

## **Background Memorandum Public Interest Litigation in China**

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The emergence of “public interest litigation” in China has been largely driven by rising rights awareness among its citizens alongside the country’s rapid economic development and growing social tension as a result of, among other things, lax public health and safety regulation and enforcement in favor of growth. During the past decade, scores of mass incidents such as those involving babies sickened by melamine-tainted milk powder, extensive environmental damage from the massive construction of the Three Gorges Dam, and scores of school-aged children being killed during the Sichuan Earthquake as a result of shoddy school construction, have spurred large groups of aggrieved citizens seeking legal redress for the harm they suffered.

In theory, private legal actions by multiple plaintiffs are possible under Chinese law. China’s Civil Procedures Law recognizes “joint/representative actions,” which permits multiple plaintiffs whose grievances contain the same or similar subject matter to aggregate their claims into a single suit.<sup>2</sup> In practice, the government has been wary of the social stability impact of such privately-initiated class actions. China’s Supreme People’s Court (SPC) actively discourages lower courts from accepting and hearing private representative suits, and encourages the division of such actions into individual cases; securities-related private representative actions are banned altogether.<sup>3</sup> More recently, the government has stepped up suppression of public interest lawyers representing multiple plaintiffs in cases involving forced land takings by local governments and labor disputes, and in individual high impact litigation cases in politically-sensitive areas such as gender-based employment discrimination.

Despite official pushbacks against these private representative or enforcement actions, the government has made it a political priority since the mid-2000s to explore viable alternatives for handling explosive legal disputes involving mass incidents which pose their own stability challenges. Two forms of “public interest litigation” emerged as a result to address discrete types of public harm in environmental protection, consumer protection (including food and drug safety), and state asset protection areas: Citizen suits and government-initiated enforcement actions.

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<sup>1</sup> Research assistance provided by Jacob Clark.

<sup>2</sup> People’s Republic of China Civil Procedures Law (2012), Arts. 52-54. A “joint action” can include less than 10 plaintiffs, while a joint action involving 10 or more plaintiffs is referred to as a “representative action,” since the parties are required to elect a “representative” to participate in the action. *See* Benjamin Liebman, “Class Action Litigation in China,” *Harvard Law Review*, Vol. 111, No. 6, 1523-1541 (April 1998), at p. 1528.

<sup>3</sup> *See* Liu Qian and Peta Stevenson, “Fast Forward – Class Actions in China,” King & Wood Mallesons, August 2016, available at <http://www.kwm.com/en/au/knowledge/insights/china-class-action-framework-fast-forward-civil-procedure-law-20160826#view-more-people>.

## **Citizen Suits: Public Interest Litigation by Social Organizations**

In 2012, China's [Civil Procedures Law](#) was amended to permit for the first time an “authority or relevant organization as prescribed by law” to institute a civil action against conducts that result in environmental pollution, infringes on consumer rights, or “otherwise harms the interest of the public” (*Art.55*). There is no requirement that such public interest litigants suffer direct harm.

Subsequently, China's [Consumer Protection Law of 2013](#) (CPL) and the [Environmental Protection Law of 2014](#) (EPL)<sup>4</sup> were amended to permit qualified citizen groups to bring civil public interest suits against nongovernment defendants for violations of these statutes. Under Article 47 of the CPL, China Consumers Association and its local equivalents are permitted to initiate lawsuits against “conducts that harm the legal interests of numerous consumers”. Article 58 of the EPL grants standing to citizen groups which are registered as social organizations, “specialized in environmental public interest activities for at least five years”, and with no past violations of the law.

China's SPC has since issued three judicial interpretations to clarify the scope of these citizen suits and provide procedural guidelines for their adjudication:

- SPC Interpretation on Civil Procedures Law (2015), Chapter 13, Articles 284-289.
- SPC Interpretation on Adjudication of Environmental Civil Public Interest Litigation (2015) (“SPC EPIL Interpretation”).
- SPC Interpretation on Adjudication of Consumer Protection Civil Public Interest Litigation (2015) (“SPC CPIL Interpretation”).

### ***1. SPC EPIL Interpretation***

Key provisions of the SPC EPIL Interpretation set forth legal guidance with respect to the following:

*Standing.* The SPC EPIL Interpretation clarifies that qualified “social organizations” under Article 58 of the EPL include only social groups, private non-enterprise entities, and foundations that are registered with the civil affairs authorities (*Art. 2*). These social organizations must specify “safeguarding public interest” in their charters and primary scope of work and have engaged in actual environmental public interest work within five years prior to bringing the lawsuit (*Art. 4*). An estimated 700 citizen groups in China are qualified to bring such lawsuits, but about 20 have filed environmental public interest cases in the past two years.<sup>5</sup>

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<sup>4</sup> Additional sector-specific environmental protection laws include the Marine Environmental Protection Law, the Water Pollution Prevention and Control Law, and the Solid Waste Pollution Prevention and Control Law.

<sup>5</sup> See China Dialogue report available at <https://www.chinadialogue.net/article/show/single/ch/9630-The-Changzhou-soil-pollution-case-is-far-from-over->. See also Yanmei Lin and Jack Tuholske, “Field Notes from the

*Permissible claims.* Claims may be raised against past, ongoing, and “major risk of” harm to public interests resulting from “environmental pollution and ecological damage” (*Art. 1*).

*Preliminary injunction.* Preliminary injunction appears to be allowed to “prevent the occurrence or exacerbation of ecological and environmental damage” when plaintiffs demand defendants to “cease tortious act, remove obstructions, and eliminate the danger” (*Art. 19*). A “White Paper on China’s Environmental Resources Trials” released by the SPC in July 2016<sup>6</sup> makes it clear that courts may grant preliminary injunctive relief in environmental cases to prevent further harm and limit the extent of damage. Since 2014, preliminary injunctions for “behavioral preservation” purposes are permitted under the Civil Procedures Law (*Art. 100*). Previously, parties could only apply for preliminary injunctions to preserve assets or evidence. Moreover, the SPC EPIL Interpretation allows public interest plaintiffs to seek reimbursement of any costs associated with reasonable preventative measures undertaken by plaintiffs to stop such harm or danger (*Art. 19*).

*Investigation and evidence collection.* The SPC EPIL Interpretation adopts several measures to help citizen suit plaintiffs access information by: (a) granting plaintiffs a presumption of evidence if a defendant refuses to provide certain required information (*Art. 13*),<sup>7</sup> (b) allowing People’s Procuratorates, and environmental and other government agencies to support citizen suit plaintiffs by providing “assistance in information and evidence collection” (*Art. 11*); and (c) requiring the court to launch its own investigation to collect evidence when necessary (*Art. 14*). Separately, the SPC has issued a joint announcement with China’s Ministry of Environmental Protection (MEP) requiring the latter to provide evidence as required by the court, including environmental impact assessments, environmental permits, pollutants release data, and administrative penalties and other substantiating evidence, “except to the extent prohibited by laws and regulations to release such information to outside parties”.<sup>8</sup>

*Settlement and publicity.* Settlements are required to be approved by court and entered into judgement as “civil mediation decrees”, and must be publicized for a minimum of 30 days prior to court’s approval (*Art. 25*). Such decrees, which must contain a stipulation of claims and facts, as well as terms of the settlement agreement, are also required to be made public. It is not clear whether the public is allowed input before the court’s approval.

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Far East: China’s New Public Interest Environmental Protection Law in Action,” 45 ELR 10856, September 2015, at pp. 10858-10859.

<sup>6</sup> Available at

[http://mp.weixin.qq.com/s?\\_\\_biz=MzA4NzUyMzY2NA==&mid=2649929670&idx=1&sn=8ec3f633d2e643baa12993a2748d6092](http://mp.weixin.qq.com/s?__biz=MzA4NzUyMzY2NA==&mid=2649929670&idx=1&sn=8ec3f633d2e643baa12993a2748d6092).

<sup>7</sup> Under China’s 2004 Solid Waste Law, 2008 Water Pollution Law, and 2009 Tort Law, the burden of proof is shifted to the defendant in civil environmental cases. See Rachel Stern, “The Political Logic of China’s New Environmental Courts”, *The China Journal*, No. 72 (2014), available at <https://www.law.berkeley.edu/php-programs/faculty/facultyPubsPDF.php?facID=15878&pubID=13>.

<sup>8</sup> See SPC, MEP and Ministry of Civil Affairs, “Joint Announcement on Implementing Environmental Civil Public Interest Litigation System” (December 2014) (hereinafter referred to as the “Joint Announcement”).

*Remedies and Enforcement:* Remedies for environmental public interest lawsuits are designed to address ecological damage rather than personal injury or property damage. Available remedies include “cessation of infringement, removal of obstruction, elimination of danger, restoration to the pristine state, compensation for losses, and formal apologies” (*Art. 18*).<sup>9</sup> The SPC EPIL Interpretation devotes considerable attention to “restoration to the pristine state” as an important injunctive remedy to environmental harms. At the same time, it provides a monetary alternative by permitting payment of restoration costs (including the costs for restoration planning and compliance monitoring) “when it is impossible for complete restoration” (*Art. 20*). In addition, plaintiffs are allowed to seek “interim loss of natural resource service functions” prior to completion of restoration (*Art. 21*).

The SPC EPIL Interpretation directs awards of restoration costs and loss of natural resource use to be applied towards “restoration of damages to the ecology” but also allows certain litigation expenses (e.g., costs for evidence collection, consultation with experts, environmental evaluation and appraisals, etc.) incurred by losing plaintiffs in other citizen environmental suits to be paid out of the same funds (*Art. 24*). It provides no further guidance on how such funds should be disbursed, and how cleanup and restoration should be monitored and by whom.

*Attorney’s fees and litigation expenses.* Courts can award “inspection and appraisal costs, reasonable attorney’s fees, and other reasonable expenses in support of litigation” to citizen suits plaintiffs (*Art.22*). Court fees for civil actions in China can range from 0.5% to 4% of the compensation requested.<sup>10</sup> SPC judges involved in drafting the Interpretation have explained that award of attorney fees and litigation expenses may only be granted when the plaintiff prevails.<sup>11</sup> Questions remain however about whether the award of attorney’s fees is subject to the general prohibition against public interest plaintiffs from accruing “economic benefits” from such litigation under EPL’s Article 58. (*See further discussions below for difficulties in fee shifting in citizen suits.*)

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<sup>9</sup> With the exception of return of property and elimination of consequences and restoration of reputation, these remedies are similar to general tort remedies provided under Article 15 of China’s Tort Liability Law promulgated in 2009, which contain provisions that deal explicitly with environmental liability in private actions.

<sup>10</sup> *See* Michael Faure and Liu Jing, “Compensation for Environmental Damage in China: Theory and Practice”, *Pace Environmental Law Review*, March 2014, 226, 253, available at <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1739&context=peir>. According to a court fee schedule provided by the “Rules for Payment of Litigation Fees” (《诉讼费用交纳办法》) issued by China’s State Council, in civil actions, the amount of court fees is RMB 50 when the amount of dispute does not exceed 10,000 RMB, 2.5% of the amount of dispute if it is in excess of RMB 10,000, and 0.5% if the amount of dispute is in excess of RMB 20 million (*see* [http://news.xinhuanet.com/legal/2017-02/08/c\\_129470823.htm](http://news.xinhuanet.com/legal/2017-02/08/c_129470823.htm)).

<sup>11</sup> *See* Zheng Xuelin, Lin Wenxue, and Wang Zhanfei, “Explanation and Application of SPC EPIL Interpretation”, *Journal of People’s Justice*, May 2015. The authors are all from the SPC, including Chief Justice of the SPC Environmental Resource Tribunal. The publication of comments by SPC judges or senior researchers, usually in court-run academic journals, appears to be routine following major releases of SPC judicial guidance documents. While not legally binding, they are being closely watched by lower courts, court observers, and litigants themselves.

## 2. SPC CPIL Interpretation

The SPC CPIL Interpretation contains many similar procedural guidelines for consumer cases as those under the SPC EPIL Interpretation for environmental cases. Highlights of the SPC CPIL Interpretation include:

*Standing.* Qualified citizen groups for bringing consumer public interest actions are limited to the government-sponsored China Consumers Association and its local equivalents (*Art. 1*). The SPC CPIL Interpretation leaves the door open for including additional citizen suit plaintiffs by providing that government agencies and other social organizations can be designated by statute as public interest litigants. The legislative authorization of People's Procuratorates' standing as a new category of public interest litigants to bring consumer protection actions appears to fall under this category.

*Permissible claims.* Claims may involve actual or potential harm which infringes upon the rights of a large number of unspecified consumers *or* are contrary to public interests, including those harming the health and safety of consumers' persons and their property (*Art. 1*).<sup>12</sup>

The SPC CPIL Interpretation lists specific types of harm that are deemed to be contrary to public interests: defective products and services; products and services endangering the personal and property safety of consumers without proper warning or with false or misleading information; business facilities serving the public that endanger the personal and property safety of consumers; contracts of adhesion which eliminate or restrict consumer rights; and other conducts that violate the rights of a large number of unspecified consumers or is harmful to the safety of consumers and are contrary to public interests (*Art. 2*).

*Remedies* include "cessation of infringement, removal of obstacles, elimination of dangers, or making formal apologies" and invalidation of contracts of adhesion (*Art. 13*). Compensation for losses or injuries suffered by consumers is not included. This appears to apply to any monetary compensation, including restitutions to make consumers whole. As explained by drafters of the SPC CPIL Interpretation, consumer public interest litigation is not designed to provide restitution for past harm to consumers but to prevent future violations for the benefit of a large number of unspecified consumers.<sup>13</sup>

## 3. Progress Update

The vast majority of the citizen suits have concentrated in the environmental protection area, brought by a small number of qualified plaintiffs comprised primarily of government-sponsored social organizations such as the All China Environmental Federation. It is also worth noting that

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<sup>12</sup> Cf. Cheng Xinwen, Feng Xiaoguang, Guan Li, Li Qi, "Explanation and Application of SPC CPIL Interpretation", *Journal of Applied Jurisprudence*, Issue 7, 2016, in which the authors, all SPC judges and presumably drafters of the Interpretation, made it clear that claims must satisfy both the "numerous unspecified consumers" requirement and the "violation of public interest" requirement.

<sup>13</sup> *Id.*

since 2014, China has set up several hundred specialized environmental tribunals within the SPC, the provincial high courts, and the local intermediate level people's courts to handle environmental cases.<sup>14</sup> There is indication that most of the environmental cases handled by the environmental tribunals involve criminal prosecutions against minor environmental crimes.<sup>15</sup>

A handful of the environmental cases have made substantial inroads against individual polluters. One notable case in Nanping, Guangxi Province involves two grassroots NGOs successfully obtaining a judgement for restoration of vegetation and ecosystem damaged by illegal mining, and recovering loss of use of woodland resources. In that case, the court ordered 4 individual defendants to pay more than RMB 3 million in fines and loss of use recovery. In another well-publicized case, the Taizhou Environmental Federation and People's Procuratorate won a RMB160 million judgement against six polluters. (*See Appendix for summaries of these and other cases.*)

In the consumer public interest litigation area, only three cases have been reported to date, all initiated by government-backed consumer groups. One involves a lawsuit filed in Shanghai against Samsung and a major Chinese cell phone manufacturer for failing to notify consumers of pre-installed apps on their smartphones which consumers were not able to uninstall. A second case involves the Shanghai Railway Bureau requiring consumers who lost their train tickets to repurchase tickets despite the fact that all train tickets are sold through a "real name" registration system maintained by the railroad. All these cases were settled through judicial mediation or settlement during trial. (*See Appendix for case summaries*)

Despite the progress, many hurdles remain for citizen groups to bring public interest suits, including the often-criticized stringent standing requirements which have precluded most grassroots NGOs from qualifying as plaintiffs, their continuing difficulties in access to information and collection of evidence, and the lack of clear enforcement guidelines which has made environmental judgements difficult to enforce.

Another major hurdle for citizen groups is the high court fees charged to losing parties as well as the need to front legal fees and costs associated with related environmental tests and assessments. In a well-publicized "sky-rocketing fee" case, two citizen groups which recently lost a soil pollution case with an estimated RMB 370 million cleanup costs were ordered by a court in Changzhou to pay RMB1.89 million in court fees (*see the Changzhou Poison Land Case described in Appendix*).

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<sup>14</sup> SPC, "White Paper on China's Environmental Resources Trials" (2016), available at [http://mp.weixin.qq.com/s?\\_\\_biz=MzA4NzUyMzY2NA==&mid=2649929670&idx=1&sn=8ec3f633d2e643baa12993a2748d6092](http://mp.weixin.qq.com/s?__biz=MzA4NzUyMzY2NA==&mid=2649929670&idx=1&sn=8ec3f633d2e643baa12993a2748d6092).

<sup>15</sup> *See Rachel Stern, supra note 6.*

## **A. Government Suits: Public Interest Litigation by People's Procuratorates**

In July 2015, at the direction of the Chinese Communist Party,<sup>16</sup> the Standing Committee of China's National People's Congress (NPC) authorized a 2-year pilot program for the People's Procuratorates (hereinafter "Procuratorates") to initiate public interest litigation in 13 localities.<sup>17</sup> Under the Chinese Constitution and national law, Procuratorates are state organs responsible for criminal prosecution and supervision of legal compliance, including supervision of the court's handling of civil, criminal and administrative cases. Their new role in public interest litigation is seen as an expansion of the Procuratorates' legal supervision authority.

Shortly after the legislative authorization, China's Supreme People's Procuratorate (SPP) and the SPC each released implementing measures to guide the initiation and adjudication of these cases.<sup>18</sup> Together these official documents provide the current legal framework for this new type of public interest litigation in China.

Public interest litigation by Procuratorates is further divided into two types of lawsuits:

### ***1. Civil Public Interest Litigation***

Procuratorates can initiate civil public interest litigation against individuals and nongovernmental entities for conducts which are deemed harmful to public interests, including environmental pollution, ecological harm, and violation of consumer rights to food and drug safety.

*Applicable law.* The SPP and SPC Implementation Measures both address issues that are unique to Procuratorates' role as "public interest litigants" in civil public interest litigation, including their statutory standing, waiver of court fees, special investigation and evidence collection authority, and the requirement for them to follow certain pre-litigation procedures to resolve disputes and reach settlement agreements with defendants before proceeding with litigation. Otherwise, the adjudication of civil public interest litigation cases brought by Procuratorates is governed by the Civil Procedure Law, the EPL and the CPL, and their respective SPC judicial interpretations applicable to citizen suits.

*Investigation and collection of evidence.* Procuratorates may initiate investigations upon discovery of illegal conduct in the course of discharging their official duties. They have broad investigative authority to access regulatory agencies' administrative enforcement files, collect

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<sup>16</sup> President Xi Jinping's Commentary on 4th Party Plenum Decision, PRC 18th Central Committee 4th Party Plenum Meeting, published January 2015.

<sup>17</sup> NPC Standing Committee, "Decision on Authorizing the Pilot Program for Supreme People's Procuratorate to Initiate Public Interest Litigation in Some Areas," July 1, 2015, available at [http://www.npc.gov.cn/wxzl/gongbao/2015-08/27/content\\_1946100.htm](http://www.npc.gov.cn/wxzl/gongbao/2015-08/27/content_1946100.htm). The 13 pilots include Beijing, Inner Mongolia, Jilin, Jiangsu, Anhui, Fujian, Shandong, Hubei, Guangdong, Guizhou, Yunnan, Shaanxi, and Gansu.

<sup>18</sup> See SPP, "Implementation Measures for Pilots on People's Procuratorates Initiating Public Interest Litigation," January 7, 2016; and SPC, "Implementation Measures for Pilots on People's Courts Hearing Public Interest Lawsuits Initiated by People's Procuratorates," issued February 25, 2015, effective March 1, 2016 (hereinafter referred to as "SPP Implementing Measures" and "SPC Implementing Measures").

various forms of evidence, interview the defendant and witnesses, consult with experts and obtain third party assessments, conduct onsite investigation, and employ “any other method Procuratorates deem necessary”, and are limited only by the prohibition against compulsory measures, such as restricting personal freedom, or seizure or freezing of assets.

*Pre-litigation procedures.* Prior to commencing civil public interest litigation, Procuratorates must first request qualified citizen groups to initiate their own civil public interest litigation and support them in such litigation if so requested. Because citizen groups can bring similar civil actions, Procuratorates can initiate such actions only in the absence of a qualified citizen group or when such litigant fails to bring suit.

*Preliminary injunction.* The Procuratorate may seek preliminary injunctions against defendants whose action or inaction may cause harm to public interests. Procurators can also apply for seizure of defendants’ property or money to “remedy the damage” without being required to post bond.

*Remedies.* The Procuratorate may seek to “stop violations, remove harms or obstacles, restore to the pristine conditions, pay out compensation, and make formal apologies”.

*Settlement and publicity.* Similar to requirements regarding publicity and court approval of settlement agreements in citizen group public interest litigation.

## **2. Administrative Public Interest Litigation**

Procuratorates can also sue government regulators or “organizations authorized by law to carry out official duties” in the so-called “administrative public interest litigation”. Similar actions cannot be brought by citizen groups, even though “administrative litigation” by private citizens and nongovernmental groups against government malfeasance are permissible under the China’s Administrative Litigation Law. In the past, groups of individual citizens have occasionally used administrative litigation in a “class like” manner to challenge decisions of local environmental agencies. In one case in 2014, 204 citizens represented by one nominal plaintiff were successful in having a court invalidate permits issued by a local environmental agency for a development project.<sup>19</sup>

*Permissible claims.* Claims can be brought against agency malfeasance or failure to discharge official duties with respect to environmental and ecological protection, state assets protection, and transfer of state land-use rights.

*Investigation and collection of evidence.* Procurators have similar investigation and discovery tools as in Procuratorates-initiated civil public interest litigation.

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<sup>19</sup> Administrative permit case involving 204 individuals including Lu Hong vs. Xiangshan District Environmental Protection Agency (December 2014), available at <http://www.chinacourt.org/article/detail/2014/12/id/1519518.shtml>.



*Pre-litigation procedures.* Administrative public interest litigation cases cannot be settled through mediation. However, prior to initiating litigation, procurators are required to submit “Procuratorate advisories” to government defendants to demand correction of malfeasance or performance of their legal duties. If a defendant fails to comply within 30 days and the harm to public interests continues, procurators may proceed with litigation.

*Remedies.* The Procuratorate may seek full or partial invalidation of a government defendant’s unlawful conduct/decision, compel the government defendant to perform its legal duties within a set period of time, and ask the court to confirm the illegality of agency conduct.

### **3. Progress Update**

Official assessment of the 13 pilot programs on public interest litigation by Procuratorates was presented by SPP Procurator-General Cao Jianmin to the NPC Standing Committee in November 2016.<sup>20</sup> Exemplary case summaries have also been released by the SPP and through the state news media. Chinese scholars who follow the situation complain privately of difficulties in obtaining information regarding the actual progress of the pilot programs and question the reliability of the official data. As of September 2016, Procuratorates have reported initiating 1,710 public interest litigation investigations, 1,668 of which either have been or are being settled through the pre-litigation process. This general pattern continues to hold true. Environmental protection cases accounted for 72.5% of the total caseload and food and drug (consumer) safety cases only 0.7%. Of those settled through pre-litigation procedures, administrative litigation against government defendants accounted for 95% of the cases, the majority of which have resulted in government agencies either correcting their illegal conduct or coming into compliance with their legal obligations. As of November 2016, a total of 42 cases have been filed in courts, two-thirds being administrative litigation cases against government defendants and more than 80% being environmental lawsuits. Court rulings were made in 8 cases.

### ***Challenges and Opportunities in Public Interest Litigation by Procuratorates***

Procuratorates are brought in as public interest litigants partially due to the general perception that few citizen groups are qualified or have the expertise or resources to lead consumer safety or environmental protection litigation. Procuratorates are also seen as a powerful branch of the government capable of taking on regulatory agencies fraught with issues of industry capture and local protectionism. Compared to citizen groups, including those sponsored by the government, Procuratorates have the clear advantage of having automatic legal standing and possessing sweeping authority to conduct investigations and collect evidence. Defendants, especially government agencies, are also more likely to be responsive to Procuratorates’ pre-litigation demands and threats of litigation, because of Procuratorates’ unique constitutional mandate to supervise overall legal compliance. The high rate of success in

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<sup>20</sup> Available at [http://www.npc.gov.cn/npc/xinwen/2016-11/05/content\\_2001150.htm](http://www.npc.gov.cn/npc/xinwen/2016-11/05/content_2001150.htm).

obtaining agency compliance through pre-litigation procedures to date is seen as a predictable yet desirable outcome of the pilot program.<sup>21</sup>

It is hard to ignore the fact, however, that the current experiment is dictated by top-down political priorities of the Communist Party and is being implemented in ways reminiscent of other “political campaigns” in China whose success is more often measured by performance targets reached by the rank-and-file. There are signs that procurators in the 13 pilot programs are under tremendous pressure to boost case volume and settlement rates. In a number of reported cases, civil public interest litigation against private defendants were initiated by Procuratorates following criminal convictions which already resulted in full payment of criminal fines and jail terms for the same violations. It is often not clear whether the defendants, often individuals, had the financial resources either to perform or pay the costs of any cleanups ordered by the courts. The justifications for such public interest litigation vary, ranging from public shaming to enhanced deterrence, and are not always directly related to elimination of harm or restoration of environmental damage. (*See the Changchun Salt Case and the Xuzhou Waterway Pollution Case described in Appendix.*) Chinese scholars are beginning to question whether public interest litigation by Procuratorates can develop on its own without Communist Party leadership’s watchful eye and what is really being accomplished after the cases have been filed and won in court.<sup>22</sup>

Procuratorates also face a steep learning curve in investigation techniques and in formulating effective remediation plans and compliance measures in environmental protection and consumer safety cases aimed at achieving broader and sustained impact. Traditionally, Procuratorates have been tasked with criminal prosecutions and anti-graft investigations, with only a perfunctory role in ensuring legal compliance by administrative agencies, including those in charge of environmental and consumer protection regulation. Despite their increasing familiarity with criminal prosecution of polluters, there is an acute recognition of the need for Procuratorates to develop the necessary expertise in collecting evidence and seeking appropriate remedies to ensure compliance. To make matters worse, in cases when governments are defendants, there is much political pressure and little cooperation from regulatory agencies which have the expertise and technical data to support the Procuratorate’s investigation and evidence collection.

Indeed, remedies and enforcement represent two of the more challenging aspects of public interest litigation for both citizen groups and Procuratorates, and have been recognized as such in the Procurator-General’s recent NPC report. At the same time, there are welcome signs that courts appear to be fairly receptive to different approaches and new ideas in devising more innovative remedies, implementation, and compliance monitoring measures. Overall, there are

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<sup>21</sup> See Yue Zhiyuan and Wang Jingbo, “New Developments in Administrative Public Interest Litigation”, *Applied Jurisprudence*, 2016, Issue 9, available at <http://www.chinalaw124.com/shehuigongyi/20161019/18731.html>.

<sup>22</sup> Presentation by Professor Zhang Jianwen of the National Procurators College, on file with the author.

significant variances in legal outcomes and inconsistencies as courts, Procuratorates, and others struggle with these issues.

- **Remedies:** Appropriate remedies present a major technical challenge. In both civil and administrative cases, courts and Procuratorates have shown a willingness to pursue a narrow band of injunctive reliefs, including ordering polluters to shut down illegal operations and forcing government defendants to revoke illegally issued permits or take corrective actions against polluters. There is less consensus on restoration as a remedy. Despite SPC's unequivocal preference for eliminating environmental harm through restoration, except in a few cases such as the Nanping Case in which the court ordered the defendants to clean up the polluted site and plant trees, most courts have stayed away from ordering specific remedial actions and opted instead to use the monetary alternative to award restoration costs as permitted by the SPC EPIL Interpretation.

Important questions remain on how to quantify ecological damage and calculate restoration costs. The SPC EPIL Interpretation allows courts to make a “reasonable determination” by considering factors such as the extent and degree of harm, scarcity of the ecological environment, difficulty of restoration, cost of operating treatment facilities, benefits to defendant as a result of violation, and degree of guilt (*Art. 23*). What is a court to do with such requirements? In general, restoration standards for various forms of environmental damages are not defined in Chinese environmental statutes and regulations or are too old to address existing problems.<sup>23</sup> Several courts have turned to environmental damage assessment recommendation guidelines issued by the MEP<sup>24</sup> and awarded restoration costs which included (a) ecological damage calculated using the so-called “simulated restoration cost method”, and (b) loss of use of ecological resources which can represent multiple times (varied by case) of the amount of ecological damage. (*See the Changzhou Waste Disposal Case and the Xuzhou Waterway Pollution Case described in Appendix.*) The MEP environmental damage assessment guidelines appear to be still a work in progress and there is considerable disagreement among experts about specific methods of calculations.

Courts and Procuratorates do seem to be eager to turn to experts to help formulate remediation plans and assess environmental damage. In a 2014 case involving soil contamination, the court convened a team of experts to serve as People's Jurors and engaged specialists to perform environmental damage assessment. Three remediation plans were proposed and were posted near the polluted site for public comments before the court reached its decision on one of the plans. (*See the Changzhou Soil*

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<sup>23</sup> See Michael Faure and Liu Jing, *supra* note 9 at 241.

<sup>24</sup> MEP, “Recommendation on Methods on Assessing Environmental Damage” (2014) and “Temporary Assessment Rule for Pollution Damage Caused by Environmental Accidents” (currently being circulated for comments). Available at <http://zfs.mep.gov.cn/pinggu/jsgfjhshjdp/201506/P020150604367218387130.pdf>.

*Contamination Case described in Appendix.*) On December 8, 2016, the MEP and the Ministry of Justice released the latest measures on regulating environmental damage assessment firms and the selection and management of experts staffing such firms. These measures will likely help to improve the quality of environmental damage assessments in court cases.

- **Enforcement:** Lack of clear legal guidance also has created inconsistency and uncertainty in enforcement and monitoring of restoration and cleanup in environmental cases. One particularly thorny issue is the use, management, and oversight of court-ordered monetary awards earmarked for restoration purposes. In most cases, the funds are paid directly into designated accounts held by citizen group plaintiffs or into local government treasuries. There are concerns that once the funds are paid into the government treasury, multiple layers of bureaucratic approvals are required before funds can be dispensed, turning them into “zombie accounts that no one is in charge of and no one can use.”<sup>25</sup>

The SPC has maintained that citizen group plaintiffs cannot hold such funds, citing the legal prohibition against public interest litigants from receiving economic benefits from the litigation.<sup>26</sup> The same prohibition applies to Procuratorates in civil public interest litigation. The SPC is reported to be in consultation with the Ministry of Finance and the MEP on setting up certain public interest litigation compensation funds to hold at least a portion of these funds for use in general environmental public interest lawsuits.

Another difficult issue involves the respective roles of courts, Procuratorates, and regulatory agencies in enforcing settlement agreements and judgements, and in monitoring compliance. The SPC Interpretation provides that when compulsory enforcement is required, court orders in environmental public interest cases shall be “transferred for enforcement” (*Art. 32*). Under Article 216 of the Civil Procedure Law, this generally means that the court, without petition by the prevailing plaintiff, is required to initiate the enforcement process to be undertaken by court enforcement officers. Exactly how judgement enforcement is “transferred” in public interest litigation remains unclear, as regulatory agencies who are not made a party to specific lawsuits are not legally obligated to provide assistance in enforcement and compliance monitoring. The SPC appears to tread carefully in its Joint Announcement with the MEP which provides that courts, when necessary, may “consult with and request” environmental regulators to

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<sup>25</sup> Minsheng Weekly, “Legal Vacuum: Environmental Compensation Awards Becoming Zombie Funds?”, April 25, 2016, available at <http://mt.sohu.com/20160425/n4446038760.shtml>.

<sup>26</sup> Wu Qing, “Suggestions to Adjudication of Environmental Public Interest Litigation Cases (2016), available at <http://www.kwm.com/zh/cn/knowledge/insights/highlights-of-the-judicial-judgment-from-the-supreme-peoples-court-on-environmental-public-20160119>

“jointly organize restoration efforts” and assist courts with “review and inspections” of cleanup results.<sup>27</sup>

As public interest plaintiffs, Procuratorates face the same difficulties as other civil litigants in collecting fines and damage awards, since failure to comply with civil judgements does not carry criminal or harsh civil penalties in China. In administrative actions against government defendants, Procuratorates have so far met little resistance from defendants in terms of compliance because of procurators dual functions as supervisor of legal compliance and public interest litigants. However, as demands by Procuratorates through pre-litigation advisories and court orders become more sophisticated and potentially requiring government defendants to carry out more complicated regulatory actions, it is not clear whether procurators have to become more actively involved with monitoring the implementation of settlement agreements or court orders to ensure compliance.

At least one case points to a possible model of courts taking the lead in initiating and supervising collaboration among various stakeholders in judgement enforcement. In the Changzhou Soil Contamination Case (*See Appendix*), upon issuance of a monetary judgement against four nongovernment defendants, the court ordered the awarded funds to be paid into a designated environmental protection account held by the local government, and subsequently convened the parties, the local Procuratorate, the local environmental protection agency, and an environmental damage assessment firm to formulate a plan to engage a third party to perform cleanup and restoration. The SPC lauded the lower court’s innovative use of “market forces” to engage the service of an environmental restoration specialist to tackle the issue of compliance monitoring and improve effectiveness in environmental restoration.<sup>28</sup>

Finally, consumer public interest litigation by Procuratorates has yet to gain traction. Procuratorates seem stymied by a lack of clarity on appropriate remedies of violations of food and drug safety and consumer protection laws. The path to Procuratorates-initiated civil litigation also appears to be narrowed by the capacity and willingness of government-backed consumer groups to bring suits. Procuratorates may need to explore the possibility of collaborating with regulators in bringing administrative enforcement actions in the food and drug and consumer safety area. There are reports of an increasing number of the so-called non-litigation administration execution cases being brought by regulatory agencies seeking court enforcement in China’s specialized environmental courts.<sup>29</sup> Collaboration between Procuratorates and

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<sup>27</sup> See Joint Announcement, *supra* at note 7, paragraph 6.

<sup>28</sup> Supreme People’s Court, *Ten Model Cases on Environmental Torts*, December 30, 2015, available at [http://rmfyb.chinacourt.org/paper/images/2015-12/30/03/2015123003\\_pdf.pdf](http://rmfyb.chinacourt.org/paper/images/2015-12/30/03/2015123003_pdf.pdf).

<sup>29</sup> See Rachel Stern, *supra* note 6.

consumer protection and food and drug safety regulators to enforce administrative enforcement actions may point to a new direction for consumer protection public interest litigation in China.

#### **4. Conclusion**

Public interest litigation in China is still in its early stage of development. Both the legal framework and litigation practice on the ground remain fluid and continue to evolve. The observations in this background memo are preliminary, reflecting the nature of a changing landscape in which only a small number cases are being litigated by citizen groups and the government, and the complication of many political and institutional factors at play.

In searching for solutions to the many challenges facing public interest litigation in China, a more technical approach which focuses on innovations in effective remedies and better enforcement of court-ordered remediation plans and negotiated settlement agreements may prove to be more fruitful for China to move closer toward the ultimate goal of controlling the country's worsening environmental problems and food and drug safety crisis for its citizens.

## Appendix

### Public Interest Litigation in China: Case Summaries

#### ***Notable environmental and consumer public interest litigation cases brought by social organizations:***

##### ***1. The Nanping Case (2014)***<sup>30</sup>

Two environmental NGOs, Beijing Friends of Nature and Fujian Green Home sued six individual defendants seeking cleanup and restoration of illegal mining site. Nanping Intermediate People's Court ruled against the defendants, ordering : (1) RMB1.27 million in civil fines, (2) removal of mining materials and waste rock from site, (3) restoration of the damaged site by planting trees within 3 years, (4) one-time penalty of RMB 1.1 million for failure to timely comply with court order remove mining material, (5) interim losses of natural resource service function in the amount of RMB 1.27 million to be paid into restoration fund for other restoration projects. The Court rejected plaintiffs' claims of actual damage for permanent loss of trees, but awarded fees to the plaintiffs (attorney's fees, court fees, and expert consultation fees) in the amount of RMB 166,163.

Note that the defendants in this case had been previously convicted of illegal use of agricultural land in connection with the same conduct and received jail terms.

##### ***2. The Taizhou River Pollution Case (2014)***<sup>31</sup>

In September 2014, the Taizhou Environmental Protection Federation filed suit in Taizhou Intermediate People's Court in Jiangsu Province against six companies for paying others to dump chemical waste into a local river. The Court ordered the companies to pay RMB 160 million in environmental restoration costs as well as RMB 100,00 in environmental damage assessment. This case was notable for its high monetary value and the fact that it was one of the earliest cases in which the Court was willing to accept a public interest litigation case filed by a qualifying social organization.

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<sup>30</sup> See Karl S. Bourdeau and Daniel B. Schulson, *Citizen Suits Under China's Revised EPL: A Watershed Moment in Chinese Environmental Litigation?* Beveridge & Diamond PC News Alert, March 9, 2016.

<sup>31</sup> See Laney Zhang, *China: Notable Environmental Public Interest Lawsuit*, Library of Congress – Global Legal Monitor, October 17, 2014, available at <http://www.loc.gov/law/foreign-news/article/china-notable-environmental-public-interest-lawsuit/>; see also Yin Youwen, *Jiangsu: Environmental Group Wins Lawsuit, Six Companies Ordered to Pay Environmental Restoration Costs of RMB 160 Million* (江苏: 环保组织赢官司, 6企业被判赔1.6亿环境修复费), *People's Daily*, September 12, 2014, available at <http://env.people.com.cn/n/2014/0912/c1010-25647548.html>.

NOTE: In August 2014, the individuals who did the actual dumping were charged with criminal violations and convicted. The defendants were sentenced to 2 to 5-year prison terms, as well as assessed fines ranging between RMB 160,000 and 410,000.

### 3. *The Dezhou Air Pollution Case* (2016)<sup>32</sup>

The All-China Environmental Protection Federation (ACFE), a social organization affiliated with the China's Ministry of Environmental Protection, sued a company in Dezhou, Shandong Province for exceeding air pollutant emissions standards in its manufacturing production. ACFE sought the largest fine ever imposed in a social organization-initiated public interest litigation suit for excessive air pollutant emissions (RMB 20.4 million) and damages for the defendant's refusal take corrective actions (RMB 7.8 million), totaling RMB 28.2 million. In addition, ACFE sought compensation to cover Dezhou local government's cost of treating air pollution, ACFE's court fees, as well as attorney's fees and costs for collecting evidence and expert witnesses. ACFE also asked the Court to order the defendant to issue a public apology, cease its pollution activities, construct air purification facilities, and not be allowed to continue its operations until approved by the local environmental protection agency. On July 20, 2016, the Dezhou Intermediate People's Court held in favor of the ACFE and ordered the defendant to pay environmental damages in the amount of RMB 21,983,600 to be used for air quality environmental restoration/repair in Dezhou, and to issue a public apology. The Court denied the remainder of ACFE's requests.

### 4. *The Changzhou Soil Contamination Case* (2014)<sup>33</sup>

Changzhou Environmental Public Interest Federation sued several recycling companies for soil contamination as a result of illegally buying and selling hazardous materials, and doing so without proper permits. The Changzhou Intermediate People's Court found the defendants to be jointly liable for harms to the environment and ordered them to pay RMB2.83 million into the Changzhou Ecological and Environmental Legal Protection Public Interest Fund. The Court then convened the parties, the local Procuratorate, the local environmental protection agency, and an authorized environmental damage assessment firm to formulate a plan to engage a third party to implement cleanup and restoration.

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<sup>32</sup> See Supreme People's Court, *Ten Model Cases on Environmental Torts* (十起环境侵权典型案例), December 30, 2015, available at [http://rmfyb.chinacourt.org/paper/images/2015-12/30/03/2015123003\\_pdf.pdf](http://rmfyb.chinacourt.org/paper/images/2015-12/30/03/2015123003_pdf.pdf); Xinhua News, *Verdict Announced in China's First Air Pollution Public Interest Litigation Case* (全国首例大气污染公益诉讼案一审宣判), July 21, 2016, available at [http://news.xinhuanet.com/legal/2016-07/21/c\\_129164975.htm](http://news.xinhuanet.com/legal/2016-07/21/c_129164975.htm)

<sup>33</sup> See Supreme People's Court, *Ten Model Cases on Environmental Torts* (十起环境侵权典型案例), December 30, 2015, available at [http://rmfyb.chinacourt.org/paper/images/2015-12/30/03/2015123003\\_pdf.pdf](http://rmfyb.chinacourt.org/paper/images/2015-12/30/03/2015123003_pdf.pdf)



## 5. *The Changzhou Poisoned Land Case (2017)*<sup>34</sup>

Between 2015-2016, more than 500 students were sickened at a newly-constructed school located adjacent to a municipal lot previously owned and used by three major chemical plants. The students complained of the air smelling of chemical pollutants and suffered rashes and headaches. The municipal lot had been undergoing cleanup by the local government. Upon receiving complaints by parents, the local government and several central government agencies, including the central MEP, conducted an investigation and concluded that the environment was safe for the students affected.

In December 2016, two NGOs (Friends of Nature and Green Development Foundation) filed an environmental public interest suit against the three chemical manufacturers in the Changzhou Intermediate People's Court, seeking to have the defendants restore the polluted site or pay for the cost of restoration. They also asked the Court to award plaintiffs RMB 1.89 million in court fees, calculated as a percentage (in this case 0.5%) of the total amount of claims, which was determined to be RMB 370 million.

In January 2017, the Court rejected the plaintiffs' claims and allowed the local government to continue cleanup and restoration of the polluted site. The Court's give the following reasons for its decision: The defendants each had undergone multiple reorganizations and the issue of environmental cleanup had long been contentious without a resolution. Because the site had been "taken back" by the local government which followed with cleanup actions and planned to redevelop the land, the responsibility for cleanup should rest with the government.<sup>35</sup> The Court also refused to order the defendants to pay plaintiffs' court fees. The case is currently on appeal. One of the key issues on appeal is whether or not citizen plaintiffs in environmental public interest litigation cases should be exempt from the requirement that the losing party pay court fees as a percentage of the total claims.

## 6. *The Jiangsu Consumer Water Bill Case (2016)*<sup>36</sup>

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<sup>34</sup> See China Dialogue, "Changzhou Poison Land Case: The Litigation is Far From Over", February 24, 2017, available at <https://www.chinadialogue.net/article/show/single/ch/9630-The-Changzhou-soil-pollution-case-is-far-from-over->. See also [http://news.xinhuanet.com/politics/2017-01/25/c\\_1120380190.htm](http://news.xinhuanet.com/politics/2017-01/25/c_1120380190.htm).

<sup>35</sup> China currently has no specialized laws applicable to soil pollution. The issue of responsible parties after land is transferred is not clearly addressed by any existing laws, even though various government policies and regulations, including the State Council's "Action Plan for Soil Pollution Prevention and Treatment" (《土壤污染防治行动计划》) issued in June 2016 and MEP's "Rules for Environmental Management of Polluted Land and Soil" (《污染地块土壤环境管理办法》) 第十条, make re-organized polluters and transferors of land use rights responsible for subsequent cleanups. The issue of cleanup responsibility after polluted land is taken back by the government remains unclear. In China, only the state and rural collectives have land ownership. Land users can acquire long-term use rights only.

<sup>36</sup> See Xinhua News, *Jiangsu Consumer Association Sues the Nanjing Water Group, How to Get Rid of the Monopoly Industries' 'Hegemon Clause'* (江苏消协起诉南京水务集团 垄断行业'霸王条款'如何破), October 31, 2016, available at [http://news.xinhuanet.com/legal/2016-10/31/c\\_1119815542.htm](http://news.xinhuanet.com/legal/2016-10/31/c_1119815542.htm)

The Jiangsu Consumer Protection Association sued the Nanjing Water Group Co. LTD claiming that a 0.5% penalty for overdue water bills was arbitrary and excessive. The plaintiff requested that the Nanjing Intermediate People's Court invalidate Article 7, Section 2, Item 1 of the "Nanjing Water Group Co. LTD Water Supply Contract," therefore terminating the 0.5% overdue penalty. The parties have communicated several times but have been unable to come to a settlement. The case is still pending.

## 7. *The Shanghai Train Tickets Case* (2015)<sup>37</sup>

From May through July 2014, passengers of the Shanghai Railway filed complaints with the Zhejiang Consumer Protection Commission that after purchasing tickets using its real name registration system which requires passengers to register their ticket purchases and provide personal identification information, they were forced to purchase a new ticket when they lost their original tickets. After failing to secure Shanghai Railway Bureau's agreement to provide refund to the consumers, the consumer organization sued and demanded the railroad to stop its practice. The Shanghai Railroad Court initially refused to accept the case. Upon appeal by the plaintiff, parties were able to hold court-supervised mediation and reached a settlement, pursuant to which the defendants agreed to improve consumer protection measures and change its practices regarding lost tickets. The consumer organization withdrew its court complaint.

## 8. *The Tianjin Samsung Case* (2015)<sup>38</sup>

In July 2015, the Shanghai Consumer Protection Association filed a consumer protection public interest lawsuit with the Shanghai Intermediate People's Court against the Tianjin Samsung Communications Technology Co. LTD for violating consumers' right of information and choice. Samsung allegedly sold smartphones with pre-installed software (a total of 44 apps) that cannot be uninstalled. Consumers were not informed of the use of the apps or the amount storage they take up on the phone. Shanghai Consumer Protection Association requested Samsung to provide an external package or manual explaining the name, type, capabilities, and storage amount of each pre-installed software app, as well as provide an explanation on how to uninstall the software. During the trial, Samsung submitted an "Innovation Plan" to the Shanghai Consumer Protection Association, expressing Samsung's plans to use its website, packaging, and other methods to inform consumers of the pre-installed software and how to uninstall it. Based on this plan, on September 17, 2015, the Shanghai Consumer Protection Association applied to withdraw the case, which was approved by the Court.

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<sup>37</sup> See Guo Xiaocui, *Zhejiang Consumer Protection Commission Sues the Shanghai Railway Bureau in Consumer Protection Public Interest Case* (浙江省消保委诉上海铁路局消费公益诉讼案), China 315 Law Net, March 23, 2016, available at <http://www.315law.org/media/2016/0323/248.html>

<sup>38</sup> See Zhu Rui, *Shanghai Consumer Protection Association's Public Interest Lawsuit Against Tianjin Samsung Begins* (上海消保委诉天津三星公益诉讼案开审), China Court, September 18, 2015, available at <http://www.chinacourt.org/article/detail/2015/09/id/1709289.shtml>; Huang Anqi, *Nation's First Consumer Civil Public Interest Law Suits Come to a Close, Shanghai Court Approves Consumer Protection Association's Application to Withdraw Case for Samsung, Oppo* (全国首例消费民事诉讼落槌 上海法院裁定准予消保委对三星、欧珀撤诉申请), Xinhua News, November 13, 2015, available at [http://news.xinhuanet.com/fortune/2015-11/13/c\\_1117139850.htm](http://news.xinhuanet.com/fortune/2015-11/13/c_1117139850.htm)

***Notable environmental and consumer public interest litigation cases brought by Procuratorates:***

**1. *The Guizhou Jinping Case* (2015)<sup>39</sup>**

In August 2014, Jinping County (Guizhou) Procuratorate filed suit in Fuquan City Intermediate Court against the Jinping County Environmental Protection Bureau (Jinping EPA) for failing to enforce its environmental violation notices against polluters and asked the Court to compel Jinping EPA to take punitive actions against the polluters. The Procuratorate, upon discovery of failure by seven stone processors to comply with environmental violation notices issued by Jinping EPA, had sent two advisories requesting the latter to conduct enhanced inspections and compel the polluters to take corrective actions. Jinping EPA failed to respond to the advisories and the violations continued for more than a year. The Court ruled that Jinping EPA failed to perform its regulatory obligations and to properly monitor environmental violations. Prior to the court's ruling, Jinping EPA voluntarily issued fines and shut down the polluters.

**2. *The Qingyun Waste Water Case* (2016)<sup>40</sup>**

In December 2015, the Qingyun County Procuratorate filed an administrative public interest litigation in Qingyun County People's Court against local environmental protection agency (Qingyun EPA) for issuing a permit to allow production by a dye-making plant which discharged waste water and caused environmental pollution. The Procuratorate alleged that Qingyun EPA failed to comply with the procurator's advisories to stop the pollution and enforce various environmental violation notices issued against the polluter. The Qingyun EPA requested the court to declare that the permit issued by Qingyun EPA to allow the polluting plant to commence production to be illegal and to order the defendant to carry out its legal obligations. During trial, Qingyun EPA adopted a series of corrective measures and partially satisfied the Procuratorate requests. In June 2016, the court ruled in favor of the Procuratorate and declared that Qingyun EPA issued the permit in violation of the law.

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<sup>39</sup> See Supreme People's Court, *Jinping County (Guizhou) Procuratorate Sues the Jinping County (Guizhou) Environmental Protection Bureau for Failing to Perform its Legal Duties* (锦屏县人民检察院诉锦屏县环境保护局不履行法定职责案), China Court Net, March, 30, 2016, available at <http://www.chinacourt.org/article/detail/2016/03/id/1830967.shtml>

<sup>40</sup> See Supreme People's Procuratorate, *Court Supports All Litigation Requests in China's First Procuratorate-Raised Administrative Public Interest Litigation Case* (全国首例检察机关提起行政公益诉讼案一审宣判, 诉讼请求全部获法院支持), Supreme People's Procuratorate Announcement Board, June 20, 2016, available at [http://www.spp.gov.cn/xwfbh/wsfbt/201606/t20160620\\_120343.shtml](http://www.spp.gov.cn/xwfbh/wsfbt/201606/t20160620_120343.shtml).

### 3. *The Changzhou Waste Disposal Case* (2015)<sup>41</sup>

On December 21, 2015, the Changzhou Procuratorate sued husband and wife Xu Jianhui and Xu Yuxian for disposing without permits barrels of used resin and oil into the ground for period of 4 years in connection with their industrial barrel cleaning business. The suit was filed after the Procuratorate determined that three registered environmental social organizations do not qualify as citizen plaintiffs. The Procuratorate requested that the Court order the two defendants timely clean up the waste site and remove any and all environmental risks; timely restore the soil and affected environment to its original condition; pay the cost for environmental restoration, which is 4.5-6 times of a base number of RMB300,000 calculated in accordance of the so-called simulated environmental restoration cost method pursuant to guidelines issued by China's Ministry of Environmental Protection.

On April 14, 2016, the Court granted the Procuratorate's requests and ordered defendants to (1) clean up remaining waste and remove ongoing hazards to the environment within 15 days; (2) engage a qualifying soil cleanup firm to create a soil restoration plan within 30 days and such plan, upon approved by the local environmental protection, must be implemented within 60 days; and (3) pay RMB1.5 million in environmental damage which is to be paid into a designated account of the Changzhou City Environmental Public Interest Fund.

*NOTE* – In a separate criminal suit brought June 2015, the Procuratorate charged the defendants for environmental crimes for the same violations and obtained a conviction with prison sentences and fines totaling RMB450. The Procuratorate cited lack of cleanup and continuing soil pollution from the disposed waste as justification for bringing further civil public interest lawsuit against the defendants.

*Post-script:* In April 2017, one year after the case was decided, the local Procuraorate applied for a compulsory enforcement order from the Changzhou Intermediate People's Court citing failure by the defendants to comply with the prior court order, including failure of adequate cleanup and failure to pay for the environmental damage awarded. [The Court again ordered the defendants to comply with its order or face "further compulsory measures."](#)

### 4. *The Changchun Salt Case* (2016)<sup>42</sup>

On May 6, 2016, the Changchun (Jilin) Procuratorate requested that the Jilin Provincial Consumer Protection Association initiate a civil public interest litigation against three

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<sup>41</sup> See Supreme People's Procuratorate, "8th Round of Guiding Cases" (第八批指导意见) (January 2017), available at [http://www.spp.gov.cn/jczdal/201701/t20170104\\_177552.shtml](http://www.spp.gov.cn/jczdal/201701/t20170104_177552.shtml). See also Yao Xueqing, *Changzhou Procuratorate Wins Environmental Public Interest Lawsuit* (常州检察院环境公益诉讼一审胜诉), *People's Daily*, April 18, 2016, available at <http://env.people.com.cn/n1/2016/0418/c1010-28283212.html>

<sup>42</sup> See Yang Songnan, Zhang Yuzhou, and Wang Changan, *China's First Food and Drug Safety Civil Public Interest Lawsuit Begins in Changchun* (全国首例食品药品安全领域民事公益诉讼案长春开庭), *Xinhua News*, November 2, 2016, available at [http://www.jl.xinhuanet.com/2012jlpd/2016-11/02/c\\_1119828818.htm](http://www.jl.xinhuanet.com/2012jlpd/2016-11/02/c_1119828818.htm).

individual defendants for selling non-food grade salt to consumers. On August 30, 2016, the Jilin Consumer Protection Association sues the individual defendants in the Changchun Intermediate People's Court requesting the Court to order the defendants to deliver a public apology through the media. On Nov. 2, 2016, the Court held that the defendants civilly liable for causing harm to consumers and ordered the defendants to offer a public apology. Remarkably, the presiding judge of the case told newspapers that the salt in question was not distributed to major supermarkets and suggested that consumers avoid roadside markets which may still carry the product.

*NOTE:* On May 11, 2016, the Kuangcheng (Changchun) District Court convicted the defendants of criminal charges for food safety violations. One defendant was sentenced to one year in prison and fined RMB 25,000. The other two defendants were sentenced to six months in prison with a stay of imprisonment of one year, and a fine of RMB 10,000.

*Post-script:* In a similar [fake iodine salt case](#) in Hubei Province, the local Procuratorate brought a civil consumer public interest litigation case against the distributors after the provincial consumer union failed to response to its advisory to bring a citizen suit. In March 2017, the Shiyan City Intermediate Court ordered the defendants to recall the fake salt and issue public apologies.

#### 5. *The Xuzhou Waterway Pollution Case* (2015) <sup>43</sup>

Xuzhou (Jiangsu) Procuratorate brought a civil public interest case against a paper product manufacturer which repeatedly discharged untreated waste water into nearby waterways during a 3-year period. After three local social organizations declined to take on the case at the urging of the Procuratorate, citing lack of capacity, the Procuratorate sought court-imposed civil fines against the defendant which had already paid fines (RMB150,000) issued by the local environmental protection agency. Meanwhile, the defendant had performed cleanups, the water quality of the polluted waterways had been restored to near permitted levels, and there appeared to be no ongoing illegal discharge at the time of the lawsuit. Experts engaged by the Procuratorate testified that ecological damage from the discharge during two of the three years amounted to RMB269,000, based on the simulated restoration cost method provided by guidelines issued by China's Ministry of Environmental Protection. In addition, the Procuratorate also sought interim loss of ecological service functions estimated to be 3-5 times of the ecological damage. In April 2016, the Court ordered the defendant to pay RMB 1,058,200 for environmental

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<sup>43</sup> See Gao Xin, *Supreme People's Procuratorate Publishes Five Model Cases for Public Interest Litigation Pilot, Cases Already Filed at Courts* (最高检发布 5 起公益诉讼试点工作典型案例, 法院均已立案), Justice Net News (正义网), January 6, 2016, available at [http://news.jcrb.com/jxsw/201601/t20160106\\_1580673.html](http://news.jcrb.com/jxsw/201601/t20160106_1580673.html); see also China Environmental Protection Publication Network, *Company Liable for Hundreds of Thousands of RMB in Environmental Restoration Costs from Procuratorate-Raised Environmental Public Interest Lawsuit* (检察机关提起环境公益诉讼企业承担百万环境修复费), April 27, 2016, available at [http://www.zhhbw.com/news\\_show.aspx?id=6887](http://www.zhhbw.com/news_show.aspx?id=6887).

restoration and interim loss of ecological service functions into the Xuzhou Environmental Protection Public Interest Fund. The court also awarded RMB17,000 to the Procuratorate for expert fees and litigation costs.

In justifying its action against the defendant, the Procuratorate indicated that the small amount of administrative fines lacked deterrent effect and showed a willingness to seek the larger court-order fines regardless of the defendant's ability to pay.

## 6. *The Baishan Case* (2016)<sup>44</sup>

Jiangyuan District Hospital in Baishan City, Jinlin Province constructed a medical facility without obtaining a discharge permit for untreated medical waste water and began operations in 2012. The hospital also failed to install waste water treatment facilities required by environmental regulations, resulting in serious pollution to underground water and adjacent soil. In 2014, during a revocation project, the violation was discovered by the local environmental protection agency which ordered the hospital to come into compliance and pay a fine. The state-owned hospital, citing lack of government funding for taking corrective measures, continued its illegal discharge. The local health authority granted a renewal of the hospital's operating license without requiring its environmental compliance certification.

In November 2015, the Procuratorate in Baishan submitted an advisory to the local health bureau recommending the latter to take corrective actions to stop the illegal discharge. The health bureau responded by ordering the hospital to take corrective actions but the illegal discharge continued, posing serious public health risks. The Procuratorate filed an administrative public interest lawsuit against the health bureau in the Baishan Intermediate People's Court, and a supplemental civil public interest suit against the hospital. On May 11, 2016, the court held that the health bureau failed to fulfill its legal obligations, and ordered it to supervise the hospital to install waste water treatment facilities within 3 months. The Court also ordered the hospital to cease its illegal discharge.

Following the court order, the local government allocated RMB 900,000 to purchase and install waste water treatment equipment at the hospital.

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<sup>44</sup> See Supreme People's Procuratorate, "8th Round of Guiding Cases" (第八批指导意见) (January 2017), available at [http://www.spp.gov.cn/jczdal/201701/t20170104\\_177552.shtml](http://www.spp.gov.cn/jczdal/201701/t20170104_177552.shtml). See also Li Nannan, *Decision in Nation's First Administrative Civil Public Interest Litigation Case Filed by Baishan (Jilin) Procuratorate* (吉林省白山市人民检察院提起的全国首例行政附带民事公益诉讼案件宣判), *People's Daily*, August 2, 2016, available at <http://legal.people.com.cn/n1/2016/0802/c42510-28603853.html>.

## 7. *Liuzhi Garbage Dumping Case* (2016)<sup>45</sup>

For more a year, Dingqi Township (Guizhou) used grounds adjacent to its neighboring Liuzhi District to dump all of the town's raw garbage without further treatment at the site, causing serious environmental damage to the entire area. The Procuratorate in Liuzhi submitted an advisory to the Dingqi Township recommending cleanup, restoration, and cessation of ongoing garbage disposal. When the township did not respond to the Procuratorate's recommendations or took any corrective actions, the Liuzhi Procuratorate invited experts to perform environmental damage assessments and confirmed actual and potential health and environmental hazards. On January 19, 2016, the Liuzhi Procuratorate filed an administrative public interest lawsuit against the Dingqi town government, requesting the court to (1) confirm that the defendant's garbage dumping constituted illegal administrative conduct, and (2) order the defendant to comply with its legal duties to stop further dumping and to take corrective actions to remedy the impact of its illegal conduct. After the lawsuit was filed, the defendant partially cleaned up the garbage site and issued a written order to its residents to stop further dumping at the site. On March 16, 2016, the court ruled in favor of the Procuratorate and granted all of its requests.

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<sup>45</sup> See Supreme People's Procuratorate, *Liuzhi (Liupanshui City, Guizhou) Procuratorate Wins Administrative Public Interest Lawsuit Against the Dingqi (Anshun Prefecture, Zhenning County, Guizhou) Government* (贵州省六盘水市六枝特区人民检察院诉安顺市镇宁县丁旗镇政府违法行政公益诉讼案一审胜诉), March 16, 2016, available at [http://www.spp.gov.cn/xwfbh/wsfbh/201603/t20160316\\_114528.shtml](http://www.spp.gov.cn/xwfbh/wsfbh/201603/t20160316_114528.shtml).