

The Sting of a Thousand Cuts 不可承受之痛 China Cleans Up its Act on the Environment 中国治理环境 执法行动

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The thousand cuts

不可承受之痛....

On October 18, 2017, President Xi Jinping, in a three and a half hour speech to the Party Congress emphasized that building an ecological civilization is necessary for the continued development of China. He chose his words carefully:

2017 年 10 月 18 日，习近平主席在中国共产党第十九次代表大会上做了长达三个半小时的报告讲话，其中，他着重强调了生态文明建设对中国可持续发展的必要性。他字斟句酌地说道：

“The damage that humanity does to nature will ultimately harm humanity itself – this is an unavoidable rule.”

“人类对大自然的伤害最终会伤及人类自身 – 这是无法抗拒的规律。”

This announcement, together with the latest in a series of central environmental inspections covering 30 provincial regions has ushered in an era in which the environment is at the forefront of enforcement action. In a centrally-led enforcement

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campaign as far-reaching as anything that the government has undertaken, over 5,700 officials have been nabbed and over 30,000 companies have been penalized. The campaign was a massive coordinated effort between central inspection teams and a multiplicity of local government authorities. The government has committed to rolling out the inspections on an ongoing biennial basis, to address the ever-present risk of environmental relapse, with the next phase targeting air pollution in the Hebei-Beijing-Tianjin triangle.

习主席的这一发言，伴随最近对 30 个省市地区的一系列中央环境检查，开创了环境问题立于执法行动最前沿的时代。在一次中央领导的政府深入执法行动中，逮捕了 5,700 多名官员，30,000 多家企业受到处罚。这场行动是中央检查组与多地地方政府的一次大规模协调努力。政府已承诺以后每两年展开一次检查，解决一直存在的环保破坏风险，下一阶段目标是冀京津三角地区的空气污染。

But the campaign's impact, felt so keenly by local government officials and corporations alike, would be nowhere near as severe if not for the new tools that have been placed in the hands of the inspectors through recent legislative action.

但当地政府官员和企业均强烈感受到，如果检察人员手中没有最新立法作为新手段，这一次行动所产生的影响不会如此强烈。

A while coming....

一段时间以来....

Few people at the time fully appreciated the significance of Premier Li Keqiang's declaration of war against pollution following the 'airpocalypse' experience in Beijing several years ago. But it set in train a series of measures that reversed the sense of helplessness and apathy that had come to be associated with environmental protection in China. The ramp-up of environmental targeting in the central government's five year plans, the issuance over the past few years of very focused environmental policy action statements – the "Air Ten", the "Water Ten" and, most recently, the "Soil Ten" – and the issuance of long-awaited laws and regulations with teeth, provided a clear sign of what was to come.

很少有人当时完全体会到李克强总理在北京几年前遭遇“末日空气”后对污染宣战的意义。但之后中国制定一系列措施，扭转了对环境保护的无力和冷漠。中央政府五年计划中对环境目标的加速、过去几年出台的聚焦环境政策行动的说明 — “大气十条”、“水十条”及最近的“土壤十条” — 以及出台翘首以盼的法律法规，均提供了明确的信号。

But it was the amended Environmental Law, which came into effect without huge fanfare at the beginning of 2015, that promised to change the status quo that has so long favored “growth at any cost”. It did so by providing enforcement authorities with a greatly enhanced set of enforcement tools, aimed not only at environmental infringers, but also at corporate senior managers and regulators. The most potent of these measures changed the basis of fining infringers from a 'per event' basis to a daily basis, drastically altering the "pollute vs comply" equation. Responsible senior managers could be thrown into administrative detention for up to 15 days at a time for repeated infringements by their company. And in associated rules, the career advancement of government officials was made contingent on environmental performance. To round out the key changes,

freed from the pre-requisite to demonstrate some sort of loss or damage, a number of NGOs became qualified to bring environmental lawsuits.

但是，2015年初静静生效的修订后的《环境保护法》，虽然没有被大力宣传，但提出了要改变长期以来“不惜任何代价发展”的现状。通过为执法机关提供一系列有力的执法手段，不仅针对环境违法者，还针对公司高级管理人员和监管人员，《环境保护法》确实对现状有所改变。这些措施最有效地把“按每一次污染事件”处罚违法者，改为按天数计算处罚违法者，彻底改变了“污染对比合规”的天平关系。承担主要责任的高级管理人员可能由于其公司的屡次违法行为而受到最高至15天的行政拘留。并且，相关的规则中，政府官员的升职发展也视环境治理业绩而定。为完善重要变更，在无需事先证明某类损失或损害的情况下，一些非政府组织也有资格提起环境诉讼。

NGOs also drive compliance through other methods. On 13 October, the Corporate Information Transparency Index (CITI) was released at the 2017 China Green Supply Chain Forum by the Institute of Public & Environmental Affairs (IPE, China's most reputable environmental NGO). It accorded CITI performance/scores to approximately 260 brand-name companies. Most of the multinational companies that attended the forum expressed their concern with the increasingly stringent environmental regulations and ensuing enforcement, which meant more risks and challenges for their supply chain management. Some companies shared their countermeasures and proactive actions and others admitted that they lacked both experience and resources to make their supply chain compliant.

非政府组织也通过其他方式推动合规。10月13日，公众与环境研究中心（简称“IPE”，中国最著名的非政府环保组织）在2017年中国绿色供应链论坛上公布了企业信息透明度指数。它提供了对约260家知名品牌公司的企业信息透明度指数表现/分数。大多数参加论坛的跨国企业表示对日益严格的环境法规及随后强行执法的担忧，这意味着其供应链管理上更多的风险与挑战。部分企业分享了他们的对策和积极行动，另一些企业则承认缺乏经验和资源来确保其供应链的合规。

Such changes represent a fundamental shift in environmental philosophy. Prior to the amended Environmental Law, environmental authorities focused on up-front approvals, with environmental impact assessments, and construction approvals, taking up most of their attention. Now the emphasis is on corporate operational compliance, and its responsible oversight.

这些变化代表了环境哲学的根本性变化。修订版《环境保护法》出台前，环保机构注重于事先批准、环境影响评估及建设审批，这是他们最关注的问题。如今的重点则放在企业运营合规及其责任监督方面。

The law provides tools. But without underlying unequivocal policy support, it struggles as an instrument of social change. It has become clear in a succession of policy initiatives that environmental enforcement is here to stay and indeed has taken centre stage, having been put on a par with anti-corruption as a government's priority. What we are therefore seeing is an elusive convergence of two critical factors underpinning implementation. Other contributing factors are coming together too, such as the build-up of numbers of trained staff in the environmental authorities, and the proliferation of specialist environmental tribunals within the court system.

法律提供了手段。但是，如果没有相关明确的政策支持，它将辗转于如何成为社会变革的工具。一系列政策倡议逐渐明确的是，环保执法在此扎根并成为焦点，与反腐败一起成为政府优先考虑的问题。因此，我们看到的是两个支撑实施的关键要素的艰难结合。其他促成因素也在——呈现，例如在环保机构中组建训练有素的团队，以及在法院系统中培养专门的环境法庭。

One need not look further than the mighty packaging company Tetra Pak to understand how much local government attitudes towards development have changed. Twenty-six years ago, when Tetra Pak wanted to set up shop in southern China, the government of Foshan offered a plot on a new industrial park a few miles out of town.

没有一家公司比包装业巨头利乐公司更了解当地政府对发展所持的态度的改变。二十六年前，利乐想在华南设厂时，佛山政府在城外几英里的新工业园区提供了一块地皮。

Tetra Pak accepted, and its factory thrived. It became the dominant local packaging firm, with a 90% share in China's beverage paper packaging market at one point. And for many years, it was Foshan's largest taxpayer.

利乐接受了政府提供的地皮，并且工厂逐渐繁荣发展起来，成为当地最大的包装公司，一度占据中国饮料纸品包装市场 90% 的份额，多年来一直是佛山最大的纳税人。

But Foshan today is not what it was 30 years ago. The population has doubled and the city has spread. Tetra Pak's once out-of-town factory is now surrounded by residential communities worried about air pollution. This summer, after years of lobbying by angry locals (and a US\$100 million antitrust fine by the Chinese authorities last year), Tetra Pak shut the plant. Production, it announced, would transfer to its three other factories in Hohhot, Kunshan and Beijing.

但今日的佛山不再是 30 年前的佛山。人口翻番，城市扩张。利乐在城外的工厂现在被居民区所包围，而居民们十分担心空气污染。今年夏天，经过愤怒的当地居民的多年游说（并且去年中国有关部门对利乐处以了 1 亿美元的反垄断罚款），利乐关闭了工厂，宣布其生产将转移至利乐在呼和浩特、昆山和北京的其他三家工厂。

The enforcement wave does not distinguish between foreign and Chinese corporations. Enforcement actions have led the phone lines of the foreign commercial chambers and other professional business organizations to ring hot with calls from affected member companies, urging the chambers to organize working group sessions for members to share experiences and recommendations on how to address the "environmental wave". As a result, corporations have started to perform their own 'self-environmental audits' to gain a greater level of comfort in the new environment.

执法浪潮并不区别对待外资企业和中资企业。这些执法行动导致外国商会和其他专业商事机构的热线电话被受到执法行动影响的商会/机构成员企业打爆，要求商会为成员组织工作小组会议，分享解决“环境风波”的经验和建议。结果是，企业开始自行开展“自我环境审计”，以期更自如地应对新的环境。

Skeptics may question whether environmental compliance will retrogress as soon as the central inspectors have returned to Beijing, and localities will return to the 'growth at all costs' approach. But another law that just came into effect is designed to nip this risk in the bud. The Environmental Tax Law turns discharge fees into a type of tax, and takes

monitoring and collection out of the hands of local authorities and into the hands of joint platforms set up by tax and environmental bureaus. This means that local governments will bear great risks if they continue skirting around environmental law by waiving or subsidizing the payment of discharge fees of favored local companies. The environmental equation now favors environmentally responsible companies over polluters. And private investors are recognizing the business prospects for environmental technology as a result, especially with the proliferation of carbon financing options entering the market.

有人可能会质疑，一旦中央巡视员回到北京后，环境合规是否会倒退，地方政府将回到“不惜一切代价发展”的模式。但是，刚刚生效的另一项法律则将这种风险扼杀在摇篮中。《环境税法》将排污费改为一种税费，并且，监管和征税部门由地方政府改为税务局和环保局共同设立的平台。这意味着，如果地方政府继续通过免征或补贴其青睐的当地企业应缴付的排污费来规避环境法的话，地方政府将承担巨大风险。环境天平更倾向于对环保负责的公司而不是排污者。结果就是，私人投资者正在意识到环保技术的商业前景，尤其是随着碳融资期权进入市场的扩散。

Supply chain compliance – a hard nut to crack

供应链合规 – 棘手问题

Indirect vulnerability arising from one's own supply chain appears to be a risk that is more elusive but no less important.

来自自身供应链的间接隐患似乎是更难以捉摸但同样重要的风险。

On September 19, Dr. Zhang Yilin, CEO of Schaeffer Group Greater China, sent a note to the Pudong and Jiading governments asking them to allow their steel wire supplier to continue operations for another three months in order to find alternative suppliers for their production, estimating that the damage arising from the shutdown of this one supplier to Schaeffer and subsequent companies in the value chain could amount to 300 billion RMB.

9月19日，舍弗勒集团大中华区首席执行官张艺林，致函浦东新区和嘉定区政府，要求允许其钢丝供应商继续运营三个月，使得它能够为其生产活动找到另一家替代供应商，这家舍弗勒的供应商以及后续企业的停工对价值链所造成的损失预计可达3000亿元人民币。

Corporations that pro-actively engage their supply chain to enhance their awareness and compliance have proven to be able to weather the environmental storm more effectively. Other corporations have started screening their suppliers to better understand their indirect vulnerability.

积极组织供应链以提高其意识及合规性的企业，被证明能够更有效地应对环保风暴。其他企业已开始筛选其供应商，从而更好地了解他们的间接隐患。

Soil remediation - the next frontier

土壤修复 – 下一个前沿领域

Most efforts to date have been to tackle air and water discharge pollution, with the most insidious of all pollution, soil and groundwater contamination, generally placed in the 'too hard' category. Several years ago, a leaked survey of the extent of the nation's soil

contamination shone a spotlight on the problem that has been hard to shift. The central government eventually issued the "Soil Ten" policy action plan which committed to the enactment of a "Law on Soil Pollution Prevention and Control" ("Soil Law") in due course, rectifying the fragmented state of regulation over this area.

迄今为止，大多数努力都在于解决空气和水排放污染，而所有污染中最隐蔽有害的土壤和地下水污染，一般被放入“太难解决”类别。数年前，一份泄露全国土壤污染程度的调查报告引发了人们对这一难以转变问题的关注。中央政府最终发布了“土壤十条”政策行动计划，决心在适当的时候颁布《土壤污染防治法》（简称“《土壤法》”），整顿这一领域监管的零散状态。

True to its word, a Soil Law is on track to be promulgated next year, and in advance of that, temporary rules that give authorities to test the various concepts that will be introduced by the law, have been issued. These rules, the "Measures on Soil Environmental Management for Contaminated Sites", announced by the MEP on December 31, 2016 and in effect from July 1, 2017, mandate the sealing off or remediation of sites targeted by the government as those already at most risk of contamination.

言而有信，《土壤法》将于明年颁布，在此之前，已经有临时规则颁布，让有关部门对该法律将引入的各种概念进行测试。这些规则，即《污染地块土壤环境管理办法》，由环境保护部于2016年12月31日公布并于2017年7月1日生效，授权政府对那些已处于极大污染风险的地块进行封闭或修复。

The Remediation Rules have kicked off a process whereby 'the polluter pays' principal will gradually become entrenched in the consciousness of polluters in China. A more systematic approach to surveys and enforcement promises to help address deep concerns in the population about the quality of locally sourced food and water. As the consequences of environmental contamination become quantifiable and acknowledged by the new environmental courts, companies will begin to seek apportioning liability, which will lead to the growth of environmental insurance products and render the application of environmental technologies more attractive.

修复规则打开了一个进程，借此，“污染者付费”原则将在中国逐渐在污染者的脑海中确立。更系统化的调查及执法方式保证有助于解决人们对本地食品及水资源质量污染的深切忧虑。随着环境污染的后果变得可量化并且被新的环境法院所认识，企业将开始寻求分摊责任，这将有利于环境保险产品的发展，并使环保技术的应用更具有吸引力。

So what you should look out for to manage your risk?

因此管理你的风险须注意什么？

Companies should, in conjunction with their environmental assessors and legal counsel, audit themselves to guard against the following red flags that will be picked up in an investigatory visit by environmental officials:

企业应当与其环境评估人员及法律顾问共同进行自身审计，以防范环保官员调查访问时可能会指出的下列重要问题：

- Absent or incomplete EHS permits

无环境健康安全许可证或环境健康安全许可证不完备

- Non-compliance with land use or industrial policy
不遵守土地使用或行业政策
- Inadequate environmental protection facilities
环境保护设施不足
- Hazardous waste disposal by unlicensed parties
危险废物交由无执照方处理
- Any soil or ground water contamination
任何土壤或地下水污染
- Noxious odors such as VOCs
有毒气味，例如挥发性有机污染物
- Outstanding fees or fines
未缴付费或罚款
- Disputes with neighboring residents or facilities
与附近居民或工厂的纠纷
- Occupational health or safety compensation issues
职业健康或安全赔偿问题
- Media or NGO exposure for non-compliance
媒体或非政府机构对不合规的曝光

The rigor of the current environmental enforcement environment is highly likely to prevail.

Proactive self-assessment with periodic follow ups, combined with a strong compliance policy is the best way to both guard against nasty surprises, and to have a ready defense demonstrating that a company has robust environmental compliance policies.

当前严格的环保执法环境极有可能一直保持下去。积极的自我评估及定期追踪，结合严格的合规政策，是防范意外惊吓及展示企业拥有强大环保合规政策防御准备的最佳方式。

Conclusion

结论

China may not be able to save the world, but there is still time for China to save its own environment. And in initiating an era in which environmental enforcement is the 'new normal', China will be making a massive contribution to improving ecosystems far beyond its own borders in the years to come. Western companies will in the main weather the inconvenience, and emerge from the initial investigatory shock in a stronger market position. As playing fields are leveled through the increase in costs to polluters, and as other areas of problematic enforcement, such as IP protection, are addressed, compliant Western companies will be better placed to compete on their own terms, and to prosper.

中国可能不能拯救世界，但中国仍有时间拯救自己的环境。启动环保执法成为“新常态”的时代，中国将为未来几年直至本国边境以外的生态系统改良作出巨大的贡献。西方企业基本上将经历这些风雨打击，从初始调查冲击中恢复过来后，会有更强大的市场地位。随着污染者成本的提高，竞技平台日趋公平，同时其他领域问题执法（如知识产权保护）得到解决，合规的西方企业将能更好地以自身条件竞争，获得成功。

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About GREENMENT ENVIRONMENT

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GREENMENT's leadership is made up of environmental pioneers who have been supporting foreign companies entering China since the 1990's. GREENMENT today helps the same foreign companies and their supply chains to keep up with fast changing environmental regulations and engages with site operators to create self-motivated compliance through enhanced environmental awareness. Greenment's clients, when they open, close and move their operations, ask Greenment's help with environmental permitting, soil and groundwater cleanup and environmental compliance. At the same time, GREENMENT serves foreign and Chinese clients outside of China through a network of local partners, currently covering 31 countries.

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