



中山大學
SUN YAT-SEN UNIVERSITY

The 10th Annual Colloquium of IUCNAEL
Global Environmental Law at a Crossroads

Institutional Function of Emerging Environmental Litigation in China

Dejin Gu

Law School, Sun Yat-sen University

Baltimore July 1-5, 2012



Content

I . Access to Justice at International and Chinese Levels

II . Classification of Environmental Litigation and Typical Cases

III . Appraisals and Temporary Conclusion



I . Access to Justice at International and Chinese Levels

- 1 . Significance of Access to Justice at International Levels from Rio to Rio+20
 - (1) Principle 10, Rio Declaration on Environment and Development, 1992
 - (2) Paragraph 119.ter, World Summit on Sustainable Development Plan of Implementation, 2002
 - (3) Paragraph 99, The future we want, 2012



I . Access to Justice at International and Chinese Levels

2 . Emergence of Environmental Tribunal and Litigation in China

- (1) Judicial activism started to develop when Shengjun Wang assumed the position as the chief justice of the Supreme People's Court (SPC) 2008
- (2) Environmental Protection Tribunals were established in Intermediate Court of Guiyang City, and Trial Court of Qingzhen, Guizhou Province, Nov. 2007



I . Access to Justice at International and Chinese Levels

- (3) Jurisdiction of dozens Environmental Tribunals include civil, criminal, administrative cases related to environment, and environmental litigation for public interests
- (4) Environmental Litigation referred as the last kind, e.g. public interests litigation for environmental protection



II . Classification of Environmental Litigation and Typical Cases

- 1 tort brought by public authority in interest of public, claiming for injunction
- 2 tort brought by public authority in interest of public, claiming for compensation
- 3 tort brought by public authority in interest of state, claiming for injunction
- 4 tort brought by public authority in interest of state, claiming for compensation
- 5 judicial review brought by citizen claiming for invalidating illegal administrative action



II . Classification of Environmental Litigation and Typical Cases

1 tort brought by public authority in interest of public, claiming for injunction

- *Two Lakes and One Reservoir Administration v. Tianfeng Chemical Plant, 2007*
- plaintiff is water enforcement agency in Guiyang
- Defendant's factory locate in Anshun, neighbor of Guiyang, discharging water pollutants illegally into a river which is upstream of a lake in Guiyang
- EPB of Anshun took no action, but plaintiff has no jurisdiction of enforcement in territory of another city



II . Classification of Environmental Litigation and Typical Cases

1 tort brought by public authority in interest of public, claiming for injunction

(5) plaintiff claimed that the lake receiving pollutants is drinking water reservoir for Guiyang resident, and defendant violated health of resident

(6) plaintiff asked for stopping discharging of pollutants, and confirmed by the tribunal



II . Classification of Environmental Litigation and Typical Cases

2 tort brought by public authority in interest of public, claiming for compensation

- *procuratorate of Wangcheng County v. Pingtang Cement Ltd., 2007*
- dust, vibration and noise discharged by defendant's factory caused severe damages to near crops, buildings and villagers' health
- when defendant refused to pay compensation to the residents, some villagers broken up some defendant's vases valued 3600 RMB, and arrested



II . Classification of Environmental Litigation and Typical Cases

- 2 tort brought by public authority in interest of public, claiming for compensation
- (4) Procuratorate of Wangcheng County made a decision of Non-prosecuting, and brought a tort litigation against defendant, asking for defendant to cease infringements from noise, vibration and air pollution to the villages' health and property, and improving relative facilities until meeting the environmental standards, and pay for attorney fee
- (5) The case was settled, defendant committed stopping polluting and compensate 62538 RMB for Villagers every year.



II . Classification of Environmental Litigation and Typical Cases

3 tort brought by public authority in interest of state, claiming for injunction

- (1) *Procuratorate of Xinyu City v. Xiannv Lake Holiday Villa and Sika Breeding Company, 2009*
- (2) Two defendants were both located in an island which was in Xiannv Lake, which is key source of drinking water for residents in Xinyu City
- (3) The sewage and faeces from villa and sheepfold had being discharged into Xiannv Lake directly without treatment.



II . Classification of Environmental Litigation and Typical Cases

- 3 tort brought by public authority in interest of state, claiming for injunction
- (4) The Agency of Xiannv Lake Scenic Management and local Environment Protection Bureau had ordered the defendants take measures to comply with legal standards for discharging and shut down the sika breeding field, but the defendants didn't act out
- (5) October 2008, Procuratorate of Yushui District in Xinyu City brought tort sue standing for P. R. China, declared the defendants should take on specific infringement responsibility, and stop discharging pollutant into Xiannv Lake and shut down operation of sika breeding, in order to avoid risk of residents' health



II . Classification of Environmental Litigation and Typical Cases

3 tort brought by public authority in interest of state,
claiming for injunction

(6) In Feb. 2009, both parties reached an agreement which
defendants promised that they would stop sika breeding
and discharge any pollutant into Xiannv Lake



II . Classification of Environmental Litigation and Typical Cases

4 tort brought by public authority in interest of state, claiming for compensation

- (1) *Guangzhou Municipality Haizhu District Procuratorate v. Zhongmin Chen, 2008*
- (2) The defendant is a garment factory, which undertook fixation and stonewash of jean. It discharged a lot of pollutant into Shiliugang River, which made the water quality worse and smelly
- (3) Procuratorate of Haizhu District bought a tort, and asking for defendant to stop discharging pollutant immediately and compensating 110,000 RMB for cleaning up the contaminated river, and confirmed by Guangzhou Maritime Court



II . Classification of Environmental Litigation and Typical Cases

5 judicial review brought by citizen claiming for invalidating illegal administrative action

- (1) *Hongming Liu v. Shanghai Songjiang District Environmental Protection Bureau, 2008*
- (2) the plaintiff, a citizen, claimed the examination and ratification of EIS by EPB of Songjiang District in Shanghai City, illegal, and asking for declare the ratification invalid
- (3) Court of Songjiang District in Shanghai City and No.1 Intermediate Court of Shanghai rejected the claim of plaintiff, but confirmed the standing of the plaintiff



III. Appraisals and Temporary Conclusion

1 the 1st type of litigation

- (1) play the role of administrative implementation and enforcement on expense of violation of tort and civil procedure law
- (2) the problem of unwillingness of local EPB to enforce should be solved by development of institution of enforcement

2 the 2nd type of litigation play the role of legal assistance on expense of violation of civil procedure law, e.g. that is a case without real plaintiff



III. Appraisals and Temporary Conclusion

3 the 3rd type of litigation

- (1) Is not necessary, when violator of environmental legislation doesn't comply with the order of EPB, EPB should apply for court to enforce
- (2) Actually, the court usually is negative to enforce that, and such problem should be resolved by judicial reform, not environmental litigation

4 the 4th type of litigation

- (1) Indicate the importance of compensation of clean-up fee by polluter
- (2) Chinese legislations have no such rules, and should be developed soon



III. Appraisals and Temporary Conclusion

5 the 5th type of litigation

- (1) Play the role to overcome the possible failure of environmental enforcement by administrative agency, consist with the goal of access to justice emphasized by couples of international legal documents
- (2) Chinese administrative procedure law and litigation law can't meet the requirement
- (3) However, these problems have not attract enough attention from academia and decision-maker



中山大學
SUN YAT-SEN UNIVERSITY

My Thanks And Your Questions