and other villagers live in a village in which a chemical plant operates. It appears that to obtain environmental information has been the first step and a common approach for citizens to fight against polluters.

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<sup>639</sup> In 2012, Baosteel achieved steel output of 43.83 million tons and a total profit of RMB 10.4 billion, ranking the second among the world's iron and steel enterprises. See, Baosteel Group Corporation official website, [http://www.baosteel.com/group\\_en/contents/2880/39991.html](http://www.baosteel.com/group_en/contents/2880/39991.html)

<sup>640</sup> Interview with pollution victims and information disclosure requester, 8 May 2011.

<sup>641</sup> *Ibid*; see, also Xu Kezhu et al. 2011.

The only exceptional plaintiff, who is not a pollution victim, is Sun Nong, a lawyer in Zhuhai. Sun Nong's environmental information disclosure request relates to the disposal of used batteries. Thus, it is public-interest related. The three administrative lawsuits brought up by environmental organizations and the four lawsuits by Impact Law Firm are also public-interest related. Among all 14 cases, eight are public interest lawsuits. This composition has shown that both grievances and public interest concerns can motivate individuals and entities to file lawsuits related to environmental information disclosure.

### 5.1.3 Emerging Public Interest Litigation Lawyers and Law Firms

Although it is argued by Zemans that legal mobilization study “focuses ... on citizens rather than lawyers or judges”,<sup>642</sup> it is undeniable that lawyers play critical roles in providing legal support to citizens. Studying legal mobilization in various countries, Epp argued that lawyers play a crucial role in lawsuits, since they are capable of speaking for the plaintiffs in courts, contributing to the legal strategy and are also able to disseminate information effectively.<sup>643</sup> The following discussion reveals that in China a group of professional lawyers with expertise and interest in environmental protection and environmental information disclosure have started to play active and crucial roles in providing support to environmental victims as well as environmental organizations.

For the 14 cases discussed here, all were either brought by lawyers directly or by representative lawyers. These lawyers are not only skilful in providing legal services; some are also enthusiastic about environmental protection and raising public awareness of environmental problems, such as Sun Nong and Lei Zhifeng. In his information disclosure request letter, the lawyer Sun Nong addressed himself as a resident concerned with environmental protection (一个关注环保的市民).<sup>644</sup> When he lost his lawsuit before the court in the first instance, he appealed. In an interview with him, it was stated:

*无论二审结果如何，他都将动用自身的资源发动民间力量做好废旧电池回收工作。*

<sup>642</sup> Zemans 1982, 995.

<sup>643</sup> Epp 1998, 20.

<sup>644</sup> Sun Nong, Letter to request used battery recycle and disposal information, 7 November 2008.

*No matter what comes out after the appeal, he will use his resources to mobilize the civil society to work for a better management of used battery recycling.*<sup>645</sup>

Clearly, the lawyer Sun Nong makes himself bear the dual role of being a lawyer as well as a citizen with deep concerns for environmental protection. His persistence in taking up the litigation is clearly not only for the purpose of obtaining the information but also for a broader aim of environmental protection.

Lei Zhifeng is not only a lawyer but also an environmental protection volunteer lawyer who concerns about electro-radiation pollution. He writes in his blog about providing legal support to Sun Bin<sup>646</sup> that

*...孙先生.....决心拿起法律武器继续维权到底。而我，作为一名关心电磁辐射问题的环保志愿者，将继续为其提供法律支持，希望更多的人关心电磁辐射问题。*

*Mr. Sun ... decides to take up the legal weapon to safeguard his right. I am a volunteer of environmental protection who concerns about electro-radiation; I will continue to provide legal support to him. I hope more people will care about electro-radiation.*<sup>647</sup>

Environmental public interest lawyers have also started to get involved in environmental information disclosure. For instance, Xia Jun, a lawyer from the Beijing Zhongzi Law Firm, has taken environmental lawsuits for more than ten years.<sup>648</sup> He is also very active in promoting environmental information disclosure in China. Besides providing legal consultation to environmental organizations, such as Greenpeace when they sued the Zhuzhou EPB, he actively involves himself in participating open environmental information seminars, commenting on environmental lawsuits,<sup>649</sup> and writing open letters to the MEP calling for public participation in environmental matters.<sup>650</sup>

Moreover, a few law firms have started to make environmental information disclosure one of their focuses. The most visible of these are the Impact Law Firm and CLAPV. Naming itself “Impact”, the Impact Law Firm was established aiming

<sup>645</sup> *Nanfang dushi bao*, 20 May 2009.

<sup>646</sup> Case 9.

<sup>647</sup> *Leizhifeng blog*, 25 May 2012.

<sup>648</sup> *China Dialogue*, 16 January 2012.

<sup>649</sup> *Fazhi ribao*, 4 February 2013.

<sup>650</sup> *Fazhi ribao*, 11 August 2012.

to take cases that would make an influential impact in pushing forward the rule of law in China.<sup>651</sup> It provided legal support to Friends of Nature regarding their information disclosure about the Yangtse River upper-reach nature reserve readjustment and to Green Beagle in their administrative lawsuit against the MEP with regard to PCBs-containing equipment information disclosure. In 2012, the Impact Law Firm conducted a nation-wide investigation, compiled a report based on its survey and shared its experiences with the public. During the survey-related requests, Impact filed four administrative lawsuits: one was not accepted, two were withdrawn after the counter parties started to respond, and one case resulted in the plaintiff's winning the lawsuit.<sup>652</sup>

Established in 1998, CLAPV is the first, and in fact only, organization that focuses on providing free of charge legal services to pollution victims in China. Affiliated to the Chinese University of Political Science and Law, CLAPV has become a leading legal aid entity in China in taking up environmental cases. In 2005, CLAPV provided legal aid in *Zhang Changjian et al. v. Rongping Chemical Plant*, which resulted in the 1721 plaintiffs winning against the local chemical plant in Fujian Province.<sup>653</sup> The case was regarded as one of the most influential lawsuits of 2005. Nowadays, lawyers from CLAPV have also become active in taking information disclosure lawsuits. Among the 14 administrative lawsuits, four were supported by CLAPV.<sup>654</sup> Moreover, in December 2010, it was reorganized from a university-affiliated organization to an officially registered law firm and named itself Huanzhu Law Firm. “Huanzhu” (环助) in Chinese means “environmental support”; it has nine professional lawyers, six part-time lawyers, and a consulting group consisting of university professors and dozens of volunteers.<sup>655</sup> Today, as a formal law firm, the Huanzhu Law Firm continues to provide *pro bono* services to environmental pollution victims and environmental organizations. Professor Wang Canfa, the director of CLAPV and Huanzhu Law Firm speaks about information disclosure and the law firm:

对于行政部门他们肯定好多时候是不愿意公开信息的 ..... 审批的发了许可证的，好多是不该发的，比如批的垃圾焚烧场也许是不

<sup>651</sup> Li Meng 2007.

<sup>652</sup> The Impact Law Firm 2012 Report, 6, 46.

<sup>653</sup> For further discussion about *Zhang Changjian et al. v. Rongping Chemical Plant*, please see, Wang 2007; see also, Stern 2011.

<sup>654</sup> Cases 5, 12, 13, 14.

<sup>655</sup> Huanzhu Law Firm official website, <http://www.clapv.org/Lawfirm/index.asp>

应该批准的。通过诉讼，越到级别高的机关和部门越害怕诉讼，即使是你败了，他也不光彩。这种情况下要更多利用诉讼的手段。如果你们没有律师，我那儿专门成立了一个“北京环助律师事务所”……专门免费帮老百姓打环境官司。

我们也不是跟政府作对。当我们国家在推行一个制度，靠政府本身推不动的时候，靠民间力量也可以推。比如环境法庭的建立，比如公益诉讼，还有一些其他的，包括环保法律，水污染防治法有利于污染受害者诉讼的条款都是民间人士推动的，最后肯定得经过政府协商和通过……整个国家还是向法治化来走的，要不然信息公开条例不可能出台。……这些法律都是来规范政府行为的。…法治政府实际上就是限制部门权力——不为老百姓服务，不为老百姓做事的权力。真正的为老百姓做事服务的，法律还是支持的。

*Government administrative agencies are mostly not willing to disclose information... some permits are granted but in fact should not be approved, for instance permits to some incinerators. The higher level the agency is, the more it fears litigation. Even if you fail, they feel the shame. Under this situation, we shall take the maximum usage of the strategy of litigation. If you cannot find lawyers, Huanzhu Law Firm is specially focusing on helping the common people file environmental lawsuits and the service is free of charge.*

*We are not challenging the government. China is pushing forward a new mechanism. When this cannot be done by the government on its own, it should still be pushed forward by the civil society. For instance, the establishment of the environmental courts, public-interest litigation, to make rules favourable to pollution victims in the Environmental Law and the Water Pollution Prevention Law, were all initiated and pushed forward by the civil society and then accepted by the government after public consultation... The whole country is going towards rule of law, otherwise the open government information regulations would not come into effect... laws are to regulate government actions. Rule of law government is in fact to impose restraints upon government power—the power that does not serve and*

*do good deeds for the common people. The law always supports government officials who work and serve the people.*<sup>656</sup>

Besides the support from lawyers, Chinese ENGOs are also starting to have in-house lawyers. Friends of Nature, the earliest environmental organization in China, have several in-house lawyers. By doing this, it has become more professional in its legal capacity. In-house lawyers also collaborate closely with external lawyers, as well as other environmental organizations. In the case of Xie Yong, both Green Beagle and Friends of Nature got involved. The lawyer from Friends of Nature went together with officials from Green Beagle to the village for onsite investigation and reporting.<sup>657</sup>

## **5.2 Raising Public Consciousness of Environmental Protection and Imposing Pressure on Government Agencies**

Inevitably, a direct aim of the plaintiffs taking up administrative litigation is to redress their failures in obtaining environmental information through disclosure requests. This applies to both private-grievance and public-interest related lawsuits. Nevertheless, there are also other reasons behind their filing the actions: namely to raise public awareness of environmental issues and put pressure on government agencies to administer according to the law. It is clear that they have been using litigation as “one weapon that can serve broader and more important political purposes”.<sup>658</sup>

The lawyer Sun Nong is one of the first to take government agencies before the courts for failing to disclose environmental information. In November 2008, he requested that the Zhuhai EPB disclose information concerning used battery disposal. Failing to hear from the EPB after the time limit,<sup>659</sup> in February 2009 Sun sued the Zhuhai EPB before the Zhuhai Xiangzhou District People’s Court.<sup>660</sup> In a report, the journalist wrote about Sun:

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<sup>656</sup> Wang Canfa, Friends of Nature Open Environmental Information Three Years Implementation Seminar, 27 April 2011.

<sup>657</sup> Interview with NGO officer and lawyer, 31 May 2011.

<sup>658</sup> Paris 2010, 24.

<sup>659</sup> The OGI Regulations, Article 24; The OGI Measures, Article 28.

<sup>660</sup> *Sun Nong v. Zhuhai EPB*, Guangdong Province Zhuhai City Intermediate People’s Court Administrative Ruling, (2009) zhuzhongfaxingzhongzi No.50, 17 December 2009.



在提起诉讼前，就预想到赢得官司的可能性也不大，但他要以这种行为提高珠海政府部门的行政水平，同时增强市民的环保意识。

*Before bringing up the litigation, he expected that the possibility of winning the case was low; however, he wanted to take the action and to help the Zhuhai government to improve its administrative work, and at the same time to help strengthen the consciousness of residents for environmental protection.<sup>661</sup>*

Clearly, the lawyer Sun Nong was fully aware of the difficulties in suing government agencies in China and his main purpose did not really lie with winning the case, but in raising public awareness and creating public pressure on the government administration.

The same opinion was expressed by the lawyer Lei Zhifeng, an environmentalist and representative lawyer of Sun Bin:

其实不管这场官司是输是赢，我都想发出一个声音，辐射对人体是一种可能致癌物，环保部门应该高度关注。

*It does not matter if this lawsuit will lose or win, I just want to let my voice be heard that radiation is a harmful substance that might cause cancer and environmental protection agencies should attach great importance to it.<sup>662</sup>*

On 5 March 2009, the lawyer Lei Zhifeng received the written reply with regard to his client's information disclosure request. A few days later, he wrote in his blog:

这份进入诉讼程序后获得的省环保厅的书面回复，至少印证了以下事实：一是全省成千上万座基站并不是每一座基站都进行了环评，而是几千座基站才一个环评；二是就玉园基站来说，虽然建成并运营了 5 年，但验收工作至今都还没有完成。这些情况，虽早在诉前就已推断。但不以诉讼的方式倒逼，这个让环保部门等于公开承认自己没有尽责的书面回复，是绝不可能轻易拿到的。

*The written reply from the provincial EPD after entering the legal procedure of litigation at least proves the following facts: first, the tens of thousands of bases do not all go through the procedure of environmental impact assessment one by one, several thousands of*

<sup>661</sup> *Nanfang dushi bao*, 25 December 2009.

<sup>662</sup> *Hunan guangbo dianshitai-Fazhi zhoubao*, 28 February 2012.

*bases have one; second, regarding the Yuyuan base [in Sun's neighbouring apartment], it has been operating for five years but did not get an approval inspection until now. This was guessed by us before filing the case. However, without using litigation to create reversed pressure, this written reply that makes the environmental agency acknowledge its omission of obligation could never be obtained easily.*<sup>663</sup>

The tactic of using administrative litigation as a strategy to “create reversed pressure” on government agencies to respond to information disclosure requests has been taken by Greenpeace as well.

To test to what extent environmental information disclosure can be pushed forward in China, Greenpeace submitted a total of six information disclosure requests towards the Zhuzhou EPB in mid-December 2009.<sup>664</sup> Failing to get the information requested from the Zhuzhou EPB, and in order to put some pressure upon the Zhuzhou EPB,<sup>665</sup> Greenpeace sued the EPB before Zhuzhou Intermediate People's Court on 12 April 2010. While the acceptance of the case was still pending, the Zhuzhou EPB replied to Greenpeace by fax on 13 May 2010 and provided corresponding answers respectively concerning all six environmental information requests.<sup>666</sup> Although the reply did not provide the information Greenpeace requested to be disclosed, it seems that the filing of administrative litigation at least imposed pressure upon the EPB to respond.

In early 2012, Green Beagle requested that the MEP disclose its report about an investigation with regard to PCBs-containing electrical equipment and waste in eight key provinces.<sup>667</sup> The MEP replied that the information could not be disclosed based on the SC Normative Document that it was in-process information. Green Beagle sued the MEP before Beijing No. 1 Intermediate People's Court. The lawyer Li Juan, from the Beijing-based Impact Law Firm, was their representative lawyer.

With regard to the filing of the case, Li Juan explains that:

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<sup>663</sup> *Lei Zhifeng blog*, 8 March 2012.

<sup>664</sup> Greenpeace, Information disclosure requests submitted to Zhuzhou EPB, 16 December 2009.

<sup>665</sup> Interview with NGO officer, 2 August 2010.

<sup>666</sup> Zhuzhou EPB, Reply concerning Greenpeace's environmental information disclosure request, 13 May 2010.

<sup>667</sup> Green Beagle has been paying continuous attention to PCBs-containing wastes for the past few years. This request is only part of their endeavour to push Chinese government to fulfil its international obligation under the *Stockholm Convention on Persistent Organic Pollutants* (POPs) China signed in 2001; please see, Chapter 4.2.2; See also, MEP, *2010 China Annual Report on the State of Environment*, 79.

我们并不是向环保部叫板，不是为了上诉而上诉，而是真诚地希望调查结果能够公开。

*We are not challenging the MEP; we do not file the litigation to make a lawsuit. We sincerely hope that the investigative result will be disclosed.*<sup>668</sup>

In fact, Green Beagle did achieve its aim of getting the information disclosed through filing this administrative lawsuit. After their filing of the case, Li Juan exchanged several telephone communications with the Intermediate Court and later the Intermediate Court arranged a reconciliation meeting between Green Beagle and the MEP. The MEP explained that the investigation was an experimental investigation and the results were not suitable for disclosure. Nevertheless, the MEP provided two tables of PCBs-related localities to Green Beagle.<sup>669</sup>

Disregarding the result of winning or losing, with the persistence of plaintiffs and professional support, it is clear that in China administrative litigation plays a role of creating judicial pressure upon government agencies to act. One comment says,

在政府不肯主动公开信息的情况下，司法诉讼无疑成为公民维护知情权、监督和逼迫政府信息公开的最佳途径。其实对政府信息公开的法治化而言，条例的最大功能并不在于列举了多么详细的“应当公开的事项”或“不公开的事项”，而在于赋予了13亿公民可寻求司法保护的“知情权”，在于赋予了各级政府须受司法监督的信息公开义务，在于赋予了法院可以通过审判活动倒逼政府信息公开的权力。

*Under the situation that the government does not provide the information on its own initiative, lawsuit undoubtedly becomes the best channel for citizens to safeguard their right to information, to monitor and push government information disclosure. With regard to the judicialization of government information disclosure, the most important function of the [OGI] Regulations is not the detailed list of “information to be disclosed” or “not to be disclosed”, but “the right to information” granted for the 1.3 billion citizens who can seek judicial relief, the obligation of all levels of governments to disclose information under judicial monitoring, and the power of the court to*

<sup>668</sup> *Zhongguo kexuebao*, 23 April 2012.

<sup>669</sup> Interview with NGO officer, 9 June 2012.

*create reversed pressure upon the government to disclose information.*<sup>670</sup>

Inevitably, Chinese courts cannot create “reversed pressure” upon government agencies without the public’s taking the cases to the courts. In other words, it is the public activism in launching the litigation that has created the possibilities of judicial pressure upon the administrative agencies. Moreover, administrative litigation has also helped creating new legal opportunities and thus gaining more ground for the public to take the issue of environmental disclosure to court in the future.

### 5.3 The Shaping of the Legal Opportunity Structure

On the one hand, the law provides opportunities for the public to take legal actions. On the other hand and most of all, citizen actions are “to an extent able to shape and create legal opportunities rather than always being shaped by them as structural accounts might imply”.<sup>671</sup> Generally, the legal opportunity structure refers to “the degree of openness or accessibility of a legal system to the social and political goals and tactics of individuals and/or collective actors”.<sup>672</sup> However, this degree of openness and accessibility is not always unchangeable. It can be changed by new legislation or restructuring the legal system, for instance, establishing new specialised courts that focus on environmental protection<sup>673</sup> to provide more legal opportunities for ENGOs. It can also be changed through the external pressures of public opinion or litigation activism. Though still limited in size and capacity, a community consisting of individuals, lawyers, and organizations with a common aim of making the maximum use of the new mechanism of open environmental information has been emerging in China. With the continuous effort of all actors approaching the court through administrative litigation, changes have been happening with both procedural requirements and substantive issues about open environmental information administrative litigation.

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<sup>670</sup> *Beijing qingnianbao*, 8 May 2008.

<sup>671</sup> Hilson 2013.

<sup>672</sup> Vanhala 2012, 527; Hilson 2002.

<sup>673</sup> In China, the establishment of environmental courts have been happening and provided more opportunities for environmental protection litigation. See, Wang & Gao 2010.

### 5.3.1 Cracking of the Gate-keeper of the Filing Division

In China, in order for a case to be accepted by a trial division of a court it needs to go through the gate-keeping procedure of being accepted and docketed by the case filing division. It is not rare that lawyers cannot get their administrative cases accepted at this stage due to the courts' reluctance to accept cases against government entities, particularly in politically sensitive cases.<sup>674</sup> This rejection of lawsuits directly deprives plaintiffs of their right to the procedural and substantive due process of law.<sup>675</sup>

It is argued that the rejection of cases is due to the fact that local courts do not want to affect their relationship with the local governments.<sup>676</sup> Although vertically under the leadership of higher-level courts, local courts depend upon the local government for staff appointments, salaries, and even welfare.<sup>677</sup> In the words of one villager, "the court and the government are one family."<sup>678</sup> Environmental information is likely to concern local enterprises who are tax-payers and GDP contributors to the local government. This existence of the mutually-dependent relationship among the courts, local government, and local enterprises, makes environmental information disclosure lawsuits also complicated and sensitive.<sup>679</sup> One environmental lawyer says:

行政诉讼最难的，不用说能不能打赢，最难的是不能立案。

*The most difficult issue with regard to administrative litigation, not mentioning whether the plaintiff can win the case, lies in whether the case can be accepted.*<sup>680</sup>

In Jianping County, Liaoning Province (辽宁省建平市), since a chemical plant started to operate, several incidents of students being poisoned occurred. While villagers worried that it was due to the environmental pollution caused by the plant, the local government argued that it was because the students drank unfiltered water. Villagers thus wanted to know the truth and requested for the disclosure of the water

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<sup>674</sup> Liu & Liu 2011, 284-285.

<sup>675</sup> *Ibid.*, 285.

<sup>676</sup> Peerenboom 2002, 399.

<sup>677</sup> Economy 2004, 100-121; Liebman 2007; Peerenboom 2002, 424.

<sup>678</sup> Interview with pollution victims, 9 May 2011.

<sup>679</sup> Interview with lawyer 2, 6 May 2011.

<sup>680</sup> Interview with lawyer, 30 May 2011.

inspection report, but they failed.<sup>681</sup> When the villagers sued the local government agencies before the Jianping People's Court, the court did not accept the case. In August 2010, noticing that the Supreme People's Court had started to inspect non-acceptance of administrative lawsuits, Xu Yu and other villagers went to Beijing to report their case. They were taken and sent back by local public security officials and punished with 10 days of administrative detention.<sup>682</sup> They nevertheless did not give up and again tried to sue various government agencies for failing to provide them with the water quality report. According to the *Intermediate Regulations of the Supreme People's Court on Case Filing*, administrative lawsuits shall be decided for acceptance or rejection with a decision within seven days after the complaint was received.<sup>683</sup> However, in practice it is not rare that Chinese courts refuse to accept lawsuits without providing written decisions. Xu Yu's case was neither accepted nor rejected with a written decision. When Xu Yu and the villagers inquired why the case could not be accepted, the Chief Judge of the Administrative Tribunal of Jianping County Court said:

告公安局的官司，上级有精神，不让立。

*Litigation against the Public Security Bureau, the upper leaders instructed, cannot be accepted.*<sup>684</sup>

When they inquired why their claim against the Public Health Bureau was also not accepted, the Chief Judge answered:

这是院长决定的。

*This is decided by the president of the court.*<sup>685</sup>

Regardless of the difficulties in getting actions accepted by the courts, individuals, environmental organizations, and law firms nevertheless do not give up; instead, different strategies are applied in order to pass the threshold of getting their cases accepted. Multiple filing and being persistent are strategies that plaintiffs and their lawyers have often pursued. Before Huang Jianxin's lawsuit was accepted by the Suzhou Canglang district court, he took his litigation before several other courts in

<sup>681</sup> Case 14.

<sup>682</sup> *Qianjiang wanbao* 20 January 2011.

<sup>683</sup> Supreme People's Court, Interim Regulations on Accepting Cases by People's Courts, Fafa [1991] No. 7, 21 April 1997, Article 16.

<sup>684</sup> *Fazhi zhoubao* 19 January 2011; see also, *Qianjiang wanbao*, 20 January 2011.

<sup>685</sup> *Ibid.*

Zhangjiagang city, Suzhou city and Nanjing city, respectively, and was rejected in them all.<sup>686</sup>

In another well-known environmental information disclosure case, the plaintiff Xu Taisheng spent two and half years suing the local EPBs in Shanghai for their refusal to disclose inspection statistics concerning Bao Steel. Xu received a total of 12 judgments and decisions from local courts at different levels in Shanghai, none of which supported his claim; Xu finally got the information through the alternative approach of a public hearing.<sup>687</sup>

To use all possible approaches with sustained effort to create pressure is likely to help plaintiffs conquer resistance. While acknowledging that “it is difficult to get a case filing accepted by the court” (起诉,存在立案难的问题),<sup>688</sup> Impact Law Firm nevertheless tried various approaches, aiming for their filings to not be in vain:

*比如：起诉石家庄市环保局，立案时费尽周折，先后找到立案庭庭长、行政庭庭长、办公室主任、副院长，还打过石家庄市市长热线和石家庄市政法委的监督电话，往返行政庭和立案庭五六趟（行政庭和立案庭相距大约10公里）。最后立案。*

*起诉青岛市环保局：2012年4月12日，我们将起诉状等材料寄给青岛市市南区人民法院，经查询，2012年4月13日15点29分签收。但是经过七天后没有任何消息。根据《最高人民法院关于执行〈中华人民共和国民事诉讼法〉若干问题的解释》第三十二条第三款之规定，受诉人民法院在7日内既不立案，又不作出裁定的，起诉人可以向上一级人民法院申诉或者起诉。于是我们向青岛市中级人民法院邮寄起诉状等相关材料。在青岛市中级人民法院收到起诉材料后不久，市南区人民法院通知我们立案缴费。*

*For instance, when we sued the Shijiazhuang EPB, we got so much trouble. Back and forth, we contacted the director of the filing division, the director of the administrative litigation division, the vice-director of the court. We also called the hotline of the city mayor and the monitoring telephone of the Political-Legal Committee of Shijiazhuang City. We paid five to six return visits between the administrative litigation division and the filing division (the distance*

<sup>686</sup> Interview with lawyer, 23 May 2011.

<sup>687</sup> Xu Kezhu, Liu Xiang et al. 2011.

<sup>688</sup> The Impact Law Firm report 2012, 46.

*between the two offices is 10km). Finally we got the lawsuit accepted by the court.*

*Suing Qingdao EPB: on 12 April 2012, we sent our filing documents to Qingdao Shinan District Court. The documents were received on 13 April 2013 at 15:29. Seven days later, we did not hear anything from the court. According to Article 32, item 3 of the Supreme People's Court Judicial Interpretation on Several Issues of Implementing the Administrative Litigation Law of People's Republic of China, if a court does not accept a case within seven days and does not make a decision upon it either, the plaintiff can appeal to the court at the next higher level. Thus we sent our appealing materials to Qingdao Intermediate People's Court. Soon after Qingdao Intermediate Court received our appealing documents, Shinan District Court informed us to pay the filing fee and the filing was accepted.<sup>689</sup>*

Instead of passively waiting for the result, plaintiffs often choose to actively communicate with the courts, if possible, after they file the actions. For instance, after Green Beagle sued the MEP before the Beijing Intermediate People's Court, their representative lawyer, Li Juan of Impact Law Firm, took the initiative and called to exchange communications with the court several times. It is clear that on the plaintiffs' part, individuals, organizations and their lawyers have been more and more active in taking positive actions to push the courts to act according to law and to accept the lawsuits. This has further created opportunities for the courts to issue decisions to clarify both procedural and substantive issues with regard to open environmental information administrative litigation.

### **5.3.2 Clarifying the Scope of Legal Standing**

Even if an action of filing a litigation is accepted, it does not mean that the case will go into the trial process to be adjudicated substantively whether the administrative agency has violated the law or not. The lawsuit can still be dismissed (驳回起诉) by a court ruling for lacking in legal standing: that is, that the plaintiff does not have

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<sup>689</sup> The Impact Law Firm 2012 report, 46.



the right to sue the defendant. This can be related to either procedural issues or substantive factors.

Among the six lawsuits filed before 2011, two were not accepted, and four were dismissed. In 2012, among the eight cases filed (including the ACEF lawsuit filed in 2011 but decided in 2012), three resulted in the plaintiffs' winning the lawsuits, four were withdrawn after the defendants reacted, and only one was not accepted. It appears that more and more lawsuits are being launched and some are also bringing positive end results.

In China, according to the Administrative Litigation Law (AL Law) and its Judicial Interpretation, administrative litigation can be brought by citizens, legal persons or other entities against specific administrative actions that have infringed their lawful rights and interests.<sup>690</sup> Citizens, legal persons and other organizations can lodge “an administrative lawsuit if they believe that a specific administrative act committed by an administrative organ in carrying out government information disclosure work has infringed their lawful rights and interests”.<sup>691</sup> Here, “specific administrative action”<sup>692</sup> relates to the scope of acceptance, while “citizens, legal persons, or other organizations who think their rights and interests are infringed” relates to the issue of who has the legal standing.<sup>693</sup> Moreover, to fulfil the legal standing in an administrative litigation, the plaintiff must also have “a causal relationship in law with the specific administrative act”.<sup>694</sup> With regard to the legal standing of administrative litigation about environmental information disclosure, the most problematic factor is the requirement of “causal relationship in law”.

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<sup>690</sup> AL Law, Article 2; AL Law Judicial Interpretation, Article 12.

<sup>691</sup> OGI Regulations, Article 33; OEI Measures, Article 26.

<sup>692</sup> Generally, administrative actions are divided into specific administrative action (具体行政行为) and abstract administrative action (抽象行政行为) in China. Specific administrative action applies to specific people, or other entities, for instance, administrative penalty, enterprise operation permit etc. Abstract administrative action applies generally to indefinite concerned parties, e.g., issuance of normative documents, or guidance documents. Abstract administrative action can not be sued before the Chinese court. Specific government information disclosure actions include a) the government information disclosure or non-disclosure affects business secret, privacy or other legal rights and interests of citizens, legal persons or other entities; b) the government agency does not reply or refuses to disclose information upon disclosure request enterprises (including partially refuse to disclose information), or administrative agency does not provide the information in requested form, or the disclosure affects business secret or individual privacy; c) administrative actions during information disclosure that affect other legal rights and interests of citizens, legal persons or other entities. See, Mo Yuchuan & Lin Hongchao (Eds.) 2008b, 255.

<sup>693</sup> Li Guangyu 2009b, 43.

<sup>694</sup> AL Law Judicial Interpretation, Article 12. See, also Huang Xuexian 2006, 8.

Between 2009 and 2010, a very strict interpretation of the “causal relationship in law” was applied in dismissing legal actions. In 2009, in *Sun Nong v. Zhuhai EPB*, the action was dismissed based on the reasoning that there was a lack of causal relationship. The appellate court stated that

孙农在行政诉状及庭审中诉称：珠海市环境保护局应当主动公开其对包括废旧电池在内的固体废物、有毒化学品的污染防治处置的相关信息而没有主动公开，且拒绝答复，为不履行法定职责的行为。由此可见，孙农起诉的理由是认为珠海市环境保护局要求得到相关信息的答复，也是基于其主张珠海市环境保护局不依法履行政府信息公开义务，并不属于《条例》第十三条规定的依申请公开政府信息的范围。上诉人孙农申请公开的政府信息对上诉人孙农不构成《条例》所要求的“生产、生活、科研等特殊需要”。本案具有公益性质。上诉人孙农主张的其因珠海市环境保护局不公开政府信息所受到的不利影响与他人受到的不利影响并无差别，目前施行的《中华人民共和国行政诉讼法》及其相关司法解释尚未对公民个人提起公益行政诉讼作出规定。综上，本院认为上诉人孙农与其所诉的具体行政行为之间不具有法律上的利害关系，不是本案的适格原告，对其提起的本案诉讼应当予以驳回。

*Sun Nong stated in his administrative litigation complaint and his statement in court: the Zhuhai EPB should have disclosed the information of pollution prevention and management about solid wastes including used batteries, and toxic chemical wastes on its own initiative; however it did not disclose it, and also refused to reply [upon citizen request], constituting a failure of fulfilling its legal obligation. Based on this, the reason for Sun Nong to sue is because he considered that Zhuhai EPB did not fulfill its government information disclosure obligation, which did not belong to the scope of government information disclosure upon request according to Article 13 of the OGI Regulations. The government information requested for disclosure by the appellant Sun Nong does not meet the “special requirements of production, living, scientific research etc.” for the appellant Sun Nong. This case belongs to public interest litigation. The non-disclosure of government information by Zhuhai EPB does not affect the appellant Sun Nong differently than other people. The*

*current applicable Administrative Litigation Law and its judicial interpretations do not have rules regulating citizen filing public interest litigation. Based on the above reasoning, our court considers that the appellant Sun Nong does not have a causal relationship based on law and he does not have a legal standing to be the plaintiff in this case, his claim is dismissed.*<sup>695</sup>

More problematically, in practice a causal relationship is not only interpreted as the special needs of livelihood, production or scientific research. In *Yang Zi v. Beijing EPB*,<sup>696</sup> the causal relationship was applied differently, but it still excluded the plaintiff for having no legal standing.

Yang Zi's lawsuit was related to an environmental information disclosure concerning the Gao'antun Incinerator in Beijing. In recent years, China has been building more incinerators in order to solve the increasing problem of household and other waste; concurrently, the opposition voice against incinerators has also been increasing.<sup>697</sup> In 2008 several large-scale mass incidents against incinerators occurred in Beijing around the time when Beijing Olympic Games was held. Some of the demonstrations were against the Gao'antun Incinerator, which at that time emitted an unbearable odour that made it difficult for residents to breathe, or even caused them to fall ill.<sup>698</sup>

Against this background, on 9 November 2009, Yang Zi, a resident who lived near Gao'antun Incinerator in Beijing, submitted an information disclosure request to the Beijing EPB. She asked the Beijing EPB to disclose two types of information: the legal basis that the Beijing EPB applied to issue a temporary permit for the Gao'antun incinerator to operate; and the inspection statistics provided for its permit renewal and the number of inspections since the incinerator first gained its temporary permit in March 2006. The Beijing EPB did not provide the statistics to Yang. On 7 January 2010, Yang submitted her information disclosure request for the second time. The Beijing EPB still did not reply to her, as of 23 February. Yang therefore sued the Beijing EPB before the Haidian District Court.<sup>699</sup>

<sup>695</sup> *Sun Nong v. Zhuhai EPB*, Guangdong Province Zhuhai City Intermediate People's Court Administrative Ruling, (2009) zhuzhongfaxingzhongzi No.50, 17 December 2009, 14-15.

<sup>696</sup> *Yang Zi v. Beijing EPB*, Beijing Haidian District People's Court Administrative Ruling, (2010) haixingchuzi No.00093, 21 May 2010; *Yang Zi v. Beijing EPB*, Beijing No. 1 Intermediate People's Court, (2010) yizhongxingzhongzi No.2464, 13 July 2010.

<sup>697</sup> *China Daily*, 22 June 2010.

<sup>698</sup> Zhang Shougang 2009, 308.

<sup>699</sup> *Jinghua shibao*, 22 May 2010; *Xinjingbao*, 24 May 24.

The Haidian District Court dismissed Yang's lawsuit based on the requirement of causal relationship. The ruling stated that, according to the *Medical Waste Management Regulations*, a medical waste incinerator should be located at a distance of more than 800 meters from residential areas, water resources, main traffic paths, factories, and enterprises.<sup>700</sup> Since Yang lived about 2.5 kilometres away from the Gao'antun incinerator, the EPB's reply did not have "specific impact" (具体影响) upon Yang's rights and duties, and therefore there was no causal relationship between the plaintiff and the defendant's act.<sup>701</sup> Yang appealed, but lost again. The court of appeal followed the ruling made by Haidian District Court, stating that:

由于杨子自认其居住的小区距离高安屯医疗垃圾焚烧场约 2.5 公里，而该距离远远大于前述规定的 800 米的要求，且杨子并未举证其权利义务受到影响，故市环保局是否履行答复职责以及如何答复，对杨子的权利义务不产生实际影响，一审法院认定杨子不具备提起本诉的原告主体资格，裁定驳回其起诉正确，本院予以支持。上诉人的上诉理由缺乏事实及法律依据，其上诉请求本院不予支持。

*Yang Zi acknowledged that she lives more than 2.5km away from Gao'antun Medical Incinerator, and this distance is far more than the requirement of 800 metres. Moreover, Yang Zi did not prove that her right and obligation were affected. Thus, whether the city EPB fulfilled its obligation of replying or how the city EPB replied does not have any actual impact upon Yang Zi. The court of first instance judged that Yang Zi did not have the legal standing as the plaintiff to bring up the litigation and dismissed her lawsuit. This court should uphold it. The appellant's appeal lacks factual and legal basis, her appeal is not sustained by this court.*<sup>702</sup>

The main problem with the ruling is that the court applied laws regulating management of incinerators to the relationships between incinerators and residents who might be affected by the operation of incinerators. From a reasonable person's

<sup>700</sup> SC, *Medical Waste Management Regulations*, 4 June 2003; SEPA, *Medical Waste Management Technical Standards* (trial implementation), Huanfa (2003) No.206.

<sup>701</sup> *Yang Zi v. Beijing EPB*, Beijing Haidian District People's Court Administrative Ruling, (2010) haixingchuzi No.00093, 21 May 2010, 2-3.

<sup>702</sup> *Ibid.*, 2.

point of view, anyone whose livelihood is affected by the incinerator should have the right to request information disclosure.<sup>703</sup> Although it is argued that if anyone with a right to information is affected by the administrative act, there shall be a causal relationship between the person and the administrative act,<sup>704</sup> legal practice in this case has shown that local courts are still applying a very restrictive interpretation on the causal relationship between the administrative act of disclosing environmental information and the information disclosure requester, namely the plaintiff in administrative litigation. This case clearly corresponds with Chen Yongxi's argument that the Chinese court did not acknowledge citizens' right to information as an independent legal right, but related it to their personal rights and property rights, and in China the right to information is still not regarded as a right to monitor the government and to promote public participation.<sup>705</sup>

A comment on Yang's case summarized the current situation concerning environmental information disclosure well:

*公民环境维权的最大困境，恰缘于政府执法的偏私以及司法矫正的无力。*

*the biggest obstacle to safeguarding citizens' environmental rights is the biased implementation of laws by government agencies, and the failure of judiciary in rectifying the situation.*<sup>706</sup>

In 2010, Greenpeace sued the Zhuzhou EPB for its failure to disclose information as requested. According to Xia Jun, the representative lawyer of Greenpeace, the court did not give any clear written reply for whether the filing was accepted or not; however, in phone communications between the lawyer and the judge, it was also stated that the information requested did not have a direct causal relationship with Greenpeace.<sup>707</sup>

This strict application of the legal standing posed a concern for lawyers and ENGOs about using administrative litigation. In late April 2011, at the seminar of the three years of implementation of the OEI Measures, on Friends of Nature's using administrative reconsideration instead of administrative litigation to redress the

<sup>703</sup> Email discussion with lawyer, 30 July 2010.

<sup>704</sup> Interview with NGO officer, 2 August 2010. See also, Jiang Bixin & Li Guangyu 2009, 14-15.

<sup>705</sup> Chen Yongxi 2011.

<sup>706</sup> *Renmin wang*, 23 May 2010.

<sup>707</sup> Xia Jun, comment, Friends of Nature Open Environmental Information Three Years Implementation Seminar, 27 April 2011.

non-disclosure of the information about Yangtse River upper-reach nature reserve adjustment, the lawyer Xia Jun commented:

就像自然之友正在做的关于长江上游珍稀特有鱼类自然保护区调整方面信息公开的案例，向我咨询的时候，我个人认为去法院诉讼的话，最大风险还不是败诉。法院下一个行政判决书说自然之友败诉了，还走不到这一步；最差的结果是，跟杨子遭遇一样，没有什么利害关系。你没有起诉的资格。这不是在个案里，以后所有环保组织去起诉的案例，都可以用这个来裁决，就把环保组织监督政府依法行政的路给堵死了，这是一个很不好的情况。

*When Friends of Nature consulted me about the information disclosure about the Yangtse River Upper Reaches Endemic Fish Nature Reserve readjustment, I thought the biggest risk is not losing the lawsuit. If the court issues an administrative judgment and Friends of Nature loses the case, this is not the worst. The worst result is if the court decides the same as it decides in Yang Zi's lawsuit that there is no causal relationship and you do not have the legal standing in the administrative litigation. This would not only affect this single case, but also the future lawsuits brought by environmental organizations. This would block the path of environmental organizations in monitoring the government to administer according to law. It would not be good indeed.<sup>708</sup>*

The comment of Xia Jun shows that until mid-2011, it was unclear whether environmental organizations would be granted access in bringing information disclosure administrative lawsuits. It also shows that lawyers and organizations were very concerned about the potential negative effects of any formal legal action.

Nevertheless, a few months later, on 12 December 2011, the first organization-initiated environmental information disclosure lawsuit was accepted by Qingzhen Environmental Court. The lawsuit was regarded as a landmark for the formal launching of environmental information disclosure public interest litigation in China.<sup>709</sup> The plaintiff in this case was the All China Environmental Federation (ACEF). In China, organizations can be divided into two general categories: NGOs

<sup>708</sup> Xia Jun, comment, Friends of Nature Open Environmental Information Three Years Implementation Seminar, 27 April 2011.

<sup>709</sup> *Diyi caijing ribao*, 13 December 2011.

and Government organized NGOs (GONGOs).<sup>710</sup> The latter ones refer to “the multitude of organizations that ... created at various administrative levels by and in support of the [the Chinese Communist] Party and state”.<sup>711</sup> ACEF is a GONGO, directly under the supervision of the MEP.

In October 2011, ACEF sued a milk company for causing water pollution. In order to seek supporting evidence, it requested that the Xiuwen City EPB disclose related information concerning the milk company, but the request failed.<sup>712</sup> Thus, ACEF sued the EPB before the court.<sup>713</sup> In January 2012, the plaintiff ACEF won the case and the court ordered the defendant, the Xiuwen City EPB, to provide the requested information to the plaintiff.<sup>714</sup>

Although this lawsuit is special in that the plaintiff is a GONGO, it creates a landmark case in China at least in two respects. First, it confirms that it is too restrictive to state that AL Law does not apply to public interest litigation, as occurred in *Sun Nong v. Zhuhai EPB*. Second, it sets up an example that besides individuals, other entities, including NGOs, can also bring environmental information administrative litigation before the court. In fact, a few months after ACEF won its lawsuit, Green Beagle failed in obtaining the PCBs-containing equipment information. Green Beagle consulted Friends of Nature for the follow-up to rectify their failures and was recommended to take administrative litigation instead of administrative reconsideration.<sup>715</sup> This shows clearly that the judgment of *ACEF v. Xiuwen EPB* made environmental organizations shift from being cautious to confident in suing government agencies before the court.

Following *ACEF v. Xiuwen EPB*, a positive change also occurred in *Yu v. Anqing EPB*. Yu is an employee of the Impact Law Firm and her information disclosure belonged to the survey conducted by the Impact Law Firm. In January 2012 Yu, a Beijing resident, requested that the Anqing EPB in Anhui Province disclose information concerning the monitoring of polluting enterprises in Anqing City, but

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<sup>710</sup> GONGOs are established by government agencies or institutions, thus, they differ from NGOs. (See, Schwartz 2004, 36; Knup 1998, 11.) In most part of this dissertation, no clear differentiation is applied to NGOs and GONGOs when referring to ENGOs or environmental organizations, which include both types of environmental organizations.

<sup>711</sup> Ho 2008, 24.

<sup>712</sup> *Diyi caijing ribao*, 13 December 2011.

<sup>713</sup> *ACEF v. Qingzhen EPB*, Guizhou Qingzhen People’s Court Administrative Litigation Judgment, (2012) qinghuanbaochuzi No. 1, 10 January 2012.

<sup>714</sup> ACEF website, 16 January 2012; Qingzhen Government website, 11 January 2012.

<sup>715</sup> Interview with NGO officer, 9 June 2012.

failed. Yu sued the Anqing EPB before the Anqing Yingjiang District Court. The court accepted the litigation and judged that

*依法公开政府环境信息是被告的职责所在。*

*To disclose government environmental information is the obligation and responsibility of the defendant.*<sup>716</sup>

It judged that Anqing EPB violated the law and should provide the information as requested within 10 days after the court judgment.<sup>717</sup>

In *Yu v. Anqing EPB*, the Anqing Court did not discuss any other requirement concerning whether the plaintiff had a legal standing in the administrative lawsuit; nevertheless on the other hand, it shows that the court did not dispute for the legal standing of the Beijing resident Yu in the information disclosure request submitted to a city EPB in Anhui Province.

It is difficult to say whether, compared to Sun Nong and Yang Zi, Yu as a Beijing resident has a closer causal relationship with the information disclosure from the Anqing EPB in Anhui Province: while Sun's request relates to where residents dispose of used batteries, Yang lives in a residential area affected by the air pollution caused by the incinerator. Nevertheless, this court judgment constitutes a change in open environmental information administrative litigation that allows both a broad legal standing for the plaintiff.

### 5.3.3 Access to Information as a Legal Right

Besides the broadening of the legal standing in administrative litigation, some lawsuits have also started to cause the courts give further interpretation to a few other issues with regard to environmental information disclosure.

Both the OGI Regulations and the OEI Measures do not stipulate clearly whether access to government information is a right to information. It has been argued by scholars that lawful rights and lawful obligations can be either explicit or implicit in laws and regulations.<sup>718</sup> The OGI Regulations do not explicitly stipulate the right to

<sup>716</sup> *ACEF v. Qingzhen EPB*, Guizhou Qingzhen People's Court Administrative Litigation Judgment, (2012) qinghuanbaochuzi No. 1, 10 January 2012.

<sup>717</sup> *Yu v. Anqing EPB*, Anhui Province Anqing City Yingjiang District Court Administrative Judgment, (2012) yingxingchuzi No.00006, 11 May 2012, 4.

<sup>718</sup> Jiang Bixin & Li Guangyu 2009, 14.



information. Nevertheless, it clearly states that its aim is “to guarantee citizens, legal persons and other organizations obtain government information according to law”.<sup>719</sup> This is regarded as an implied access to government information as a lawful right.<sup>720</sup> Compared to the OGI Regulations, the OEI Measures are more explicit, stating that the Measures are to “safeguard citizens, legal persons and other organizations’ rights and interests to obtain environmental information”.<sup>721</sup> In other words, to obtain environmental information is the lawful right and interest of the concerned party under the OEI Measures.<sup>722</sup>

Although the lawyer Sun Nong’s legal action was dismissed based on the lack of a causal relationship, the court’s decision confirmed that he had a legal right to access government information. It was already stated by the court in 2009 that

《条例》明确规定了公民享有依法获取政府信息的权利，即知情权，这一权利属于《中华人民共和国行政诉讼法》保护公民、法人或者其他组织合法权益的组成部分。

*The OGI Regulations explicitly stipulate that citizens have the right to obtain government information according to law. This refers to the right to information, which belonged to the scope of legal rights and interests of the citizens, legal persons and other organizations that shall be protected by the Administrative Litigation Law of the PRC.*<sup>723</sup>

This confirms the scholarly discourse that legal rights and interests that are alleged to be infringed by administrative actions clearly do not only refer to the rights of the person or of property—for instance personal freedom, or loss of property—but also include other lawful rights and interests.<sup>724</sup> Accessing to environmental information as a legal right has also been endorsed in *ACEF v. Xiuwen EPB*, and *Xie Yong v. Jiangsu EPB*.

In *ACEF v. Xiuwen EPB*, the court affirmed that to obtain environmental information was an important right for citizens, legal persons, and other organizations, and it was an important approach for the public to participate in

<sup>719</sup> OGI Regulations, Article 1.

<sup>720</sup> Jiang Bixin & Li Guangyu 2009, 14.

<sup>721</sup> OEI Measures, Article 1.

<sup>722</sup> Mo Yuchuan & Lin Hongchao (Eds.) 2008a, 213.

<sup>723</sup> *Sun Nong v. Zhuhai EPB*, Guangdong Province Zhuhai City Intermediate People’s Court Administrative Ruling, (2009) zhuzhongfaxingzhongzi No.50, 17 December 2009, 14.

<sup>724</sup> Mo Yuchuan & Lin Hongchao 2008a, 213; Jiang Bixin & Li Guangyu 2009, 14.

environmental protection and monitor the implementation of environmental protection laws.

本院认为，依法获取环境信息，是公民、法人和其他组织的一项重要权利，是公众参与环境保护，监督环保法律实施的一项重要手段。

*Our court considers that to obtain environmental information according to law is a very important right for citizens, legal persons and other organizations. It is a very important means for the public to participate in environmental protection and to monitor the implementation of environmental laws.*<sup>725</sup>

In *Xie Yong v. Jiangsu EPB*, the court first confirmed clearly that administrative agencies “shall bear the legal obligation to disclose environmental information (有公开相关信息的法定职责)”.<sup>726</sup> This is the same as in *Yu v. Anqing EPB*. Moreover, it also stated that

原告谢勇依法要求获取相关环境保护信息的知情权益，应当得到维护和支持。

*The plaintiff Xie Yong requested for the relevant environmental protection information according to law. This is his right and interest to information and shall be safeguarded and supported.*<sup>727</sup>

The three court judgments in 2012 have further confirmed that on the one hand, government agencies have the obligation to disclose environmental information, and on the other hand, the public has the legal right to access environmental information.

#### **5.3.4 From the Scope of Environmental Information Disclosure to the Means of Disclosure**

Court judgments have also helped to clarify other issues with regard to open environmental information, specifically, the scope of environmental information

<sup>725</sup> *ACEF v. Qingzhen EPB*, Guizhou Qingzhen People’s Court Administrative Litigation Judgment, (2012) qinghuanbaochuzi No. 1, 10 January 2012, 6.

<sup>726</sup> *Xie Yong v. Jiangsu EPD*, Jiangsu Province Nanjing City Intermediate People’s Court Administrative Judgment, (2012) ningxingchuzi No. 26, 13 August 2012, 6.

<sup>727</sup> *Ibid.*, 9.

disclosure, requirements for information disclosure requests submitting, government obligation in dealing with disclosure requests, and the means of disclosure.

In *ACEF v. Xiuwen EPB*, the court stated that the principle for environmental information disclosure is to disclose as the principle, not to disclose as the exception, and the disclosure exceptions are limited to state secret, business secret and privacy.

环境信息应以公开为原则，不公开为例外。原告中华环保联合会为环境公益诉讼案件的需要向被告修文县环保局通过邮政快递的方式提出了环境信息公开的书面申请，并在申请中载明了申请人的名称、联系方式、申请公开的具体内容、获取信息的方式等，其申请环境信息的内容不涉及国家秘密、商业秘密、个人隐私、属于法定可以公开的政府环境信息，……

*To disclose environmental information shall be regarded as the principle and not to disclose as the exception. The plaintiff ACEF submitted its written request by courier and also stated the name and contact of the requester, content of information, and the way the information be provided, in the request. The content of the information requested for disclosure does not concern state secret, business secret and individual privacy, and it belongs to the scope of government environmental information that shall be disclosed. ...*<sup>728</sup>

This understanding of the scope of information to be disclosed was also taken by the court in *Xie Yong v. Jiangsu EPB*. The court stated that

被告在答复中认为上述信息为内部管理信息，其拒绝公开的理由不符合《信息公开条例》第十四条的规定，缺乏法律依据。

*the reply by the defendant that the materials are internal management information and shall not be disclosed does not comply with Article 14 of the OGI Regulations.*<sup>729</sup>

This plays a same function as the judgment of *ACEF v. Xiuwen EPB* to further confirm that the exceptions of disclosure shall be based on Article 14 that only information concern state secret, business secret and individual privacy shall not be

<sup>728</sup> *ACEF v. Qingzhen EPB*, Guizhou Qingzhen People's Court Administrative Litigation Judgment, (2012) qinghuanbaochuzi No. 1, 10 January 2012, 6-7.

<sup>729</sup> *Xie Yong v. Jiangsu EPD*, Jiangsu Province Nanjing City Intermediate People's Court Administrative Judgment, (2012) ningxingchuzi No. 26, 13 August 2012, 7.

disclosed. It thus excludes state security as one type of disclosure exception, but shall only be regarded as balancing element for discretion.

In *Xie Yong v. Jiangsu EPD*, the scope of information disclosure, particularly with regard to Article 17 of the OGI Regulations, has also been clarified. Article 17 of the OGI Regulations stipulates:

*Administrative agencies shall be responsible for disclosing government information that they have made. Administrative agencies that store government information obtained from citizens, legal persons or other organizations shall be responsible for disclosing it. If laws or regulations have different provisions on the scope of authorization to disclose government information, those provisions shall be followed.*<sup>730</sup>

In 2008, the Shanghai Huangpu District Court dismissed Shanghai resident Xu Taisheng's claims based on Article 17 of the OGI Regulations and Article 14 of *Shanghai Open Government Information Rules* (上海市政府信息公开规定).<sup>731</sup> The major argument was that an administrative agency should disclose information made or compiled by itself. If the information was compiled by other government administrative agencies, in Xu Taisheng's case, SEPA and the Baoshan EPB in Shanghai respectively, it did not fall into the scope of the disclosure responsibility of the defendant, the Shanghai EPB.<sup>732</sup> This judgment was later upheld by the second instance court of Shanghai No.2 Intermediate people's Court.<sup>733</sup> Although Xu later got the information after a hearing, the court's interpretation of Article 17 limited the scope of information to be disclosed by government agencies to a large extent.

A different court opinion was given more than three years later in August 2012 in *Xie Yong v. Jiangsu EPD*. The Nanjing Intermediate People's Court stated that:

<sup>730</sup> The translation is made by the China Law Centre, Yale Law School.

<sup>731</sup> Xu Kezhu et al. 2011. Shanghai is one of the pioneer experimental cities in issuing open government information government rules before the formal establishment of the open government information mechanism nationwide in 2007-2008. Article 14 of the Shanghai Open Government Information Rules stipulates: if the requested information concerns a third party's interests, unless the third party already agreed for its disclosure, the government department shall consult the third party in written form. If the third party does not reply within the requested period, it is regarded as not agreeing for disclosure.

<sup>732</sup> *Xu Taisheng v. Shanghai EPB*, Shanghai Huangpu District People's Court Administrative Judgment, (2008) huangxingchuzi No. 258, 15 December 2008, 3; *Xu Taisheng v. Shanghai EPB*, Shanghai Huangpu District People's Court Administrative Judgment, (2008) huangxingchuzi No.260, 15 December 2008, 3.

<sup>733</sup> *Xu Taisheng v. Shanghai EPB*, Shanghai No. 2 Intermediate People's Court Administrative Judgment, huerzhongxingzhongzi No.34, 17 February 2009, 3; *Xu Taisheng v. Shanghai EPB*, Shanghai No. 2 Intermediate People's Court (2009) huerzhongxingzhongzi No.36, 17 February 2009, 3.

在行政许可完成后，申请人提交的材料，系行政许可的事实性材料，应当予以公开。《信息公开条例》第二条规定，政府信息是指行政机关在履行职责过程中制作或获取的，以一定形式记录、保存的信息，因此，行政机关在履职的过程中，制作或者获取的信息，均在信息公开的范围内。……原告申请公开赛特有限公司垃圾焚烧项目申请生活垃圾甲临、甲级资质证书时被告提出的预审意见、申请生活垃圾甲级资质证书提交的项目简介、运营合同、环境保护监测机构出具的设施运行监测报告等信息，均是被告在预审过程中制作和获取的相关资料，被告省环保厅在本案中理应成为相关信息公开的义务主体。

*When an administrative permit is completed, documents submitted by applicants become materials of the administrative approval process, and shall be disclosed. According to Article 2 of the OGI Regulations, information made or obtained during its administration belongs to the scope of information that shall be disclosed ... The Level A temporary permit, pre-evaluation opinion, project introduction, operation contract and inspection reports, are all related materials made and obtained by the defendant during its pre-assessment process. The defendant bears the obligation to disclose them.*<sup>734</sup>

This court judgment clarifies that government agencies are not only responsible to disclose information made by them but also responsible to disclose information that obtained during their administration. This shows stark contrast to the obfuscated application made by the Shanghai Huangpu People's Court and Shanghai No. 2 Intermediate people's Court in dismissing Xu Taisheng's claims that a government agency is only responsible for disclosing information made or compiled by the agency itself but not information obtained from other places.

Besides the scope of information to be disclosed, requirements can be imposed upon the public for submitting information disclosure requests by government agencies have also been clarified though administrative litigation. Basically, government agencies shall not ask requesters to present their identification certificates as long as they provide name and contact information. In *ACEF v. Xiuwen EPB*, the court stated that:

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<sup>734</sup> *Xie Yong v. Jiangsu EPD*, Jiangsu Province Nanjing City Intermediate People's Court Administrative Judgment, (2012) ningxingchuzi No. 26, 13 August 2012, 7.

关于被告认为原告在提交政府信息公开申请时，应同时附上原告的身份证明的意见，本院认为，原告在信息公开申请表中已正确填写了单位名称、住所地、联系人及电话并加盖了公章，而《中华人民共和国政府信息公开条例》第二十条明确规定，政府信息公开申请应当包括（一）申请人的姓名或者名称、联系方式；（二）申请公开的政府信息的内容描述；（三）申请公开的政府信息的形式要求，其中并没有强制要求申请人提供身份证明，故被告所提意见没有法律依据。

*As to the plaintiff shall provide a certificate to prove its identification together with its submitting the government information disclosure [required by the defendant], our court considers that the plaintiff already filled its name, address, contact person and telephone number in request table with its entity stamp. According to Article 20 of the OGI Regulations, government information disclosure request shall include (1) name and contact of the requester; (2) description of the information requested for disclosure; (3) the method of disclosure. There is no requirement about the requester must provide identification certificate, thus the defendant's argument has no legal basis.*<sup>735</sup>

This court judgment also clarifies that government agencies shall not reject unclear request but rather bear the obligation to ask the requester to give further clarification, and government agencies shall try its best to disclose the information that is within its knowledge.

关于被告认为好一多公司在修文县有三个基地，原告未明确申请公开哪一个基地的环境信息，原告所申请的内容不明确的意见，本院认为，《中华人民共和国政府信息公开条例》第二十一条规定，对于申请内容不明确的，行政机关应当告知申请人作出更改、补充。在本案中，原告在申请表中已经明确提出需要贵州好一多乳业股份有限公司的排污许可证、排污口数量和位置、排放污染物种类和数量情况、经环保部门确定的排污费标准、经环保部门监测所反映的情况及处罚情况、环境影响评价文件及批复文件，其申请内容的表述是明确具体的，至于好一多公司在修文县有几

<sup>735</sup> ACEF v. Qingzhen EPB, Guizhou Qingzhen People's Court Administrative Litigation Judgment, (2012) qinghuanbaochuzi No. 1, 10 January 2012, 7.

个基地，并不妨碍被告公开信息，被告应就其手中掌握的所有涉及到好一多公司的相关环境信息向原告公开。

*As to the defendant's argument that Haoyiduo Company has three branches in Xiuwen county and the plaintiff did not clarify the information concerned which branch thus constituted unclear information disclosure request, our court considers, that according to Article 21 of the OGI Regulations, with regard to request that is unclear, the government agency shall notify the requester to amend and clarify with additional information. In this case, the plaintiff already gave a clear request that it needed the information of Pollutants Emission Permit, the number of pollutants emission exits and their localities, the types and volume of pollutants emitted, the pollutant emission charge standard, the situation of environmental monitoring and inspection and environmental penalties, the EIA reports and its approval documents. The plaintiff's request is clear and substantive. As to [the fact that] there are a few branches of Haoyiduo Company does not affect the defendant's disclosing the information. The defendant shall disclose the information that is within its knowledge of the Haoyiduo Company.*<sup>736</sup>

Furthermore, government agencies shall not only fulfil its obligation of disclosure but also fulfil it in the form requested by the public. In *Yu v. Anqing EPB*, the court stated it clear that the Anqing EPB violated its legal obligation in three aspects:

被告于2012年2月15日通过电子邮件向原告提供的政府环境信息，未按照原告要求的纸质形式予以提供，延长答复期限未书面告知原告，且不能举证证明延长答复期限经过法定程序、答复系在法定期限内作出，被告的行为构成不履行法定职责。

*The defendant provided the plaintiff the requested environmental information by email instead of in written form, and the defendant delayed its reply without informing the plaintiff, the defendant also did not bear the burden of proof to explain its taking the legal procedure*

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<sup>736</sup> *ACEF v. Qingzhen EPB*, Guizhou Qingzhen People's Court Administrative Litigation Judgment, (2012) qinghuanbaochuzi No. 1, 10 January 2012, 7-8.

*to delay the reply and the reply was within the time limit, these actions constitute its failure of fulfilling its legal obligations.*<sup>737</sup>

In brief, no matter in lawsuits that the plaintiffs win or in the others they lose, it is clear that court rulings can nevertheless help to further clarify both substantive and procedural issues, thus providing more opportunities for the public to file environmental information disclosure litigation. However, does this mean that, as it is stated in *Yu v. Anqing EPB*, there is a real turning point for the courts to “safeguard the legitimate right and interest of citizens and monitor administrative agencies to administer according to law (维护公民的合法权益, 监督行政机关依法行政)”?<sup>738</sup>

### 5.3.5 A Turning Point?

According to Vanhala:

*[t]he terms “test case” and “strategic litigation” generally refer to those cases in which an organization or individual entreats a court or tribunal to a) look at an issue for the first time or potentially reconsider an issue that has been decided in the past, b) decide an issue that will affect a significant number or class of people, and/or c) consider a particular perspective on an issue that has hitherto not been included in existing jurisprudence.*<sup>739</sup>

“Test case” and “strategic litigation” have not been really used by the lawyers and citizens in China. However, it seems like the concept of “impact litigation” (影响性诉讼) used in China refers to the same types of lawsuits that aim to “establish model decisions for other plaintiffs, attorneys, and judges to follow”.<sup>740</sup> In fact the English name of the Impact Law Firm derived from this. Nonetheless, the administrative lawsuits analysed in this chapter, though might not really initiated purposely as “test cases”, have been functioning similarly in creating opportunities for the courts to

<sup>737</sup> *Yu v. Anqing EPB*, Anhui Province Anqing City Yingjiang District Court Administrative Judgment, (2012) yingxingchuzi No.00006, 11 May 2012, 4-5.

<sup>738</sup> *Ibid.*

<sup>739</sup> Vanhala 2011a, 6.

<sup>740</sup> Wilson 2012.



clarify unsolved or unclear issues about the OEI Measures, thus bearing the same function as strategic litigation.

However, despite the noticeable development in court judgments, it is difficult to say whether they really constitute a turning point in the sense that there has been or will be a legal opportunity structure conducive to environmental information disclosure related administrative litigation. First of all, since China adopts a civil law system and does not recognize judicial precedents as binding in later cases, landmark cases do not guarantee that all Chinese courts will act accordingly in the future.

Second, it appears that the Chinese courts are still very cautious in accepting administrative lawsuits; and Chinese courts are likely to consult the defendant government agencies for pre-trial solutions. An environmental lawyer said:

行政诉讼案子，法院立案之前是要跟当事人沟通的。法院说，行政诉讼要慎重，跟别人说，有人告你，促使对方去解决问题。在起诉之前，双方已经过很多次了，能解决早就解决了，还用你法院去告诉啊？

*Before accepting administrative lawsuits, the court always communicates with the concerned parties [government agencies]. The court says that they take administrative litigation cautiously, and telling the defendant is to urge him to solve the problem. However, before taking the case to court, the plaintiff normally contacted the defendant for many times already. If the problem could be solved, it should have been done already. Why does it need the court to communicate again?*<sup>741</sup>

Moreover, Chinese courts are also encouraged by the Supreme People's Court to settle cases through mediation.<sup>742</sup> Although strictly speaking, mediation is not applicable to the adjudication of administrative law cases,<sup>743</sup> a practice similar to mediation, reconciliation (和解) acts as an alternative that the court actively facilitate both parties to reach a settlement, under which the defendant changes its

<sup>741</sup> Interview with lawyer, 30 May 2011.

<sup>742</sup> The Supreme People's Court, *Several Opinions of the Supreme People's Court on Further Displaying the Positive Roles of Litigation Mediation in the Building of a Socialist Harmonious Society*, Fafa [2007] No. 9, issued and effective 6 March 2007.

<sup>743</sup> AL Law, Article 50. It is argued that the legality of an administrative action is not a matter that shall be negotiated and subject to the bargaining and compromises in a mediation process. See, Chen 2011, 301, ft329; Jiang & Liu 1989, 125.

administrative action and the plaintiff, withdraws the lawsuit.<sup>744</sup> This happened with Sun Bin, Green Beagle, and the Impact Law Firm. In the case of Xu Taisheng, the dispute was finally resolved by a hearing. The problem was solved in a harmonious way and the court judgment was nevertheless not reversed. This is because to state a government agency does something wrong in a court judgment is a big issue, and this kind of judgment is not easy to be made.<sup>745</sup> There is no doubt that reconciliation or hearing can be more efficient or flexible than adjudication, it nevertheless decreases the possibility of more influential and binding court judgments to be issued.

The impact of a lawsuit also depends on many other extra-legal factors, including the media. With regard to the three winning cases in 2012, reports about the ACEF case were quite abundant; media reports concerning the latter two cases were limited and less influential. As ACEF is a GONGO directly affiliated to the MEP, it attracted the most media attention with its information disclosure litigation. A search of the subject “ACEF v. Xiuwen EPB” through Google<sup>746</sup> resulted in more than 30 pages of related reports.<sup>747</sup> From the accepting of the lawsuit to the judgment rendered, it appeared in most major Chinese media ranging from *China Daily*, People’s Net, Yahoo, Sina, local media in Guizhou Province where the trial happened, and the websites of ACEF and the trial court. The case was also listed as one of the 10 most important public interest lawsuits of 2011 in China<sup>748</sup> and hailed as a milestone in pushing forward environmental information disclosure in China. For instance, the report by *People’s Daily* stated:

有关专家指出，本案开启了以司法审查推动中国的政府信息公开之门，对于推进政府依法行政、维护公民、法人和其他社会组织获取环境信息的权益，推动公众参与环境保护具有里程碑意义。

*Experts point out that this case opens the door of using litigation to push forward open government information. It constitutes a milestone*

<sup>744</sup> Chen 2011, 301.

<sup>745</sup> Interview with law professor, 3 June 2011.

<sup>746</sup> Although Google withdrew from China due to its disagreement with China’s Internet censorship, it in fact still provides simplified Chinese service for Chinese Internet users via Hong Kong domain and server. Moreover, the author considers that Google in fact still provides better and accurate results than the biggest Chinese search engine Baidu.

<sup>747</sup> Internet search conducted on 7 January 2013. The search term is in Chinese, it is “全国环保联合会诉清镇环保局”.

<sup>748</sup> *Minzhu yu fazhi wang*, 19 February 2012.

*in promoting government administration according to law, safeguarding the rights and interests of citizens, legal persons and other social organizations to obtain environmental information, and facilitating public participation in environmental protection.*<sup>749</sup>

*Yu v. Anqing EPB* was part of the environmental information disclosure survey conducted by the Impact Law Firm, which is not only professional in legal knowledge but also active in promoting public interest litigation in China. Nevertheless, a search for “*Yu v. Anqing EPB*” through Google only results in one page with related articles, and a second page with a few related links.<sup>750</sup> As for *Xie Yong v. Jiangsu EPB*, a search resulted in 17 pages with links relating to his information disclosure requests.<sup>751</sup> However, they are mostly reports about his failure to obtain the environmental information from various government agencies. Only a few relate to his winning the lawsuit against the Jiangsu EPB, and generally these are reposts from the first report of CLAPV that provided legal aid to his litigation.<sup>752</sup> Compared to the wide media coverage about open government information when the OGI Regulations and the OEI Measures just came into effect, it seems that the recent winning cases, except the ACEF lawsuit, were probably not known to a wider audience.

More controversially, in 2013, the amendment of the Environmental Protection Law (EP Law) has indicated that a broader participation of environmental organizations in environmental lawsuits is not encouraged yet. The July 2013 amended draft of the EP Law particularly stipulates that only ACEF and its local offices have the legal standing in filing public interest environmental litigation.<sup>753</sup> On the one hand, this seems a progress that public interest litigation is explicitly stipulated by the new EP Law. However on the other hand, it also appears that the law tries to reserve public interest environmental litigation to the GONGO alone and thus excludes the participation of all other ENGOs. In October 2013, the draft was amended again, stating “national social organizations registered with the Civil Affairs Office under the State Council, have conducted environmental protection activities continuously for more than five years, and with good reputation” can file

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<sup>749</sup> *Renmin wang*, 17 January 2012.

<sup>750</sup> Internet search conducted on 7 January 2013. The search term is “于诉安庆环保局”.

<sup>751</sup> Internet search conducted on 7 January 2013. The search term is “谢勇诉江苏环保局”.

<sup>752</sup> Liu Jinmei 2012.

<sup>753</sup> National People’s Congress, Environmental Protection Law amendment (second draft), 17 July 2013.

environmental public interest litigation. Basically among the active organizations, only ACEF fits the requirements.<sup>754</sup> Ho argued that the establishment of ACEF in 2005 after the color revolution in the Ukraine, Georgia and Kyrgyzstan was a “clever move by the government to co-opt environmental civil groups”.<sup>755</sup> The 2013 EP Law amendment draft seems a confirmation. Moreover, this draft also shows that a wider scope of legal standing is not really welcomed by the central authorities at present. In 2013, ACEF filed in total seven environmental public interest lawsuits, and four were not accepted, three were dismissed by the first instance court. Basically; basically in 2013 no environmental public interest lawsuit was adjudicated in China.<sup>756</sup> This is also sending out a mixed signal from the authorities about environmental public interest litigation that while the central government emphasizes environmental protection never so often, it is still very hesitant in fully opening the door for environmental public interest litigation. Seeing no clear gesture from the central government, Chinese courts are also acting conservatively and unwilling to accept more environmental public interest litigation.

#### 5.4 Concluding Remarks

Due to the limited number of cases brought to court, it is difficult to generalize the trend of judicial development with regard to open environmental information administrative litigation. Nevertheless, the available lawsuits have shown that despite the dismissal of the cases using a restrictive interpretation of legal standing and unfavourable judgments towards plaintiffs with obfuscation of legal rules, the *ACEF v. Qingzhen EPB*, *Yu v. Anqing EPB*, and *Xie Yong v. Jiangsu EPD* judgments have shown visible progress in courts gradually accepting administrative lawsuits, implying the possibility of applying a broad application of the requirement of legal standing. Secondly, the court judgments have also demonstrated that the failure to provide environmental information as requested can constitute a violation of the law by government agencies. However, it might be too positive to say that these cases have indicated a real turning point in administrative litigation for rectifying failures to access government information. A major problem with the

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<sup>754</sup> *Caijing*, 4 November 2013.

<sup>755</sup> Ho 2008, 23.

<sup>756</sup> *Fazhi ribao-Fazhi wang*, 23 January 2014; see also, *Renmin ribao*, 14 December 2013.

legal system is the current judicial system is still more restrictive than active in acting as an active supporting pillar in the process of mobilizing the law to access government information.

Undoubtedly in China, lacking in judicial independence, it remains a formidable challenge for the Chinese courts to safeguard citizens' rights and act not in favour of the powerful authorities. It will take a considerable time for the court to be an effective monitor of government administration under an authoritarian regime. The zero acceptance of environmental public interest litigation in 2013 has signalled the unwillingness of Chinese courts to make liberal moves while no clear guidance given by the central authority. Moreover, the 2013 EP law amendment drafts have indicated that the central government is rather hesitant about giving more space for the civil society to participate in environmental protection.

Nevertheless, a legal mobilization, though not on a large scale, has been happening in the field of environmental information disclosure along with the growing environmental and legal consciousness of ordinary citizens and professionals, such as lawyers and environmental organizations. They have been actively forming the agents of change aiming to use the new regulations for the benefits of the public and the environment, and most of all, to push government agencies to fulfill their disclosure obligation. In a realist view that law is one form of politics,<sup>757</sup> citizens have been taking the approach of judicialization to participate in the political process. During this process, empowered by the law, taking government agencies before Chinese courts, citizens and lawyers have become active participatory actors and helped to shape legal opportunities. In a word, their lawsuits have also extended "in impact beyond the specific circumstances of the particular case".<sup>758</sup>

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<sup>757</sup> Paris 2010, 24.

<sup>758</sup> Vanhala 2011a, 193.

## **6 LEGAL PARADOX, CITIZEN MOBILIZATION AND POLITICAL PROCESS**

The aim of this dissertation is to study the workings of the law in the field of open environmental information, with a particular focus on environmental information disclosure upon request. It takes an integrated approach of studying the role of law within its social and political context.

Based on this study, it is clear that the formal establishment of China's open government information mechanism has not led to an effective means of getting government information disclosed due to defects and problems in the legislation and obstacles in its implementation. However, the invoking of the law by citizens and entities has formed a new legal mobilization that has contributed to the shaping of China's open government information system. During the process of legal mobilization, citizens and entities have changed themselves into the key drivers for pushing government agencies to fulfil their obligations of disclosure. Moreover, the public, including citizens and entities active in the field of the society, have also created changes and made an impact in China's legal and political field.

### **6.1 The Legal Paradox**

While there are more and more laws and regulations promulgated, the debate about whether China has rule of law or not still dominates the academic discourses. One of the major reasons behind this is that the legal system in China has never appeared as so paradoxical as now. On the one hand, it seems that the Chinese government has been continuously taking measures to promote its aims of "constructing the country according to law" by promulgating abundant new legislation; on the other hand, the abridging of basic rights and the lax or obstructed implementation of laws has appeared still frequently. In the field of environmental protection, while there are sufficient laws, regulations, and rules regulating almost all aspects of the environment, environmental pollution and ecological degradation have been happening at an unimaginable pace.

There is no exception with regard to the mechanism of government information disclosure—it is also full of paradoxical situations. First of all, it is paradoxical to introduce open government information mechanism into China's non-democratic political system.<sup>759</sup> While access to government information constitutes the first step of public participation in decision making, which can indeed lead to more demands for public participation in China's political process. A dilemma exists for the Chinese government in that while it opens the door for government information disclosure, it does not want to leave the door fully open, fearing that too much open government information might lead to more democratic demand. This shows more clear with regard to people who demand government officials to disclose their assets. Although it can be regarded as part of the government information disclosure mechanism and even complies with the central government's anti-corruption policy, it is immediately repressed and people got detained if they go to street with banners of disclosing government officials' assets. Thus, the Chinese government tries to control and limit information disclosure at the same time.

The second paradox relates to the establishment of the new open government information mechanism in China and the resistance of information disclosure by all levels of government agencies from the MEP to local EPBs, as shown by the findings in this study. It appears that open government information has still remained more like government rhetoric than a government commitment.

Moreover, the Chinese government agencies are also using various reasons from the laws, from business secret to state stability, to refuse information disclosure. Undoubtedly, while the political legitimacy of the Party-state is, to a large extent, still depends on economic growth, it seems not difficult to understand whether the government will use the law to protect environment or to protect business if there is conflict between these two. At the same time, legal rhetoric can help government agencies to mask their political discretion and make their activities appear legitimate, and difficult to be challenged by the public. Thus legal rhetoric becomes the tool of government politics.

The issuance of normative documents, giving narrow interpretations of the OGI Regulations, has further added to the paradox of the implementation of the open government information law in China. It reflected that the central government agencies, including the SC and the SEPA, have not really been encouraging more citizens and entities to access government information; instead they have been

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<sup>759</sup> Hubbard 2008, 4.

providing more flexibility for government agencies to refuse information disclosure and thus limit citizens' rights to access government information. The government has been conducive and containing in open government information at the same time. The power of law has been mitigated through administrative power.

The main paradoxical question this study aims to address, that despite the obstacles and impediments existing and the unpromising realization of environmental information disclosure upon request, citizens and entities have still been actively using the new legislation to request that related government agencies disclose information. The findings of this dissertation have shown that it is the social and political change achieved or aimed to achieve by citizens and entities' invoking the law to access environmental information that matters. Their mobilizing the law to access environmental information in fact constitutes both an end and a means. Even if they cannot achieve their aim of getting the information requested, they can nevertheless raise social awareness, strengthen the civil society through networking, and impose pressures upon government agencies to get to know their legal obligations and to act accordingly, and create legal opportunities.

## **6.2 Citizen Activism, Legal Mobilization and Political Change**

In China, as citizens have been utilizing legal strategies in pushing government agencies to fulfil their obligations of disclosure, they are indeed demanding the realization of their right to information stipulated by the law; it thus constitutes citizen activism in the form of legal mobilization.

This legal mobilization has utilized the rules of law established by the authorities to assert their rights and demand government agencies act according to law. It is a type of boundary spanning that it used the language of law, demanding for political changes. It goes beyond the "rightful resistance" coined by O'Brien and Li<sup>760</sup> to more explicit and direct "lawful demand". Actively making "the legitimacy of one's claim ... grounded in rules of law,"<sup>761</sup> citizens and organizations have turned themselves from passive actors into agents of change. Moreover, while more and more people take similar legal actions, in accumulation, they form an individualized collective activism that can and will help to make more changes.

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<sup>760</sup> O'Brien & Li 2006.

<sup>761</sup> Zemans 1983, 700.



In the social field, more and more citizens, including residents, lawyers and NGO workers have started to use the law not only to safeguard their own rights but also to raise environmental awareness among the public, enabling more citizens to use legal mobilization for their causes in the future.

In the legal field, strategic litigation has been adopted, particularly by ENGOs and law firms, in order to create “reversed pressure” upon government agencies to react to information disclosure requests.

This has helped to create chances in the legal opportunity structure. It is clear that without citizens and organizations launching lawsuits, there would not be court judgments. Taking various tactics to get their legal actions accepted by Chinese courts, citizens and organizations have also made it possible for the courts to clarify both procedural and substantive issues relating to environmental information disclosure administrative litigation.

Court judgments have already started a change towards the broadening of the scope of legal standing in filing environmental information disclosure related administrative lawsuits as well as clarifying some legal issues, such as the scope of information that shall be disclosed. This has clearly enhanced “the degree of openness or accessibility of a legal system to the social and political goals and tactics of individuals and/or collective actors”.<sup>762</sup> Moreover, court judgments favourable to information disclosure requesters have indicated that the possibility exists for the public to win against government agencies who fail to disclose information upon request. This can encourage more citizens and entities to sue against government agencies in the future.

Accordingly, it further enhances the role of administrative litigation to create pressure upon government agencies, in the fear of being sued, to react to disclosure requests instead of neglecting them in the first instance.

The findings in this dissertation have shown that although it seems that the Chinese courts are rather conservative in being strong supporters of open government information, they help in clarifying issues about the subject and pave the way for more administrative litigation in the future. While restraints exist for legal reform of China—for instance having an independent court system still seems impossible in the near future—the Chinese courts have been making progress when rendering court judgments and can thus produce more legal opportunities for future litigation. This study also agrees with the argument that legal opportunity shall be

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<sup>762</sup> Zemans 1983, 527; Hilson, 2002.

taken into consideration when studying legal mobilization. It is clear that there is not really unchangeable legal opportunity structure. Opportunities can nevertheless be created with the activism of citizens and organizations, as reflected in this study.

In China, changes in the political field of government administration have been largely instigated by the citizen activism of directly interacting with government agencies about information disclosure. The increase of public requests for environmental information disclosure, regardless of whether for private interests or for public interest, such as conducting information disclosure requests as surveys, has clearly made government agencies change from being unfamiliar with information disclosure to effectively aware of the laws and regulations about it. Although government agencies are still hesitating about disclosing environmental information, more and more of them have changed their attitude towards information disclosure requests from simply ignoring them to disclosing the information or using legal rhetoric to avoid disclosing information. Based on the study, it is very clear that while the law lays down the foundation for open government information, it is citizen activism that has been pushing forward its implementation.

Last but not least, a legal system is not merely about rules and structures, but a “set of interactions” and a social system.<sup>763</sup> It is thus of significant importance to understand the interactions between the social and political fields through the media of law. In this study, the legislation from the political field has laid down the foundations for the public to use it to request the government disclosure information. This further imposes recursive pressure on government agencies to change accordingly. Thus, legal activism in the social sphere has clearly made impact in the political field. Moreover, in reacting to the empowerment of citizens and entities by the new legislation of open government information, politico-legal adjustment occurs with the production of normative documents issued by the SC and the SEPA *de facto* limiting public access to government information. This has shown that the Chinese government and government agencies have still been very concerned with the empowerment of the public by the OGI Regulations and the OEI Measures, in that they might demand more participation in political processes. This again proves the dilemma of establishing an open government information mechanism in the non-democratic environment of China.

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<sup>763</sup> Friedman 1975, 5.

Nevertheless, citizen action in the form of legal mobilization has been happening. Although the number of participants is still limited and legal actions are sporadic, a network of using the law to demand government agencies to disclose environmental information has emerged, and actively played its pivotal role in shaping China's environmental information disclosure mechanism. Apparently, ENGOs have also changed from promoting environmental education, bird watching and tree planting to being active agents and directly demanding government to act through requesting for information disclosure and filing administrative lawsuits. The ENGOs are probably still "embedded" in a way that they avoid to make their actions bearing any political aims; however, even explicitly apolitical actions can make political changes too. In the field of environmental information disclosure, citizens and organizations have already proved it.

### **6.3 Concluding Remarks**

With regard to environmental information disclosure, public participation in the form of requests for environmental information disclosure, though still limited in size, has been developing from a token stage of being informed and consulted to a more meaningful one of exercising citizen power. An "actual legal mobilization occurs only when there is an active demand based on legal norms";<sup>764</sup> this study has shown that citizens and organizations have been actively requesting government agencies to disclose environmental information, and more importantly, endeavouring to make government agencies disclose the information according to law. An actual legal mobilization in requesting for environmental information disclosure has been happening in China.

Legal actions in the field of environmental information disclosure mostly bear the characteristics of SULNAM coined by Kate Zhou that they are "spontaneous, unorganized, leaderless, non-ideological, and apolitical", yet cumulatively they will help to revolutionize Chinese society.<sup>765</sup> This study emphasizes that while more citizens act in similar measures, in accumulation, together they form an

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<sup>764</sup> Zemans 1983, 701.

<sup>765</sup> Zhou 2009, xxvii.

individualized collective activism<sup>766</sup> that plays more important roles during China's legal and political transition.

Moreover, this legal demanding of environmental information disclosure is nevertheless not alone and individualistic, if taking into consideration of the happening of legal mobilization in present China. While actions in the form of politicization is repressed and limited, judicialization has become an alternative of political participation. From rights-defence movement to public interest litigation, it is clear that the public has used legal language aiming for changes beyond redressing their grievances. This study argues that in accumulation, legal actions in various fields can play a pivotal role during China's transition. However it shall also be pointed out that it depends on how the Chinese government will react to the happening of legal mobilization, or citizens' using the law to demand their rights.

In any case, with regard to the legal development in China, it is incomplete and narrow to only focus on the top-down process of legal reform initiated by the Chinese government. By doing this, the role of citizens have been largely neglected. It is suggested here that the legal development in China shall be treated not a legal reform but in fact a legal change.<sup>767</sup> First of all, it is doubtful whether there has been a real legal reform in China due to the fact legal reform and political reform are seriously lag behind China's economic reform and remain almost dormant; secondly, legal change embodies a multi-directional perspectives in understanding the function of law and it includes both the top-down initiative of the shaping of the legal system as well as the bottom-up activism of the reshaping of China's legal opportunity structure by citizens, lawyers and organizations.

A shift of studying Chinese law from focusing on laws and rules established by the authorities to the roles of citizens and organizations can help us to better understand China's legal and political change as well. It is true that law is never separated from politics in China that the ruling party—CCP plays a role in determining today's legal reform. Furthermore, the authority has also used law for its own purposes,<sup>768</sup> and to counteract against citizen activism, for instance, the using of legal rules to refuse information disclosure; more seriously, the cracking down of Chinese civil society can also be done “in the name of law”, for instance,

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<sup>766</sup> Van Deth & Maloney 2013.

<sup>767</sup> This argument is inspired by Eva Pils's comment at the European China Law Studies 2013 Annual Conference at Oxford, 18-19 September 2013.

<sup>768</sup> Teng 2014.

the authority use the crime of “subverting state power”<sup>769</sup> or “disrupting public order”<sup>770</sup> to charge citizens for their expressing different opinions towards China’s political system and calling for rule of law and democratic reform. However does this mean that law can only be used to serve the politics of the authorities? If we see it from a different perspective, law clearly can also empower citizens to actively interact with the government, thus constituting political participation in the political process, as pointed out by this dissertation.

Underscoring the roles and strategies of citizens and organizations invoking the law to request for environmental information disclosure, this study argues that the bottom-up individualized legal mobilization can play an alternative role of public participation in China’s political process. However, due to the length of this study, there are many related questions still remain unanswered in this dissertation. For instance, how do citizens and organizations use the information they get through disclosure requests? Under which situations will the public be likely to get the information? How does the legal action of filing administrative reconsideration affect government information disclosure? Furthermore, a comparative study with regard to other types of government information disclosure, for instance, disclosing government officials assets or government spending, and a wider scope of general government information disclosure will also help us to understand the wider picture of open government information in China. Most of all, this study wishes that it will inspire more people to concern not only China’s legal development from the perspective of the establishment of the legal system by the authorities, but also how citizens and civil organizations have been mobilizing the law to create political changes. In addition, studies about the relationship between legal mobilization and social movements in China are also of immediate and necessary importance against China’s current political environment that organized political activities are likely to be repressed and judicialization under many situations plays an alternative role of mobilization and political participation.

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<sup>769</sup> In 2009, China sentenced Liu Xiaobo to 11 years in prison for his calling for political reform and ending the one-party rule in China. Liu won the 2010 Nobel Peace Prize in prison. Many other Chinese dissidents were also sentenced for long imprisonment for the same alleged crime, such as Tan Zuoren (5 years), Liu Xianbin (10 years), Chen Wei (9 years), Chen Xi (10 years), Li Tie (10 years), and Zhu Yufu (7 years).

<sup>770</sup> In 2014, Xu Zhiyong and his fellow activists were tried in separate courts for their New Citizens’ Movement activities, such as calling for government officials to disclose their assets in public, and gathering non-Beijing house registration parents to the Ministry of Education to assert the right to equal education for their children. Xu Zhiyong was sentenced to four years imprisonment for “disrupting public order” in January 2014 at the first instance trial. Xu will appeal and the result is pending when this dissertation is finished.

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**CHINESE LAWS, ADMINISTRATIVE REGULATIONS, MINISTRY RULES, AND GOVERNMENT RULES**

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## 8 APPENDICES

### 8.1 Appendix I Regulations of the People's Republic of China on Open Government Information<sup>771</sup>

(Adopted by the State Council on January 17, 2007; Effective May 1, 2008)

#### Chapter I General Principles

Article 1 In order to ensure that citizens, legal persons and other organizations obtain government information in accordance with the law, enhance transparency of the work of government, promote administration in accordance with the law, and bring into full play the role of government information in serving the people's production and livelihood and their economic and social activities, these Regulations are hereby formulated.

Article 2 "Government information" referred to in these Regulations means information made or obtained by administrative organs in the course of exercising their responsibilities and recorded and stored in a given form.

Article 3 The people's governments at all levels should strengthen the organization and leadership of open government information work.

The General Office of the State Council shall be the national department in charge of open government information work. It shall be responsible for promoting, guiding, coordinating and supervising open government information work throughout the whole country.

The general offices of local people's governments at the county level and above or other departments in charge of open government work designated by the local people's governments at the county level and above shall be responsible for promoting, guiding, coordinating and supervising open government information work within their respective administrative areas.

Article 4

The people's government at all levels and the departments of the people's governments at the county level and above should establish and perfect systems for open government information work for their respective administrative organs and designate an office (hereafter referred to as the "office for open government information work") to be

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<sup>771</sup> This English version of the Open Government Information Regulations is translated by China Law Center, Yale Law School, <<http://www.law.yale.edu/intellectuallife/openinformation.htm>> Accessed on 12 September 2013.



responsible for the daily work of open government information for their respective administrative organs.

The specific functions of the office for open government information work are:

- 1) To undertake specific open government information matters for that administrative organ;
- 2) To maintain and update government information disclosed by that administrative organ;
- 3) To organize for that administrative organ the compilation of an open government information guide, open government information catalogue and annual reports on open government information work;
- 4) To conduct examinations for secrecy of government information to be disclosed; And
- 5) To carry out other responsibilities related to open government information stipulated by that administrative organ.

Article 5 When disclosing government information, administrative organs should observe the principles of justice, fairness, and convenience to the people.

Article 6 Administrative organs should disclose government information promptly and accurately. When administrative organs discover false or incomplete information that affects or might affect social stability and disturbs the social management order, they should release, within their scope of responsibility, accurate government information to clarify the situation.

Article 7 Administrative organs should establish and perfect a coordination mechanism for releasing government information. When releasing government information that involves other administrative organs, an administrative organ should communicate and confirm with the administrative organs concerned to ensure the government information released is accurate and consistent.

If the government information to be released by administrative organs needs to be approved in accordance with relevant state regulations, it may not be released without being approved.

Article 8 The government information disclosed by administrative organs may not endanger state security, public security, economic security and social stability.

## Chapter II The Scope of Disclosure

Article 9 Administrative organs should disclose on their own initiative government information that satisfies any one of the following basic criteria:

- 1) Information that involves the vital interests of citizens, legal persons or other organizations;
- 2) Information that needs to be extensively known or participated in by the general public;
- 3) Information that shows the structure, function and working procedures of and other matters relating to the administrative organ; and
- 4) Other information that should be disclosed on the administrative organ's own initiative according to laws, regulations and relevant state provisions.

Article 10 People's governments at the county level and above and their departments should determine the concrete content of the government information to be disclosed on their own initiative within their scope of responsibility in accordance with the provisions of Article 9 of these Regulations, and emphasize disclosure of the following government information:

- 1) Administrative regulations, rules, and regulatory documents;
- 2) Plans for national economic and social development, plans for specific projects, plans for regional development and related policies;
- 3) Statistical information on national economic and social development;
- 4) Reports on financial budgets and final accounts;
- 5) Items subject to an administrative fee and the legal basis and standards therefor;
- 6) Catalogues of the government's centralized procurement projects, their standards and their implementation;
- 7) Matters subject to administrative licensing and their legal bases, conditions, quantities, procedures and deadlines and catalogues of all the materials that need to be submitted when applying for the administrative licensing, and the handling thereof;
- 8) Information on the approval and implementation of major construction projects;
- 9) Policies and measures on such matters as poverty assistance, education, medical care, social security and job creation and their actual implementation;
- 10) Emergency plans for, early warning information concerning, and counter measures against sudden public events;
- 11) Information on the supervision and inspection of environmental protection, public health, safe production, food and drugs, and product quality.

Article 11 The government information to be emphasized for disclosure by the people's governments at the level of cities divided into districts and the county level people's governments and their departments should also include the following contents:

- 1) Important and major matters in urban and rural construction and management;
- 2) Information on the construction of social and public interest institutions;
- 3) Information on land requisition or land appropriation, household demolition and resettlement, and the distribution and use of compensation or subsidy funds relating thereto; and
- 4) Information on the management, usage and distribution of social donations in funds and in kind for emergency and disaster relief, special care for families of martyrs and military service personnel, and assistance to poverty stricken and low income families.

Article 12 People's governments at the township (town) level should determine the concrete content of the government information to be disclosed on their own initiative

within their scope of responsibility in accordance with the provisions of Article 9 of these Regulations, and emphasize disclosure of the following government information:

- 1) Information on the implementation of rural work policies of the state;
- 2) Information on fiscal income and expenses and the management and use of various specialized funds;
- 3) Overall township (town) land use plans and information on the verification of land to be used by farmers for their primary residences;
- 4) Information on land requisition or land appropriation, household demolition and resettlement, and the distribution and use of compensation or subsidy funds therefor;
- 5) Information on township (town) credits and debts, fund raising and labor levies;
- 6) Information on the distribution of social donations in funds and in kind for emergency and disaster relief, special care for families of martyrs and military service personnel, and assistance to poverty stricken and low income families;
- 7) Information on contracting, leasing and auctioning of township and town collectively owned enterprises and other township and town economic entities; and
- 8) Information on implementation of the family planning policy.

Article 13 In addition to government information disclosed by administrative agencies on their own initiative provided for in Articles 9, 10, 11 and 12, citizens, legal persons or other organizations may, based on the special needs of such matters as their own production, livelihood and scientific and technological research, also file requests to departments of the State Council, local people's governments at all levels and departments under local people's governments at the county level and above to obtain relevant government information.

Article 14 Administrative agencies should establish and perfect mechanisms to examine for secrecy the government information to be released, and clarify the examination procedures and responsibilities.

Prior to disclosing government information, administrative agencies should examine the government information to be disclosed in accordance with the provisions of the Law of the People's Republic of China on Safeguarding State Secrets and other laws, regulations and relevant state provisions.

When an administrative agency is unable to determine if certain government information may be disclosed, it should submit the matter for determination to relevant departments in charge or departments for safeguarding secrecy at the same level as the administrative agency.

Administrative agencies may not disclose government information that involves state secrets, commercial secrets or individual privacy. However, government information involving commercial secrets or individual privacy may be disclosed by administrative agencies with the consent of the rightholder(s) or if administrative agencies believe that non-disclosure might give rise to a major impact on the public interest.

### **Chapter III Methods of and Procedures for Disclosure**

Article 15 Government information to be disclosed on administrative agencies' own initiative should be disclosed by means of government gazettes, government websites, press conferences, as well as through newspapers and other publications, radio, television and other methods that make it convenient for the public to be informed.

Article 16 The people's governments at all levels should set up government information reading places in the state archives and public libraries and install appropriate facilities and equipment to make it convenient for citizens, legal persons and other organizations to obtain government information.

Administrative agencies may set up, as needed, places and facilities such as public reading rooms, materials request stations, information bulletin boards, and electronic information screens to disclose government information.

Administrative agencies should provide the state archives and public libraries with government information disclosed on their own initiative in a timely manner.

Article 17 Administrative agencies shall be responsible for disclosing government information that they have made. Administrative agencies that store government information obtained from citizens, legal persons or other organizations shall be responsible for disclosing it. If laws or regulations have different provisions on the scope of authorization to disclose government information, those provisions shall be followed.

Article 18 Government information to be disclosed on administrative agencies' own initiative should be disclosed within 20 business days from the date the information is formed or changed. If laws or regulations have different provisions on the time period for disclosing government information, those provisions shall be followed.

Article 19 Administrative agencies should compile and publish open government information guides and catalogues of open government information, and update them in a timely manner.

Open government information guides should include such contents as the types of government information, the system of cataloguing, the methods for obtaining information, and the name, office address, office hours, contact telephone number, fax number and e-mail address of the office for open government information work.

Open government information catalogues should include such contents as an index, the name of the information, a summary of the information contents and the date of creation of the information.

Article 20 Citizens, legal persons or other organizations should file requests with government agencies to obtain government information in accordance with Article 13 of these Regulations in written form (including digital and electronic forms). In the event that it is truly difficult for a requester to submit a request in written form, the requester may do so orally and the administrative agency accepting the request shall fill out the request for open government information on the requester's behalf.

Requests for open government information should include the following contents:

- 1) The name of the individual or organization making the request and the method of contact;
- 2) A description of the government information requested to be disclosed; and
- 3) Requirements as to the format in which the requested government information is to be supplied.

Article 21 Administrative agencies shall reply to requests for open government information respectively in accordance with the following circumstances:

- 1) If the requested government information falls within the scope of disclosure, the requester should be informed of the methods and channels for obtaining that government information;
- 2) If the requested government information does not fall into the scope of disclosure, the requester should be informed that such information cannot be disclosed, together with an explanation of the reasons;
- 3) If, in accordance with the law, the requested government information should not be disclosed by that administrative agency or the requested government information does not exist, the requester should be informed of the situation and, if the agency that has the obligation to disclose that government information can be determined, the requester should be informed of the name of that administrative agency and the method to contact it;
- 4) If the content of the requested government information is not clear, the requester should be notified to amend and supplement the request.

Article 22 If the requested government information contains some contents that should not be disclosed but that can be handled through differentiation, the administrative agency should provide the requester with that information content that may be disclosed.

Article 23 If an administrative agency believes that the requested government information involves commercial secrets or individual privacy the disclosure of which might infringe upon the lawful rights and interests of a third party, it should write to the third party to seek its opinion. If the third party does not agree to have the information disclosed, the information may not be disclosed. However, if the administrative agency believes that non-disclosure might have a major influence on the public interest, it should disclose the information and notify the third party in writing of the content of the government information they have decided to disclose and the reasons therefor.

Article 24 After receiving requests for open government information, administrative agencies should reply to the requests on-the-spot to the extent possible.

If an on-the-spot reply is not possible, administrative agencies should provide a reply within 15 business days from receiving a request. If an extension of the time limit for replying to a request is needed, the agreement of the responsible person in charge of the office for open government information work should be obtained and the requester notified. The maximum extension of the time limit for replying to a request may not exceed 15 business days.

If the requested government information involves the rights and interests of a third party, the time needed by administrative agencies to seek the opinion of the third party shall not be counted against the time limit provided in Paragraph 2 of this Article.

Article 25 When citizens, legal persons or other organizations request administrative agencies to provide government information about themselves such as taxes and fee payments, social security and medical care information, they should show valid identification certificates or certifying documents.

If citizens, legal persons or other organizations have evidence showing that the government information provided by an administrative agency concerning them is not recorded accurately, they have the right to request the administrative agency to correct the information. If the administrative agency does not have the authority to make the correction, the case should be transferred to the administrative agency that does have such authority, and the requester shall be so informed.

Article 26 When providing government information on request, administrative agencies shall provide the information in the format requested by the requesters. If it is impossible to provide the information in the format requested by the requesters, administrative agencies may provide the information through making arrangements for the requesters to read the relevant documents, providing photocopies or using other appropriate methods.

Article 27 When disclosing government information on request, administrative agencies may not collect any fees except they may collect cost-based fees for the cost of searching, photocopying, postage and the like. Administrative agencies may not provide government information as a compensated service through any organizations or individuals.

The standards for fees collected by administrative agencies to cover such costs as for searching, photocopying and postage shall be made by the department of the State Council in charge of pricing in consultation with the department of the State Council in charge of financial affairs.

Article 28 If a citizen requesting disclosure of government information truly has economic difficulties, the relevant fee may be reduced or exempted after an application for such reduction or exemption is submitted by the requester and verified and approved by the responsible person of the office for open government information work.

If citizens requesting disclosure of government information have trouble reading or obstacles to hearing and seeing, administrative agencies should provide them with necessary assistance.

## **Chapter VI Supervision and Safeguards**

Article 29 People's governments at all levels should establish and perfect inspection, social appraisal and accountability systems for open government information work to carry out periodic inspection and appraisal of open government information work.

Article 30 The departments in charge of open government information work and the supervision agencies shall be responsible for supervising and inspecting the implementation of open government information by administrative agencies.

Article 31 Administrative agencies at all levels should publish their annual reports on open government information work before March 31 each year.

Article 32 The annual report on open government information work should include the following contents:

- 1) Information on disclosing government information on the administrative agency's own initiative;
- 2) Information on disclosing government information public upon request and of requests for government information that are denied;
- 3) Information on fee collection and fee reductions and exemptions concerning open government information;
- 4) Information on applications for administrative reconsideration and filing of administrative lawsuits in respect of open government information;
- 5) The main problems existing in open government information work and the information on improvements thereof; and
- 6) Other items that need to be reported.

Article 33 If citizens, legal persons or other organizations believe an administrative agency has failed to fulfill, in accordance with the law, its obligations in respect of open government information, they may report it to the higher level administrative agency, the supervision agency or the department in charge of open government information. The agency that receives the report should investigate and handle it.

If citizens, legal persons or other organizations believe a specific administrative action of an administrative agency in its open government information work has infringed their lawful rights and interests, they may, in accordance with the law, apply for administrative reconsideration or file an administrative lawsuit.

Article 34 If an administrative agency fails to establish and perfect, in violation of the provisions of these Regulations, a secrecy examination mechanism for releasing government information, the supervision agency or the administrative agency at the next higher level shall order that administrative agency to correct the situation. If the circumstances are serious, administrative penalties shall be imposed in accordance with the law on the principal responsible person(s) of that administrative agency.

Article 35 If an administrative organ violates the provisions of these Regulations and has engaged in any one of the following behaviors, the supervision organ or the administrative organ at the next higher level shall order that administrative organ to correct the situation. If the circumstances are serious, administrative penalties shall be imposed in accordance with the law on person(s) directly in charge of the administrative organ, as well as other persons who are directly responsible. If the behaviour constitutes a crime, criminal responsibility shall be pursued in accordance with the law:

- 1) Failure to fulfil, in accordance with the law, open government information obligations;

- 2) Failure to timely update the contents of government information that has been disclosed, the guide to open government information and the catalogue of open government information;
- 3) Collecting fees in violation of provisions;
- 4) Providing government information as a paid service through other organizations or individuals;
- 5) Disclosing government information that should not be disclosed; and
- 6) Other actions that violate the provisions of these Regulations.

**Chapter V Supplementary Regulations**

Article 36 These Regulations shall apply to open government information activities of organizations that are authorized by laws or regulations to exercise the functions of managing public affairs.

Article 37 Disclosing information that is made or obtained in the course of providing public services by public enterprises and institutions that are closely related to the people's interests such as education, medical care, family planning, water supply, electricity supply, gas supply, heating, environmental protection and public transportation shall be done with reference to these Regulations. The specific measures shall be formulated by competent departments or offices of the State Council.

Article 38 These Regulations shall go into effect as of May 1, 2008.



## 8.2 Appendix II Measures on Open Environmental Information (for Trial Implementation)<sup>772</sup>

(Adopted by the State Environmental Protection Administration of China on February 8, 2007; Effective May 1, 2008)

### Chapter I General Provisions

Article 1 In order to promote and standardize the disclosure of environmental information for the administrative departments in charge of environmental protection (hereinafter referred to as “environmental protection departments”) and enterprises, protect the rights and interests of citizens, legal persons, and other organizations to obtain environmental information, and promote public participation in environmental protection, in accordance with the “Regulations of the People's Republic of China on Open Government Information,” the “Law of the People's Republic of China on the Promotion of Clean Production,” the “State Council Decision on Implementing the Scientific Concept of Development and Strengthening Environmental Protection,” and other relevant provisions, these Measures are hereby formulated.

Article 2 “Environmental information,” as referred to in these Measures, includes government environmental information and enterprise environmental information.

“Government environmental information” refers to information created or obtained by environmental protection departments in the course of carrying out their environmental protection responsibilities and recorded and stored in a definite form.

“Enterprise environmental information” refers to information that an enterprise has recorded and stored in a definite form and which relates to the environmental impact generated by the operating activities of the enterprise or the environmental conduct of the enterprise.

Article 3 The State Environmental Protection Administration (SEPA) is responsible for promoting, guiding, coordinating, and supervising open environmental information work throughout the country.

The environmental protection departments of the local people’s governments at the county level and above are responsible for organizing, coordinating, and supervising open environmental information work within their respective administrative areas.

Article 4 Environmental protection departments shall abide by the principles of justice, fairness, convenience to the people, and objectivity, and disclose government environmental information promptly and accurately.

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<sup>772</sup> This translation is made by the United States, Congressional-Executive Commission on China, <<http://www.cecc.gov/resources/legal-provisions/measures-on-open-environmental-information-trial-cecc-full-translation>> Accessed 12 September 2013.

Enterprises shall, regardless of whether disclosure is voluntary or mandatory, disclose enterprise environmental information promptly and accurately.

Article 5 Citizens, legal persons, and other organizations may file requests with environmental protection departments to obtain government environmental information.

Article 6 Environmental protection departments shall establish and perfect the environmental information disclosure system.

The General Office of SEPA shall be the office responsible for organizing SEPA's open government environmental information work. Each of the functional offices shall complete open government environmental information work within their respective areas in accordance with the division of work responsibilities.

Environmental protection departments of the local people's governments at the county level and above should designate the office responsible for organizing their open government environmental information work based on practical circumstances. These offices are responsible for organizing and implementing their department's open government environmental information work.

The specific duties of the office responsible for organizing the open government environmental information work of an environmental protection department are:

- (1) To organize formulation of a set of regulations and work rules for the disclosure of the department's government environmental information;
- (2) To organize coordination of the open government environmental information work of each of the functional offices within the department;
- (3) To organize the safeguarding and updating of government environmental information disclosed by the department;
- (4) To supervise and assess the open government environmental information work of each of the functional offices within the department;
- (5) To organize compilation of the department's open government environmental information guide, open government environmental information catalogue, and annual report on open government environmental information work;
- (6) To supervise and guide the open government environmental information work of lower level environmental protection departments;
- (7) To supervise enterprise environmental information disclosure work in areas under the department's jurisdiction;
- (8) To be responsible for investigating the secrecy of government environmental information prior to disclosure;
- (9) Other responsibilities of the department related to the disclosure of government environmental information.

Article 7 Citizens, legal persons, and other organizations shall not harm national interests, public interests, or the lawful rights and interests of other persons when using disclosed environmental information.

Article 8 Environmental protection departments shall guarantee the personnel and funding for that department's environmental information disclosure work.

Article 9 For government environmental information that requires approval in accordance with the relevant state provisions in order to be released by an environmental protection department, such information may not be released without approval.

Article 10 Environmental protection departments, in disclosing government environmental information, must not endanger state security, public security, economic security, and social stability.

## **Chapter II Disclosure of Government Environmental Information**

### **Part I The Scope of Disclosure**

Article 11 Environmental protection departments, within their scope of responsibility and jurisdiction, shall proactively disclose the following government environmental information to the public:

- (1) Environmental protection laws, regulations, rules, standards, and other regulatory documents;
- (2) Environmental protection plans;
- (3) Environmental quality conditions;
- (4) Environmental statistics and environmental investigation information;
- (5) The emergency response plan, forecast, occurrence, management, and other information relating to sudden environmental incidents;
- (6) Distribution and implementation of targets for total levels of major pollutant discharges, the distribution of pollutant discharge permits, and the results of urban environment comprehensive improvement quantitative assessments;
- (7) Information on the classification, production quantity, disposal of and other conditions of solid waste for large- and medium-sized cities;
- (8) The review of environmental impact assessment documentation for a construction project, the results of such review, the results of the environmental protection inspection of a construction project upon completion, and other items requiring environmental protection administrative permits and their legal bases, conditions, procedures, and results;
- (9) The items, legal bases, standards, and procedures for fees levied on the discharge of pollutants, the amount of fees that the polluter shall pay for the pollutant discharge, the actual amount collected, and any reduction or delay;
- (10) The items subject to environmental protection administrative fees, and the legal bases, standards, and procedures for the collection of these fees;

- (11) Verified and investigated petition letters and complaints by the public relating to environmental issues or enterprises that pollute the environment, and their outcome;
- (12) Environmental administrative penalties, administrative reconsideration, administrative lawsuits, and the implementation of administrative compulsory measures;
- (13) A list of the names of enterprises with serious pollution that have discharged pollutants exceeding national or local discharge standards, or whose total amount of pollutant discharge exceeds the total discharge control targets set by the local people's governments;
- (14) A list of the names of enterprises responsible for major, large-scale environmental pollution accidents or incidents, and a list of the names of enterprises that refuse to carry out an environmental administrative penalty decision that has already taken effect;
- (15) The inspection and approval results of environmental protection projects;
- (16) The organizational structure, work responsibilities, contact information, and other information relating to environmental protection departments;
- (17) Other environmental information required to be disclosed according to laws, regulations, rules, or provisions.

Environmental protection departments shall compile their own open government environmental information catalogues based on the scope as set forth in this provision.

Article 12 Environmental protection departments shall establish and perfect a mechanism to examine the secrecy of government environmental information to be released, and clarify the procedures and responsibilities for such examination.

Prior to disclosing government environmental information, environmental protection departments shall carry out an examination in accordance with the “Law of the People's Republic of China on Guarding State Secrets” and other laws, regulations, and relevant state provisions.

Environmental protection departments may not disclose government environmental information involving state secrets, commercial secrets, or individual privacy. However, government environmental information involving commercial secrets or individual privacy may be disclosed if the rights holder consents or the environmental protection department believes that not disclosing such information could significantly impact the interests of the public.

If the environmental protection department is unable to determine whether to disclose government environmental information, then it shall submit the matter for determination to the department in charge or the department for safeguarding secrecy at the same level as the environmental protection department, in accordance with laws, regulations, and relevant state provisions.

## Part II Disclosure Methods and Procedures

Article 13 Environmental protection departments shall publicize the government environmental information that is to be proactively disclosed through government Web

sites, government gazettes, press conferences, newspapers and other periodical publications, radio broadcasts, television, or any other method that facilitates public awareness.

Article 14 Environmental protection departments shall disclose government environmental information that is to be proactively disclosed within 20 business days from the date such information arose or was modified. If other laws or regulations have different provisions regarding the time limit for disclosing government environmental information, those provisions shall be followed.

Article 15 Environmental protection departments shall compile and publish open government environmental information guides and open government environmental information catalogues, and update them in a timely manner.

Open government environmental information guides shall include the information classification, the compilation system, the method for obtaining the information, the name, office address, office hours, contact telephone number, facsimile number, and e-mail address of the office for open government environmental information work, and other related content.

The open government environmental information catalogues shall include an index, name of the information, a summary of the information's content, the date of production, the date of disclosure, and other related content.

Article 16 Citizens, legal persons, and other organizations who make a request to an environmental protection department to obtain government environmental information in accordance with Article 5 of these Measures shall do so in writing, either through a letter, facsimile, e-mail, or another written form; if it is truly difficult for the requester to make a request in writing, he or she may do so orally, and the environmental protection department's office for open government environmental work shall fill out a request for the disclosure of government environmental information on the requester's behalf.

Requests for the disclosure of government environmental information shall include the following content:

- (1) The name of the individual or organization making the request, and the method of contact;
- (2) A detailed description of the government environmental information requested to be disclosed; and
- (3) Requirements as to the format of the government environmental information requested to be disclosed.

Article 17 Environmental protection departments shall reply to requests for government environmental information in accordance with the following:

- (1) If the information requested to be disclosed falls within the scope of disclosure, the requester shall be notified of the method and channel for obtaining such government environmental information;

(2) If the information requested to be disclosed does not fall within the scope of disclosure, the requester shall be notified that such government environmental information will not be disclosed and provided an explanation of the reason;

(3) If the law provides that disclosure is not within a department's responsibility or the government environmental information does not exist, the requester shall be notified; with regard to government environmental information whose disclosure agency can be confirmed, the requester shall be notified of the relevant administrative agency's name and contact information;

(4) If the content for which the request is being made is unclear, the requester shall be notified to edit or supplement his or her request.

Article 18 Environmental protection departments shall reply within 15 business days of receiving a request; if they are unable to reply within 15 business days, then with the consent of the person responsible from the office for open government environmental work, the deadline to reply may be extended with the requester notified in writing. The deadline to reply may not be extended by more than 15 business days.

### **Chapter III Disclosure of Enterprise Environmental Information**

Article 19 The state encourages enterprises to voluntarily disclose the following environmental information:

(1) The enterprise's environmental protection guiding principles, and annual environmental protection targets and results;

(2) The enterprise's total annual consumption of natural resources;

(3) The enterprise's investment in environmental protection and its development of environmental technology;

(4) The type, amount, toxicity, and destination of the enterprise's discharged pollutants;

(5) The construction and operation of the enterprise's environmental protection facilities;

(6) The enterprise's handling and disposal of waste materials generated during the production process, and the recycling and comprehensive utilization of discarded products;

(7) A voluntary agreement with an environmental protection department to improve environmental conduct;

(8) A description of how the enterprise fulfills its social responsibility;

(9) Any other environmental information that the enterprise wishes to voluntarily disclose.

Article 20 Enterprises included on the lists provided for under Part I, Article 11, Item 13 of these Measures shall disclose the following information:

(1) The enterprise's name, address, and legal representative;

(2) The names of major pollutants, their methods of discharge, the toxicity and amount of discharge, if they exceed standards, and the amount in excess;

(3) The enterprise's construction and operation of environmental protection facilities;

- (4) The emergency response plan for an environmental pollution accident.

The enterprise may not invoke the protection of trade secrets as a pretext for refusing to disclose the aforementioned environmental information.

Article 21 Enterprises required to disclose environmental information to the public in accordance with Article 20 of these Measures, shall, within 30 days after the environmental protection department publishes its list, publish the environmental information in the major media outlets where they are located, and file such environmental information disclosed to the public with the environmental protection department where they are located.

Environmental protection departments have the authority to perform an audit of environmental information released by an enterprise.

Article 22 Enterprises that voluntarily disclose environmental information in accordance with Article 19 of these Measures may disclose such environmental information to the public through the media, the Internet, or other means, or in the form of their annual environmental report.

Article 23 With respect to enterprises that voluntarily disclose information regarding their environmental conduct, and who obey environmental protection laws and regulations in an exemplary fashion, environmental protection departments may give the following awards:

- (1) Public recognition in local major media outlets;
- (2) Priority position with respect to special funds for environmental protection projects in accordance with relevant state provisions;
- (3) Priority recommendation for clean production demonstration projects or other demonstration projects that receive state subsidies in accordance with relevant state provisions;
- (4) Other awards as provided by state provisions.

#### **Chapter IV Supervision and Responsibilities**

Article 24 Environmental protection departments shall establish and perfect a system for assessment, public appraisal, and investigation of responsibility, and schedule periodic assessment and appraisal of open government environmental information work.

Article 25 Environmental protection departments shall publish an annual report on their open government environmental information work before March 31 of each year.

The annual report on open government environmental information work shall include the following information:

- (1) The government environmental information proactively disclosed by the environmental protection department;
- (2) Requested government environmental information that was either disclosed or not disclosed by the environmental protection department;
- (3) Applications for administrative reconsideration or the filing of administrative lawsuits related to the disclosure of government environmental information;

- (4) Major issues that exist in open government environmental information work and improvements thereof;
- (5) Other matters that must be reported.

Article 26 If citizens, legal persons, and other organizations believe an environmental protection department has not fulfilled its obligation to disclose government environmental information according to law, they may report their concerns to a higher level environmental protection department. The higher level environmental protection department that receives such a report shall supervise and urge the lower level environmental protection department to fulfill its obligation to disclose government environmental information according to law.

If citizens, legal persons, and other organizations believe that an environmental protection department's specific administrative conduct while carrying out open government environmental information work have violated their lawful rights and interests, they can apply for administrative reconsideration or file an administrative lawsuit according to law.

Article 27 For environmental protection departments that violate provisions under these Measures, as in the case of any one of the circumstances below, the higher level environmental department shall order it to make corrections; if the circumstances are serious, managers with direct responsibility or other personnel with direct responsibility may be subject to administrative punishment according to the law:

- (1) Failure to fulfill the obligation to disclose government environmental information according to law;
- (2) Failure to update government environmental information content, the open government environmental information guide, and the open government environmental information catalogue in a timely manner;
- (3) Collecting fees in violation of provisions during the government environmental information disclosure process;
- (4) Utilizing other organizations and individuals to provide government environmental information as a fee-paying service;
- (5) Disclosing government environmental information that should not be disclosed;
- (6) Other conduct in violation of the provisions in these Measures.

Article 28 In the case of serious pollution, enterprises that violate Article 20 of these Measures by discharging pollutants in excess of national or local discharge standards, or by discharging a total amount of pollutants in excess of the total discharge control targets set by the local people's government, and failing to disclose or failing to disclose in accordance with requirements the pollutant discharges, the local people's government environmental protection department at the county level or above shall, in accordance with requirements of the "Law of the People's Republic of China on the Promotion of Clean Production," impose a fine of up to 100,000 yuan and publicize it.



**Chapter V Supplementary Provisions**

Article 29 These Measures shall go into effect as of May 1, 2008.

### 8.3 Appendix III List of Cases & Surveys of Environmental Information Disclosure Requests

Case No.	Information disclosure requester(s)	Information disclosure requestee(s)	Summary of information requested for disclosure	Time
<b>Requests by individuals</b>				
1	Beijing netizen	Beijing EPB	PM2.5 inspection	2011
2	Ding Jinkun	Hangzhou Forest & Water Bureau	Qiandao lake water diversion project proposal and report	2012
3	Hangzhou resident	Hangzhou Forest & Water Bureau	Qiandao lake water diversion project proposal	2012
4	Huai'an residents	Huai'an EPB	Huaigang Special Steel Co EIA report	2011
5	Huang Jianxin	Zhangjiagang EPB, Suzhou EPB, Jiangsu EPD	Sewage plant EIA report	2009
6	Mao Da	MEP	Result of the 2006-2008 National Survey on Persistent Organic Pollutants	2011
7	Mao Da	Beijing EPB, Beijing Land & Resources Bureau	2006 Report on Beijing Domestic Waste Landfill Risk Evaluation	2009
8	Mao Da	Beijing Industry & Commerce Bureau	Plastic bags usage fee	2009
9	Sun Bin	Hunan EPD	Neighbouring telecommunications base approval information	2011
10	Sun Nong	Zhuhai EPB	Used battery disposal information	2008
11	Tianjin blogger Wandering Sky	Wuqing District Government, Wuqing Forestry Bureau	Dahuangbao Wetland Nature Reserve plan maps	2011

12	Xie Yong	Hai'an County EPB, Nantong City EPB, Jiangsu EPD	Hai'an Incinerator approval and inspection information	2010
13	Xu Taisheng	Shanghai Pudong District EPB, Shanghai EPB	Bao Steel Plant approval and inspection record etc.	2008
14	Xu Yu et al.	Liaoning Chuyang City & Jianping County government agencies	Water quality inspection report relating to chemical plant pollution	2010
15	Yan Yiming	Henan EPD, Anhui EPD	List of polluting enterprises	2008
16	Yang Zi	Beijing EPB	Gao'antun Incinerator annual inspection statistics	2009
17	Zhang Changjian etc.	Pingnan EPB	Houlong village dumping site approval info etc.	2008
18	Zhang Tao	Ministry of Ocean	Pollution situation of Bohai oil field leaking	2011
<b>Requests by organizations</b>				
19	All China Environmental Federation	Xiuwen EPB	Haoyiduo Diary Co daily inspection, EIA report and pollutants emission	2011
20	Friends of Nature	MEP, Ministry of Agriculture	Yangtse River Upper Reaches Endemic Fish Nature Reserve area readjustment	2011
21	Green Beagle	Beijing EPB	Sujiatuo Incinerator EIA public participation section	2011
22	Green Beagle	Hai'an EPB, Nantong EPB, Jiangsu EPD	Hai'an Incinerator EIA and pollutant emitting data	2011
23	Green Beagle	MEP	2010 investigation result on PCBs-containing electrical equipment and waste electricity equipment in eight key provinces	2012
24	Green Beagle	Beijing EPB	Emergency Plan for Heavy-polluted Day	2012
25	Greenpeace	Shanghai Environmental Protection and Hygiene Administration Bureau	BASF pollutants emission	2008
26	Greenpeace	Zhuzhou EPB	Zhuzhou polluting enterprises	2009

27	Green Watershed	Bank of China Kunming Branch, Yunnan EPD, Yunnan Banking Regulatory Bureau	Chromic slag pollution enterprises loan, regulations	2011
28	Tianxiagong (Justices for all)	Ministry of Housing and Construction	List of cities where water quality below requirement standard	2012
<b>Surveys by NGOs &amp; others</b>				
<b>Survey No.</b>	<b>Information requester(s)</b>	<b>Information disclosure requestee(s)</b>	<b>Summary of information requested for disclosure</b>	<b>Survey time</b>
1	Friends of Nature Shanghai members	Shanghai/Shanghai district EPBs	water-related environmental information	2008
2	Institute of Public & Environmental Affairs	113 EPBs in China	list of enterprises received environmental penalty	2008-2011
3	Greenpeace	15 EPBs	information of polluting enterprises	2009
4	Southern Weekend	29 EPBs in China	list of enterprises received environmental penalty	2010
5	Article 19 & Centre for Legal Assistance to Pollution Victims	8 EPBs in China	17 types of government information as listed in Art 11 of OEI Measures	2010
6	Southern Metropolis Daily journalist	MEP & 19 EPDs	PM2.5 & Ozone inspection statistics	2011
7	Wuhu Ecology Centre	MEP, 4 EPBs, 26 EPDs in China	List of key enterprises that emit dioxin	2011-2012
8	Impact Law Firm	80 EPBs in China	8 types of information as listed in Art 11 of OEI Measures, i.e., pollutants emission	2012
<p>Notes:</p> <p>The cases are numbered by the author. They do not correspond to any official documents numbers, i.e., court judgments number, with regard to the requests. The time recorded for disclosure requests is according to the first time when the request was submitted.</p> <p>MEP, Ministry of Environmental Protection, 环保部; EPD, Environmental Protection Department at provincial level, including autonomous regions, EPD 环保厅; EPB, Environmental Protection Bureau below provincial level, including city, county, and district EPBs, 环保局. EPB also refers to the EPBs at the municipality that is directly under the central government, i.e., Beijing, Shanghai, Tianjin, and Chongqing EPB.</p>				

## 8.4 Appendix IV Interviews

17 June 2010, phone interview, lawyer and former ENGO volunteer, Beijing

18 June 2010, interview with lawyer, Beijing

20 June 2010, discussion with journalist and environmental activist, Beijing

21 June 2010, interview with university environmental law professor, Beijing

1 July 2010, EPB officials, Yantai, Shandong Province

16 July 2010, phone interview with university law professor, Beijing

16 July 2010, phone interview with ENGO officer

20 July 2010, phone interview with environmental lawyer, Beijing

22 July 2010, phone interview with administrative lawyer

23 July 2010, phone interview with pollution victim in Beijing

25 July 2010, interview with pollution victim and her lawyer, Beijing

30 July 2010, email discussion with lawyer

2 August 2010, interview with ENGO officer, Beijing

3 August 2010, phone interview with ENGO director, Beijing

4 August 2010, discussion with ENGO officers, Beijing

6 May 2011, interview with lawyer 1, Shanghai

6 May 2011, interview with lawyer 2, Shanghai

7 May 2011, interview with former ENGO volunteer, Shanghai

8 May 2011, interview with pollution victim, Shanghai

9 May 2011, interview with pollution victims, Zhangjiagang, Jiangsu Province

10 May 2011, interview with pollution victim, Wuxi, Jiangsu Province

23 May 2011, interview with lawyer of pollution victim, Beijing

27 May 2011, interview with ENGO officer, Beijing

29 May 2011, interview with ENGO officer, Beijing

30 May 2011, interview with lawyer, Beijing

31 May 2011, interview with ENGO Officer and lawyer, Beijing

3 June 2011, interview with environmental law professor

3 June 2011, phone interview with administrative law professor

9 June 2012, interview with ENGO officer, Beijing

14 June 2012, discussion with lawyers, Anqing, Anhui Province

15 June 2012, interview with ENGO officer, Wuhu, Anhui Province

23 June 2012, interview with pollution victim, Shanghai

3 July 2012, phone interview with administrative lawyer

## **8.5 Appendix V A Short List of Major Laws, Regulations, & Rules Concerning Open Environmental Information**

### **Laws and regulations**

1989, The Environmental Protection Law of the PRC (中华人民共和国环境保护法 EP Law).

2000, The Prevention and Control of Atmospheric Pollution Law (大气污染防治法 PCAP Law).

2002, The Environmental Impact Assessment law of the PRC (环境影响评价法 EIA Law).

2006, The Interim Measures on Public Participation in Environmental Impact Assessment (环境影响评价公众参与暂行办法 PPEIA Measures).

2008, The Prevention and Control of Water Pollution Law (水污染防治法 PCWP Law).

2008, The Circular Economy Promotion Law (中华人民共和国循环经济促进法 CEP Law).

2009, The Plan Environmental Impact Assessment Regulations (规划环境影响评价条例 PEIA Regulations).

2007, The Open Government Information Regulations (政府信息公开条例 OGI Regulations).

2007, The Interim Measures for Open Environmental Information (环境信息公开暂行办法 OEI Measures).

## 8.6 Appendix VI Wang Xing's 32 PM2.5 Information Disclosure Requests Towards MEP, EPDs, & Municipality EPBs

Table A: Information disclosure requests submitted successfully

Requestee	Request date	Reply date	Result
MEP	7 Dec 2011	25 Dec 2011	Research data cannot disclose
Shanghai EPB	9 Dec 2011	25 Dec 2011	PM2.5 data provided
Beijing EPB	17 Dec 2011	10 Jan 2012	Already disclosed historical research data on website
Tianjin EPB	7 Dec 2011	25 Dec 2011	Research data, not disclose
Chongqing EPB	8 Dec 2011	12 Dec 2011	Start to monitor since 2005, data can be disclosed till new standards established
Guangdong EPD	16 Dec 2011	4 Jan 2012	Research data, not belong to the category of information to be disclosed
Jiangsu EPD	8 Dec 2011	19 Dec 2011	Monitor since 2010, will disclose according to MEP requirement
Henan EPD	8 Dec 2011	28 Dec 2011	Did not monitor, start by 2012 in Zhengzhou city
Hebei EPD	8 Dec 2011	8 Jan 2012	Did not monitor, will start according to MEP requirement
Shanxi EPD 陕西	8 Dec 2011	16 Dec 2011	Did not monitor, start by 2012 in Xi'an city
Xinjiang EPD	8 Dec 2011	23 Dec 2011	Did not monitor, cannot provide information
Zhejiang EPD	8 Dec 2011	No reply	It shows "in process" on website
Liaoning EPD	8 Dec 2011	No reply	Provided reference number; but cannot check for information disclosure result
Jilin EPD	8 Dec 2011	No reply	Same as above
Yunnan EPD	8 Dec 2011	No reply	Same as above
Qinghai EPD	8 Dec 2011	No reply	Same as above
Inner Mongolia EPD	8 Dec 2011	No reply	Same as above
Fujian EPD	8 Dec 2011	No reply	Same as above
Gansu EPD	8 Dec 2011	No reply	No reference number provided
Ningxia EPD	8 Dec 2011	No reply	No reference number provided
Shanxi EPD 山西	8 Dec 2011	27 Dec 2011	Ask for sending request form and copy of ID



Table B: Wang Xing's PM2.5 related information disclosure requests submitted unsuccessfully

Requestee	Attempted request date	Reason for failure in submitting the request online
Heihongjiang EPD	8 Dec 2011	Requires registration, waiting for confirmation
Guizhou EPD	8 Dec 2011	Requires registration
Shangdong EPD	8 Dec 2011	Cannot open the request form
Guangxi EPD	8 Dec 2011	Cannot open digital forms (can open now)
Jiangxi EPD	8 Dec 2011	Cannot submit request successfully
Hubei EPD	8 Dec 2011	Email submit, requires copy of ID
Anhui EPD	8 Dec 2011	Error, cannot submit
Sichuang EPD	8 Dec 2011	No online request
Hainan EPD	8 Dec 2011	No online request
Tibet EPD	8 Dec 2011	No official EPD website
Hunan EPD	8 Dec 2011	Requires request in paper format

The above two tables are compiled mostly according to the original table (in Chinese) compiled by Wang Xing, with additional information added based on the report. The compilation and report of Wang Xing, see, *Nanfang dushibao* 11 January 2012.

## 8.7 Appendix VII Replies Regarding Wuhu Ecology Centre 32 Dioxin Information Disclosure Requests

Table A: Information disclosure requests with replies addressing the information

Requestee	Request date	Reply date	Reply summary
Hunan EPD	14 Feb 2012	12 Mar 2012	MEP did not approve, cannot provide list.
Jiangsu EPD	20 Dec 2011	31 Dec 2011	Requested information does not exist.
Shanghai EPD	14 Feb 2012	6 Mar 2012	Information requested does not belong to government information that shall be disclosed according to OGI Regulations.
Yunnan EPD	14 Feb 2012	8 Mar 2012	We did not monitor it, cannot provide accurate information
Anhui EPD	20 Dec 2011	13 Jan 2012	We asked Chemical Division, Department of Pollution Prevention of MEP, the information related to key research project, cannot be disclosed.
Beijing EPB	20 Dec 2011	11 Jan 2012	State secret, cannot disclose.
Fujian EPD	20 Dec 2011	(Not recorded)	The information requested for disclose does not exist.
Guangdong EPD	20 Dec 2011	16 Jan 2012	Information is already available on the website. With links provided.
Guizhou EPD	14 Feb 2012	21 Mar 2012	Provided list of enterprises that emit dioxin.
Tianjin EPB	20 Dec 2011	4 Jan 2012	We cannot monitor dioxin. We plan to carry out investigation and then decide the list of enterprises emit dioxin to be disclosed.
MEP	14 Feb 2012	2 Mar 2012	Information requested does not exist. We have not got the 2011 dioxin emission information.
Jiangxi EPD	22 Feb 2012	14 Mar 2012	The issue is in process, no result is available yet.
Shanxi EPD (陕西)	22 Feb 2012	10 April 2012	Disclosed three dioxin emission enterprises of 2010. Information re. 2011 will be available by June.
Xinjiang EPD	27 Feb 2012	22 Mar 2012	Due to Xinjiang as frontier and minority area, it is complicated society, to disclose the information might affect social stability of Xinjiang.
Guangxi EPD	27 Feb 2012	12 April 2012	The data is being collected. But it belongs to data in process and cannot be disclosed.
Hainan EPD	27 Feb 2012	20 Mar 2012	Dioxin emission enterprises list belongs to MEP key research project. According to the SC opinion and art 9(4) of Hainan OGI methods, information under investigation, discussion and process, cannot be disclosed, unless it is stipulated by laws and regulations otherwise.

Henan EPD	28 Mar 2012	11 April 2012	Information does not belong to the information to be disclosed. Art 2 of State Council Opinion 2010 “internal management information made or obtained by administrative organs during their day-to-day work or in-process information <sup>1</sup> under discussion, research or examination in general is not government information that should be disclosed as referred to in the Regulations.”
Zhejiang EPD	20 Dec 2011	18 April 2012	Information does not exist.
Ningxia EPD	10 April 2012	20 April 2012	We did not categorize key enterprises that emit dioxin. Information cannot be provided.
Chongqing EPB	22 Feb 2012 16 April 2012	28 April 2012	Due to the special characters of dioxin, according to relevant regulations, in order to avoid causing panic and safeguard social stability, we cannot provide the list of enterprises emit dioxin.
Hebei EPD	28 Mar 2012	4 May 2012	The list is not disclosed.
Sichuan EPD	27 Feb 2012 25 April 2012	17 May 2012	Did not know the enterprises emit dioxin in the province and cannot provide accurate data.
Shandong EPD	27 Feb 2012	6 June 2012	Does not have the complete list, and cannot provide the information.

Table B: Information disclosure requests without official reply addressing the information

Requestee	Request date	Contact date	Note
Inner Mongolia EPD	22 Feb 2012		Contacted for several times, agree to reply but did not
Shanxi EPD (山西)	22 Feb 2012 10 April 2012		Submitted request in written form and with ID according to requirement, but no reply.
Gansu EPD	22 Feb 2012		Nobody answers contact phone.
Qinghai EPD	28 March 2012		Contacted EPD with phone, was replied cannot provide the list. Then no reply.
Hubei EPD	28 March 2012		Phoned twice, replied request information was not complete, asked for ID
Jilin EPD	28 March 2012		Emailed, EPD said information requested for disclosure unclear. Later called, but did not get through.
Heilongjiang EPD	28 March 2012		Could not open the information disclosure page online. Later was informed a proof of "scientific research" was needed to request.
Liaoning EPD	22 Feb 2012		Cannot find responsible person
Tibet EPD			No contact information

Note: Compiled by the author based on materials provided by Wuhu Ecology Centre in June 2012.