

## China Supreme People's Court Issues Judicial Interpretation Addressing Environmental Civil Public Interest Litigation

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On January 6, 2015, China's Supreme People's Court (SPC) issued a judicial interpretation on environmental civil public interest litigation, effective January 7, 2015. This interpretation comes one week after China's amended **Environmental Protection Law** went into effect (see [B&D alert](#) from January 9, 2015).

The SPC formulated its interpretation, which consists of 35 separate articles, according to the Civil Procedure Law of the People's Republic of China, the Tort Law of the People's Republic of China and the Environmental Protection Law of the People's Republic of China.

The final interpretation reflects certain changes to the draft interpretation that the SPC issued for public comment at the end of September 2014. Among other things, the final interpretation:

- addresses which organizations may file public interest lawsuits and under which conditions;
- prescribes which courts have jurisdiction over such lawsuits and whether the plaintiff or defendant will have the burden of proof;
- addresses liability; and
- sets forth the remedies that a court may order.

The following provisions are particularly noteworthy. Note, however, that the language within a number of these provisions is broad and undefined, e.g., "the people's court may provide support in accordance with the law." In this regard, it is unclear how courts will interpret and apply this interpretative statement.

- Article 1 of the interpretation provides that the people's court shall accept lawsuits that are filed in accordance with applicable law--including the Civil Procedure Law and the Environmental Protection Law--by "legally designated institutions and relevant organizations . . . against the acts that pollute the environment and damage the ecology, which have harmed the social public interests or have the major risk of harming the social public interests." Article 1.
- The interpretation fleshes out Article 58 of the Environmental Protection Law, which governs the conditions under which "social organizations" may file suit against activities that cause environmental pollution, ecological damage and public interest harm. First, the interpretation provides that "[s]ocial organizations, private non-enterprise units, foundations and others registered in the civil administrative departments of the people's governments at the city (divided into districts) level or above in accordance with laws and regulations can be identified as the social organizations prescribed in Article 58 of the Environmental Protection Law." Article 2. Second, the interpretation states that "[w]here a social organization's purpose and main business scope specified in its articles of association are to maintain the social public interests and it is engaged in public environmental protection activities, it can be identified as 'specially engages in public environmental protection activities' prescribed in Article 58 of the Environmental Protection Law. The



Article By [Karl S. Bourdeau](#)  
[Daniel B. Schulson](#)  
[Beveridge & Diamond PC](#)  
[Environmental Law Portal](#)  
[Environmental, Energy & Resources](#)  
[Litigation / Trial Practice](#)  
[China](#)

social public interests involved in the lawsuit filed by a social organization shall be related to its purpose and business scope.” Article 4. Third, the interpretation indicates that “[w]here a social organization was not subject to any administrative or criminal punishment due to violation of laws and regulations by virtue of its business activities within five years before filing a lawsuit, it can be identified as ‘without records of violations of laws’ prescribed in Article 58 of the Environmental Protection Law.” Article 5.

- The interpretation also sets forth which materials must be provided in order to file an environment-related civil public interest lawsuit. In general, these include: (1) a statement of claim that conforms with the applicable provision on the Civil Procedure Law and (2) preliminary materials “proving that the act of the defendant has harmed the social public interests or has the major risk of harming the social public interests.” Article 8. Notably, the interpretation also states: “In the trial of an environment-related civil public interest lawsuit, the people’s court will not accept the claims proposed by the defendant in the way of counterclaim.” Article 17.
- According to Article 11, “prosecuting organs, departments responsible for supervision and management of environmental protection, and other organs” may support social organizations in their civil public interest lawsuits, including by assisting in investigation and collecting evidence.
- A plaintiff may request that the defendant provide information including data on the main pollutants emitted, emission concentrations, discharge pathways and construction and operation of pollution prevention and control facilities. If the defendant refuses to furnish the information that must be provided according to applicable law, and plaintiff “puts forth the claim that the relevant facts go against the defendant, the people’s court may presume that the claim is tenable.” Article 13.
- The interpretation directs the people’s court to “investigate and collect evidence that it deems necessary for the trial of an environment-related civil public interest lawsuit.” Article 14.
- With respect to liability and remedies, for “acts that pollute the environment and damage the ecology, which have harmed the social public interests or have the major risk of harming the social public interests” the plaintiff “may request the defendant to bear civil liabilities, including cessation of infringement, removal of obstruction, elimination of danger, restoration to the original state, compensation for losses and apology.” Article 18.
- Where a plaintiff requests the defendant “to cease the infringement, remove the obstruction and eliminate the dangers so as to prevent the occurrence and expansion of the damages to the ecological environment, the people’s court may provide support in accordance with the law.” Article 19.
- A plaintiff may also request that a defendant “restore the environment to the original state.” Article 20. Under this scenario, the interpretation provides that “the people’s court may judge in accordance with the law that the defendant shall restore the ecological environment to the state and function before the damage occurred.” *Id.* Where full restoration cannot be achieved, the interpretation allows “alternative restoration,” which is not defined. *Id.* However, the interpretation does indicate that “[w]hile decreeing that the defendant shall restore the ecological environment, the people’s court may determine the expenses for ecological environment restoration that the defendant shall bear when it fails to fulfill the obligation of restoration; or may also decree that the defendant shall bear the expenses for ecological environment restoration. The expenses for ecological environment restoration include the expenses for formulating and implementing the restoration plan and the expenses for monitoring and supervision.” *Id.*
- With respect to attorney’s fees, the interpretation states: “Where a plaintiff requests the defendant to bear the expenses for inspection and appraisal, reasonable attorney’s fee and other reasonable costs for litigation, the people’s court may provide support in accordance with the law.” Article 22.

In sum, the SPC’s interpretation attempts to add clarity to Chinese environmental civil public interest litigation and reflects the SPC’s effort to establish a framework for such litigation. Certain provisions also seem to indicate “official support” for such environmental public interest litigation. There is uncertainty, however, about what kind of impact this interpretation will have in the Chinese courts, whose action in response to it warrants monitoring. Clearly, the evolving concept of “citizen suits” in China bears stark differences in several respects from citizen suit provisions and concepts under U.S. environmental statutes.

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