

**Transparency in China:
Implications for the Environment and Climate Change**

**Testimony before the Congressional Executive Commission on China
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Chairman Dorgan, Chairman Levin, Members of the Commission:

Thank you for the opportunity to present these remarks to you today. I am the Director of the Natural Resources Defense Council's (NRDC) China Program and have been working on environmental issues in China for nearly twenty years. NRDC was the first international environmental group to establish a clean energy program in China. From our humble beginnings in the mid-1990s, we have grown to a team of more than thirty people working out of our Beijing and U.S. offices on climate change, energy efficiency, renewable energy, responsible sourcing, sustainable cities and environmental governance.

NRDC's Environmental Law Project has been actively engaged in environmental transparency projects in China for nearly five years in an effort to improve the use of environmental information to strengthen implementation of China's environmental laws and policies, and to enhance public involvement in environmental protection. This is just one component of a suite of projects in China to improve environmental governance and to help China achieve its environmental and energy goals. Our other projects on governance and law include collaboration on environmental legislation, such as China's *Atmospheric Pollution Prevention and Control Law*, work with China's environmental courts, judges and lawyers, as well as efforts to build better environmental health and climate change governance.

Importance of Open Environmental Information

My experience in China over the last twenty years and many years before that working on environmental issues in the United States has given me a clear understanding of the fundamental importance of public access to accurate, timely environmental information as a tool for strengthening environmental protection. This has been a pillar of our work at NRDC in the United States, China and around the world for over four decades.

Open information mechanisms have been proven to reduce pollution and improve human health by driving better environmental protection. The first broad-based use of environmental information as a regulatory technique was the *Toxics Release Inventory* ("TRI"), established in 1986 in the United States in the aftermath of the Union Carbide chemical accident in Bhopal,

¹ <http://china.nrdc.org>

India. In the past decade, signatories to the “Aarhus Convention”² ratified open information as a key tool for environmental protection and subsequently created the *Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention*, which established the rules for TRI-like systems in the Aarhus signatory countries. More generally, disclosure of environmental information is now recognized as a core component of environmental regulatory regimes in countries around the world.

China’s Recognition of the Importance of Environmental Information

Like many other countries, China has also begun to look to environmental information disclosure as a way to improve environmental protection. China’s leaders recognize that open information is an important way to bring a variety of stakeholders – such as members of the public and businesses – into its environmental protection efforts, and to improve the quality of information needed to achieve the country’s environmental and energy targets. Environmental transparency is also seen as having the potential to provide assistance to perennially overextended environmental agencies. China’s shift towards greater transparency on environmental issues has created an opportunity for international cooperation and capacity building, and NRDC has been working with various stakeholders in China, including government agencies, environmental non-governmental organizations (NGOs), and local communities, to build a stronger foundation for environmental transparency in China.

I. China’s Actions to Increase Environmental Transparency

In recent years, China has made a number of important moves towards greater transparency in general and environmental disclosure in particular.

Open Government Information Regulations

On May 1, 2008, China’s first national regulation on freedom of information went into effect. The enactment of the *Open Government Information Regulations* (“*OGI Regulations*”)³ was a landmark for a country not known for a tradition of information disclosure. China’s movement toward greater open government information has been driven in large part by the understanding that greater transparency will benefit economic development, curb corruption, improve government performance and generally improve the lives of its people.⁴

² The “Aarhus Convention” is the common name for the 1998 United Nations Economic Commission for Europe’s (UNECE) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters.

³ *Zhonghua renmin gongheguo zhengfu xinxi gongkai tiaoli* (中华人民共和国政府信息公开条例). A copy of the regulations is available at: www.gov.cn/zwgk/2007-04/24/content_592937.htm. An English version of the regulations translated by the China Law Center of Yale Law School is available online at: www.epa.gov/ogc/china/open_government.pdf. This English translation of the regulation will be referenced in this testimony.

⁴ Jamie Horsley, “China Adopts First Nationwide Open Government Information Regulations”, available at: www.law.yale.edu/documents/pdf/Intellectual_Life/Ch_China_Adopts_1st_OGI_Regulations.pdf.

Environmental Information Disclosure Regulations

Of all of China's government ministries, the Ministry of Environmental Protection ("MEP") has been the most enthusiastic adopter of information disclosure as a regulatory tool. MEP was the first ministry to promulgate implementing measures for the national *OGI Regulations*, and issued environmental information regulations on the same day as the *OGI Regulations*.⁵ These environmental information regulations, called *Measures for Environmental Information Disclosure (For Trial Implementation)* ("*Environmental Information Measures*"), set forth relatively detailed environmental information disclosure obligations for environmental protection departments and certain enterprises throughout China.⁶

The enactment of the *OGI Regulations* and the *Environmental Information Measures* in 2008 arose from more than a decade of local experimentation with government disclosure and open environmental information. China has incrementally instituted various forms of environmental disclosure at both the central and provincial level since the late 1990s:

- In 1998, a pilot project, called the GreenWatch Program, was instituted in Jiangsu Province with guidance from the World Bank that established a rating system for factory-level environmental performance. The State Environmental Protection Agency ("SEPA"), the predecessor to the Ministry of Environmental Protection, subsequently issued non-mandatory guidance encouraging nationwide implementation of this rating system in all provinces. Where implemented, this system has often been an important tool for identifying polluting enterprises across sectors in different provinces.
- Since 2002, more than 30 provinces and municipalities across China have enacted "open government information" legislation.⁷
- The 2003 *Clean Production Promotion Law* (and the related 2004 *Interim Measures on Clean Production Audits*) required key polluting enterprises to disclose information about emissions and other environmental data.⁸ This was the first law to require disclosure of factory-level pollution for a range of facilities.
- The 2003 *Environmental Impact Assessment Law* (and the related 2006 *Measures on Public Participation in Environmental Impact Assessment*) required partial public disclosure of Environmental Impact Assessment ("EIA") documents.
- In 2005, a key State Council document, entitled the *Decision on Implementing Scientific Development Outlook and Enhancing Environmental Protection*, which set forth guiding principles on environmental protection, stressed the importance of environmental

⁵ MEP was at that time known as the State Environmental Protection Administration ("SEPA"), but has since been elevated to full ministry status and accordingly been renamed the "Ministry of Environmental Protection."

⁶ *Huanjing xinxi gongkai banfa shixing* (环境信息公开办法 (试行)), available at: www.gov.cn/flfg/2007-04/20/content_589673.htm. An unofficial English translation of the *Environmental Information Measures* is available online at: www.greenlaw.org.cn/files/laws/open_environmental.pdf.

⁷ Horsley, *supra* note 3.

⁸ Key polluting enterprises are those enterprises that are required to implement clean production audits under Article 28 of the *PRC Law on Clean Production Promotion*, including: heavily polluting enterprises that violate pollutant emission standards or violate the quota of total emission of pollutants, and enterprises that use or emit toxic and hazardous substances during production.

information disclosure, public supervisory mechanisms, and disclosure of enterprise violations of environmental standards, among other things.⁹

The *Environmental Information Measures* enacted in 2008 built upon these experiments in environmental information disclosure. They require environmental protection bureaus to proactively disclose 17 categories of environmental information and to respond in a timely fashion to public requests for environmental information.¹⁰ In addition, these regulations require that certain enterprises, whose emissions have exceeded national or local emission standards or exceeded total emissions quotas, disclose information such as the volume of pollution emitted by their operations that exceeds legal standards or prescribed limits.¹¹

II. How is Access to Environmental Information Being Implemented?

Under the *Environmental Information Measures*, environmental protection departments at the national, provincial, municipal and city levels are required to comply with various environmental information disclosure obligations. Environmental protection departments are now required to proactively disclose, *inter alia*, information concerning:

- Environmental quality status, environmental statistics and environmental investigative information;
- Allocation of total emission quotas of major pollutants and their implementation;
- Issuance of pollutant emission permits;
- Acceptance of EIA documents for construction projects and the examination and approval status of the EIA documents;
- Collection of pollutant emission fees and the amounts paid by polluters;
- Letters, calls and complaints from the public about environmental issues or pollution caused by enterprises;
- Environmental administrative penalties, administrative reconsideration, administrative lawsuits and enforcement of administrative compulsory measures; and
- Lists of heavily polluting enterprises, enterprises that have caused serious environmental pollution accidents or events, and enterprises that refuse to enforce environmental administrative penalty decisions.¹²

Environmental protection departments must respond to requests for information within 15 working days of receiving them, with the possibility for a 15 day extension if the applicant is notified.¹³ These disclosure obligations are subject to certain exceptions such as state secrets, commercial secrets and personal privacy.¹⁴ In addition, if applicants believe the administrative

⁹ See State Council, “Decision on Implementing Scientific Development Outlook and Enhancing Environmental Protection” Guofa [2005] No. 39, December 3, 2005, available at: http://www.gov.cn/zwggk/2005-12/13/content_125680.htm

¹⁰ *Environmental Information Measures*, Art. 11.

¹¹ *Id.*, Art. 20.

¹² For the full list of environmental information that must be disclosed, see *Environmental Information Measures*, Art. 11.

¹³ *Id.*, Art. 18.

¹⁴ *Id.*, Art. 12.

agency has failed to fulfill its obligations under the regulations, they may report it to a higher-level administrative agency. If applicants believe the administrative agency has infringed their lawful rights and interests, they may apply for administrative reconsideration or file an administrative lawsuit.¹⁵

These legal requirements regarding the disclosure of environmental information are a significant step forward for environmental transparency in China. However, the key lies in how effectively the measures are being implemented.

Study on Environmental Information Disclosure

NRDC partnered with the Institute of Public & Environmental Affairs (“IPE”), a Chinese research institute, to track the progress of implementation of the *Environmental Information Measures* since they became effective on May 1, 2008.¹⁶ NRDC and IPE conducted a study of 113 municipal environmental protection departments to assess progress in implementing these regulations across China. After the first year of implementation of the regulations, our assessment shows that average compliance levels were low. Nonetheless, a number of cities performed well in each of the eight categories of information disclosure evaluated. Our study also uncovered a surprising range of innovative practices in information disclosure that can serve as a model for underperforming cities.

a. Disclosure of Environmental Information in Practice

Different cities are meeting their information disclosure requirements in a variety of innovative ways. For example:

- **Ningbo**, a city in Zhejiang province, ranked the highest in terms of its overall performance on environmental information disclosure. In 2008, Ningbo disclosed more than 600 documents regarding environmental enforcement and enterprise violation records on its website and did so in a relatively timely manner. Ningbo also has released all environmental complaints filed in sufficient detail and included the status of each complaint. In response to citizen concerns about emissions from area factories, the environmental protection bureau in Ningbo’s Zhenhai district took various steps to improve environmental transparency, including releasing information on emissions of five pollutants not currently covered by any standards, establishing a public information display that lists monthly emissions data alongside the applicable standards, working with enterprises to improve monitoring, and holding quarterly briefings to respond to questions from area residents and news media. Zhenhai’s environmental officials noted that although these efforts increased their level of work, they helped to resolve concerns from citizens at an early stage so as to avoid conflicts and increased the level of trust between citizens and government.¹⁷

¹⁵ *Id.*, Art. 26.

¹⁶ For more information about this effort, see <http://www.greenlaw.org.cn/enblog/?p=2027>.

¹⁷ “Zhenhai District in Ningbo City Fully Discloses Environmental Information: Small Pressure [on Officials] Resolves Large Issues” (宁波市镇海区全面公开环境信息: 小压力化解大问题) *China Environmental News*, March 24, 2010, available at: www.cenews.com.cn/xwzx/zhxw/ybyw/201003/t20100323_632305.html.

- **Weihai**, a city in Shandong province, captures real-time monitoring data for key enterprises and water treatment plants across the city, and discloses a monitoring database that provides daily reports with detailed hourly data. According to our research, the frequency of this reporting is the highest in the country.
- **Wuhan**, a city located in Hubei province in central China, has created a website that provides the public with searchable emissions data for a given day or time period. On this website the public can choose a point source, and then select the pollutant to be tracked for a selected time period. In addition, the website also provides real-time video of the waste treatment facilities, discharge pipes, or emission stacks at certain sites.
- **Fuzhou**, a city in Fujian province in southeastern China, has set up an online “Call Center” database that allows the public to make various information requests through its website or via email, text message, telephone, fax, letters to the Mayor and tape recordings. The website will post the public inquiry and the results will be handled by the corresponding department. The public is also able to search the information by time, type of appeal, and processing status.
- **Hefei**, a city in Anhui province, in response to our request for information, publicized on its website a list of enterprises in violation of rules and standards during the month of September 2008 and provided related links so that the list could be accessed by the public.

b. Responsiveness to Information Requests

Members of the public have begun to make information requests pursuant to the *Environmental Information Measures*. For instance, a Shanghai lawyer sought government information regarding the severely polluted Huai River. The lawyer contacted the provincial environmental protection bureaus in both Henan and Anhui provinces to retrieve the names of the enterprises that were polluting the river. In the end, the lawyer succeeded in obtaining the information he sought, and he is now considering initiating litigation against those factories that are consistently in violation of environmental regulations.

The yearly reports that environmental authorities are required to prepare regarding their open government information work for the previous year provides some idea of the number and type of information requests received. At the central level, the MEP received 72 requests for information in 2009, mainly concerning EIA, environmental monitoring data, and environmental laws and regulations. Seventy-one of these requests were timely answered, while the remaining one request was answered after an extension of time. The requested government information was not disclosed for four of the requests.¹⁸ In the city of Guangzhou in Guangdong province, the environmental protection bureau received 17 requests for information in 2009, relating to issues such as EIA, environmental monitoring data, and environmental administrative penalties.¹⁹

¹⁸ Ministry of Environmental Protection, 2009 Report on Open Government Information Work (环境保护部政府信息公开工作 2009 年度报告), May 18, 2010, available at: www.mep.gov.cn/gkml/hbb/bgg/201003/t20100324_187222.htm.

¹⁹ Guangzhou Environmental Protection Bureau, 2009 Report on Open Government Information, January 2010, available at: www.gzepb.gov.cn/root43/zfxxgkrb/201002/t20100201_4734.htm.

Obstacles to Greater Compliance

The responsiveness of environmental protection bureaus to public information requests and their proactive disclosure of environmental information have varied widely across the country. There are currently three key obstacles to widespread compliance with the environmental information disclosure measures: (1) a lack of capacity, (2) vagueness of the regulations, and (3) insufficient accountability for government officials.

- **Lack of Capacity.** Many lower level officials do not understand or are still unaware of the regulations and are ill-equipped to collect the information needed to execute such requests. We expect to see continued progress as time goes on and as environmental officials obtain more experience and training in dealing with information requests. There is a significant opportunity to improve information disclosure through enhanced training and education, and international cooperation can help facilitate such capacity building.
- **Vagueness.** Another primary obstacle to consistent implementation of the regulations is a lack of clarity regarding the scope of disclosure as well as the permissible exceptions, such as commercial secrets, personal privacy and state secrets. In November 2009, the Supreme People's Court ("SPC") issued a draft judicial interpretation to clarify the regulations and solicited public comments on this interpretation.²⁰ A variety of stakeholders (including NRDC) have provided suggestions on how to clarify these regulations, and we are hopeful that the SPC interpretation when it is ultimately released will provide a boost to information disclosure. MEP can also play an important role in clarifying the scope of information disclosure by developing implementation guidelines for the *Environmental Information Measures* as soon as possible.
- **Accountability.** Another obstacle is that local officials are not consistently held accountable for failing to comply with their disclosure obligations. However, there have been a handful of cases in which refusals to disclose were successfully appealed. In addition, there are efforts to hold officials accountable for their performance in meeting their information disclosure responsibilities. For example, according to a recent news report, after administrative departments in Shijiazhuang city in Hebei province were found to be violating their responsibility to disclose information, city leaders announced that performance in meeting information disclosure requirements would be included in the performance assessments of city officials.²¹ The expansion of such practices around the country will be critical to the implementation of the open information regulations.

Although there is still much work to be done to improve environmental transparency, the progress made on environmental information disclosure in recent years is significant. China is still at the earliest stages of implementing its landmark *OGI Regulations* and *Environmental Information Measures*, but these have the potential to be truly transformative if implementation continues to move in the right direction.

²⁰ Supreme People's Court, *Some Provisions on Hearing Administrative Cases related to Open Government Information (Draft for Solicitation of Opinions)* (关于审理政府信息公开行政案件若干问题的规定 (征求意见稿)), November 2, 2009, available at www.chinacourt.org/wsdc/index.php?id=379436.

²¹ "Shijiazhuang City Will Incorporate Open Government Information into Official Performance Assessments", *Yanzhao Metropolis Daily*, August 27, 2009, available at: news.sina.com.cn/c/2009-08-27/084918522478.shtml.

III. Conclusion: The Road Ahead

China is now at a crossroads. Given the pace and scale of change, China will constantly be faced with choices that have dramatic and fundamental significance for the future direction of the country. The area of environmental transparency is no different. The trend has been toward ever-greater openness in the environmental realm and there are many reasons to believe that this trend will continue; however, the choices made on-the-ground in China in the coming years on how to deal with the implementation challenges I have referenced today will mean the difference between a transparency system that truly helps China to achieve its environmental and climate change objectives or a system that exists mainly in the law books, but not in practice.

The main reason to believe that the trend towards greater transparency will continue is that transparency is viewed by many within China as an effective tool for solving serious environmental and energy challenges. Environmental authorities recognize that environmental transparency can bring in local communities and other members of the public as powerful allies in the enforcement of environmental laws and regulations. Greater transparency in China is enabling a wide range of efforts to strengthen environmental protection that are now getting off the ground. These include efforts by corporate purchasers to “green” their supply chains in China, initiatives to meet consumer demand for cleaner, healthier products, “green credit” efforts to limit loans to serious polluters, and of course the most basic of demands from local people for cleaner, more sustainable communities.

Transparency has also been utilized in the energy realm to promote implementation of China’s climate change and energy efficiency efforts. China has, for example, disclosed the performance of provinces against their interim energy intensity targets in an effort to drive greater competition among different jurisdictions. Greater disclosure of energy and climate information has the potential to help China achieve its climate change and energy targets, just as it has begun to unleash a wide range of efforts that are helping China reduce conventional forms of pollution. For example, China has begun to develop carbon exchanges and other efforts to monetize greenhouse gas reduction efforts, but these nascent efforts will be hampered if the business community and the public do not believe they have access to quality information. Greater transparency also has the potential to spur competition among jurisdictions and companies within China to perform better than their peers in meeting government energy intensity targets.

The Implications for U.S.-China Cooperation

In practice, the United States can work with China on environmental and energy information disclosure in a number of areas of mutual interest:

- Exchanges on issues related to developing and refining the laws, rules and systems for environmental information disclosure will provide an invaluable boost to China as it builds its capacity and administrative structure to handle environmental information disclosure.
- The U.S. and China are already engaged in a number of international partnerships and collaborations on environmental protection, pollution reduction, and energy efficiency.

All of these can be made more effective by building in components related to the improvement of environmental and energy information and the development of capacity to generate, capture, and distribute such information.

- Given the increasing demand by U.S. consumers and businesses for information on the environmental impact of the products they purchase and the tremendous interdependence of the U.S. and China in international trade, there is significant space for international collaboration on approaches to “greening” corporate supply chains. This benefits consumers, gives Chinese environmental enforcement authorities the support of powerful business allies, and ultimately helps to bring about a cleaner environment in China.
- The U.S. and China are both exploring the best approaches to monitoring and inventorying their greenhouse gas emissions. Technical, non-political exchanges on approaches to improving the capacity and methodologies related to greenhouse gas emissions can serve to build trust and solve real technical challenges facing both countries in the battle to combat climate change.

Thank you and I look forward to answering any questions you may have.

Further information about environmental transparency in China is available at NRDC’s China Environmental Law Project website, Greenlaw (www.greenlaw.org.cn/enblog).