




## A Handbook for the Protection of Environmental Rights



In China, even though the performance of the economy has been impressive, more and more people are suffering from environmental pollution. The prospects for sustainable economic and social development are in question.

What can people suffering from environmental pollution do to protect their environmental rights under law? And what cannot be done? This handbook aims to provide victims of environmental pollution some helpful knowledge about, and methods for, environmental rights protection.

## ↘ The All-China Environment Federation (ACEF)

The All-China Environment Federation is a nationwide non-profit civil society organization (CSO) composed of CSOs, enterprises, institutions and individuals who are enthusiastic about and supportive of environmental protection. ACEF was established on April 22nd, 2005. It was approved by the State Council of the People's Republic of China and registered under the Ministry of Civil Affairs and affiliated with the Ministry of Environmental Protection. ACEF is committed to serving as a bridge between the government and the public in implementing a sustainable development strategy, achieving national objectives on environment and development, and protecting the environmental rights of the public. By fully utilizing its organizational advantage and the value of "Great China, Great Environment, Great Union" (namely to unite with the people of China to protect the environment), ACEF aims to promote environmental protection and sustainable development in China and the world at large.

For more information, please visit our website: [www.acef.com.cn](http://www.acef.com.cn)

## ↘ The United Nations Development Programme (UNDP)

UNDP is devoted to promoting human development and helping people create a better life. As a global network of the United Nations dedicated to development, UNDP makes full use of its experience in worldwide development and helps China formulate solutions to the challenges of development. The key work of UNDP in China includes: poverty reduction and socially inclusive development, rule of law and governance, energy and environment, and responding to climate change.

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State leaders inaugurate the Environmental Legal Service Center in 2005

The All-China Environment Federation (ACEF) was established to protect social and public environment rights and to provide legal aid for vulnerable groups. Towards these ends ACEF includes an Environmental Law Service Center.

Over the years, ACEF has provided legal services to pollution victims, promoted environmental rights legislation and policy, engaged in communications and education efforts through workshops, media, and web and brochure dissemination, and developed a related environmental case and information database. From the close to 1000 environmental complaints ACEF has received, ACEF has sought to deal with over 550, of which close to 300 have been resolved satisfactorily. ACEF has succeeded in environmental litigation that has brought wide attention. These include lawsuits which recognize the right of ACEF as a civil society organization to bring environmental public interest lawsuits, the first lawsuit in which a court has ordered the production of environmental information under the China open environmental information rules, and lawsuits resulting in compensation to pollution victims and polluter cleanup of pollution. (Some of these cases are discussed later). The ten silk banners from the citizens ACEF has helped in environmental public interest litigation are a traditional way of signifying appreciation.



ACEF leaders talking with pollution victims

ACEF  
presenting  
silk banner  
to the Wuxi  
Environmental  
tribunal





ACEF explaining environmental rights protection to the public at a press briefing

Volunteer lawyers providing the public with free environmental law consultancy service



Mr. Ma Yong of the Environmental Legal Service Center was honored by CCTV in 2009 as one of 10 "Models of Law Enforcement"



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## Environmental pollution: A Basic Introduction

Environmental pollution occurs when human beings directly or indirectly release more substances or energy than the self-renewing capacity of the environment. As a consequence, the quality of the environment is reduced, which may adversely affect the survival and development of human life and ecological systems, and damage property.

Environmental pollution can damage and alter ecological systems, as in desertification and forest destruction. It can also indirectly harm ecological systems and human society, as in the greenhouse effect, acid rain and ozone depletion. These indirect hazards may be more harmful than direct ones and much harder to eliminate. This kind of environment effect is latent, hard to perceive and its effects may not be expected. However, when they eventuate, the harm caused may be very serious.

Of course, the easiest and most direct consequences felt by humans after environmental pollution are the decline of environment quality, which in turn affects our life quality, physical health and our productive capacity. For example, urban air pollution causes air contamination and increases disease incidence; water pollution results in the deterioration of water quality, threatening the physical health of human beings and even fetuses, with possible premature birth or malformation. Serious pollution incidents bring not only health problems but also social problems. Group disputes and conflicts caused by pollution have recently been increasing each year.





## What are environmental rights?

Citizens' environmental rights include the following:

### (1) Right of environmental resources use

The core of environmental rights is the right to a protected environment for use by the current generation and by our successors, in order to assure the sustainability of resources necessary to human survival and economic and social development.

### (2) Right of environmental supervision

Citizens have the right to assurance that state authorities and officials are supervising environmental management, law enforcement and other activities needed to sustain environmental resources.

### (3) Right to information on environmental conditions

Citizens have the right to information on environmental conditions, national environmental management and other relevant information on the status of their own homeland's environment and world environmental conditions.

### (4) Right to participate in environmental affairs (Also called the "the right to participate in environmental decision-making")

Citizens have the right to take part in environmental policy and environmental decision-making.

### (5) Right to make claims against environmental wrongdoers

Citizens have the right to seek protection from relevant authorities when their environmental rights and interests are infringed.





## How to protect environmental rights?

Safeguarding environmental rights means the use of law and legal procedure to protect and realize environmental rights, including obtaining proper guidance and effective help in order to do so.

### (1) Rights protection before the pollution happens

At present, people often talk about environmental rights after pollution has already done damage. But environmental rights also provide for the prevention of pollution from occurring in the first place. Pollution prevention is most important. Although government and enterprises have primary roles in pollution prevention, citizens also have substantial roles because of their rights and their capacities to help make the law work.

One basis for a citizen role in pollution prevention is the “Temporary Measures of Public Participation in Environmental Impact Assessment (EIA).” (环境影响评价公众参与暂行办法). This policy provides that, except when state secrets are involved, the construction unit or the organization approved to do the EIA should publish an environmental impact assessment, which should be reviewed by competent administrative authorities.

Construction projects should include the solicitation of public opinion according to state regulations. The relevant environmental protection administrative unit should not accept environmental impact reports which do not show public participation has been involved. If an administrative authority(ies) approves an environmental impact report which does not show public participation in the text, or where public participation information is fabricated, the public can apply for administrative reconsideration to the administrative authority at a higher level or to the central authority for the level of the government that took the first action.





## (2) Rights protection after pollution occurs

In today's China, it is common for people to realize or notice that their living environment has been polluted after the pollution has negatively impacted their lives. When environmental pollution occurs, victims can be passive or hope for others to act, expecting others to protect their rights. In fact, citizens should adopt a positive attitude. They should take up legal arms to protect their legitimate rights and interests.

While using law to solve environmental problems, victims of environmental pollution should have this attitude:

It is important to solve the problem of environmental pollution in a lawful way with legitimate means, instead of illegal and extreme actions. In recent years, it is often reported that victims of environmental pollution were investigated for criminal responsibility because they petitioned collectively bypassing local government and sometimes even assaulted state authorities, causing serious consequences. Citizens should be using legal means, even though the process can be arduous.

Next, we will introduce commonly used methods you may use to safeguard your environmental rights.



## I. The parties settle on their own

Environmental pollution victims and perpetrators of environmental pollution may reach a consensus about liability, compensation and other matters related to the dispute on their own, and agree on the remedy to be provided. They may fulfill their agreement in an equal and amicable manner, with respect for the facts. Negotiation between the parties is an effective way to resolve environmental civil disputes (where criminal conduct is not involved). Negotiation can solve problems without hurting feelings; it is conducive to timely resolution of disputes, in a way that is the most cost-effective method for all parties. To ensure that a court can enforce the agreement, the parties should document the agreement.

## II. Administrative methods

### 1. Report the pollution problem to administrative authorities

- What to report about: The report should be about a specific polluting organization or individual
- Whom to report to: Under normal circumstances, report the situation to the relevant administrative authority(ies), such as the Ministry of Water Conservation, Ministry of Environmental Protection, Fisheries bureau, or other relevant authority. If the pollution causes major casualties or damage to property, it should also be reported to the Public Security department.
- What the report should contain: First, the report should contain evidence related to the facts of the pollution and the facts showing the law that is violated. For example, this evidence might include: photos or videos showing the pollution (for example emissions into the water or air); photos or videos showing its consequences (for example dead fish), water or air appraisal reports and other relevant evidence; statements by people who have observed the pollution or its consequences. In addition, the report should explain, and show



evidence of, the loss caused by the pollution.

- What citizens can do after the report: If a citizen is not satisfied with the administrative body's decision (or any implementation) within 60 days of learning of the specific administrative acts that are unsatisfactory, the citizen can apply to higher authorities or the people's government at the same level for administrative reconsideration.

If the administrative authority(ies) fails, delays or refuses to perform duties required by statute, a citizen can file a claim for "administrative omission" to the local court within the time specified by the Administrative Procedure Law.

## 2. Apply to the environmental protection department for mediation

Section 41 of the China Environmental Protection Act (环境保护法) provides that, depending on the choice of the parties (both parties have to agree for mediation to happen), disputes about compensation liability and compensation amount can be handled by the relevant Environmental Protection Administrative Department or other administrative agencies or bureaus exercising environmental supervision and management rights in accordance with the law.

These may include forestry, agriculture and animal husbandry, marine administration, harbor supervisory, fishery and other authorities with direct environmental responsibility, and also public security, transportation, railway and other administrative authorities. For example, a dispute about pollution by fishing boats in ocean fishing waters can be mediated by the State Fisheries Administration and Fishing Harbor Supervisory Agency; an inland waters ship pollution dispute can be mediated by the Navigation Administration Office of the Transportation Bureau.

Success in this kind of mediation can only occur as a result of compromise between the parties, as the administrative authority has no legal interest in, and is not a party to, the agreement. Therefore, the authority presiding over the mediation cannot enforce the mediation agreement or apply to court for enforcement. It can only rely on the parties to conscientiously fulfill their



obligations.

According to relevant law and judicial interpretation, if the parties refuse to accept the result of administrative mediation, they can either apply for administrative reconsideration or file an administrative lawsuit. They can only file a civil action for compensation, with the damages at issue in the original dispute as the subject of the lawsuit.

### 3. Petition to the environmental protection department in the form of letter(s) and visit(s)

An Environmental petition in the form of letter(s) and visit(s) refers to the ability of citizens, legal persons and other organizations to put forward opinions, proposals and requests to environmental protection departments (at any level) through letters, telephone, or personal appearance. The environmental protection departments shall deal with these communications according to the law.

In its function and effect, a petition in the form of letter(s) and visit(s) is now irreplaceable. Parties often hope to resolve an environmental dispute through a simple, quick and efficient manner, and this may include an environmental petition in the form of letter(s) and visit(s).

According to the Regulations on Petitions in the Form of Letters and Visits (信访条例), when many people put forth a common complaint, they should elect up to five representatives. The relevant administrative authority (ies) shall have up to 15 days after receiving complaint to tell the complainant(s) if it will accept the complaint. Once accepted, the complaint shall be handled within 60 days from the date of acceptance. If the case is complex, on approval by the principal of the administrative authority, the deadline can be extended, but not for more than 30 days and the complainant must be informed about the extension and its basis. If the complainant is not satisfied with the opinion of the administrative authority(ies), the complainant can ask the higher level administrative authority for a review within 30 days from the date of receiving a written reply. The administrative authority receiving a request for review shall put forward its opinion and give a written reply within 30 days of the date that the review application is received.



### III. Commencing lawsuit for compensation for damages (following administrative adjudication)

- Decide who will be the plaintiff and defendant: The plaintiff refers to the person or persons who are being affected by the pollution incident; the defendant refers to the unit or individual that created the pollution and, and who has already been found to be at fault by administrative adjudication.

- Decide the litigation claims:

This will include Compensation for losses of property or health; it may also include the cost of litigation that the plaintiff incurs but that the plaintiff will ask the court to order the defendant to pay for.

- Obtain key materials needed for lawsuit, including: a) the decision in a binding administrative adjudication; b) the date on which the violation started; c) evidence related to the violation, including photos and videos showing pollution, dead fish or animal or plant specimens, water or air



appraisal reports, and further relevant evidence; d) evidence of the damages caused by the violation(s).

-Determine who will represent the plaintiff: The possibilities include: a) the plaintiff may attend and represent himself; b) the plaintiff may authorize a lawyer as agent; c) the plaintiff may entrust capable and experienced relatives or friends as agents to take part in the proceedings.

- Submit a complaint to the court: The complaint must be submitted to a court which has “jurisdiction” over the complaint. This generally means a People's Court where the conduct causing the harm occurred or where the defendant lives.



## IV. Bring a lawsuit directly to court



After the pollution and damage occur, the victim may bring a lawsuit directly to the People's Court, without submitting requests for conciliation and administrative mediation. The litigation procedure to be used is the same as that used for "commencement of a lawsuit for damage compensation following administrative adjudication."

Where the pollution is severe, the pollution victims may number thousands. If there are many victims with the same basis for a claim against the polluter (the polluter can be an individual or enterprise), they may sue together. If the victims are more than ten, they can elect a representative for the litigation. This requires an election, documentation showing the election and its results, and a letter of authorization to prove the qualification of the representative.

The representative can implement a decision or agreement to provide benefit for the victims. However, if there is an effort to conciliate with the polluters or waive claims, the representative needs the appropriate authorization from the victims represented.



### (3) Other methods of rights protection

#### 1. Use the power of news media and the Internet

This handbook primarily introduces the use of law and the legal process to deal with pollution. However, the news media and the Internet also play a role. The public can invite television, newspapers, and radio to report on pollution, including media interview of victims. The public can also send relevant materials to media, including photographs, video or other materials showing pollution violations. Evidence placed on the internet can make the pollution conduct and effects public and provide basis for the formation of public awareness.

#### 2. Seek help from a legal aid center

Legal aid is a form of public service in which lawyers provide low cost or free legal help for the poor or disabled in order to safeguard their lawful rights.

In China now there are legal aid institutions throughout the country. Citizens can use the web to help locate institutions near their home.

Steps to follow in seeking help from a legal aid center:

Submit the following materials in applying for legal aid:

- a) Personal Identification, such as a resident ID card, resident certification ,temporary resident permit or other valid identity certificate;
- b) Evidence of financial difficulties, such as a relief certificate, proof of economic difficulties experienced by the applicant and family members issued by relevant government departments or units, a laid off worker certificate, unemployment certificate, or other relevant evidence;
- c) Evidence of legitimate rights and interests, such as a property ownership certificate (where property damage is claimed), a relationship certificate (where a claim is being made for a family member), evidence showing the basic facts relating to the pollution and the factual materials showing rights and interests infringed;
- d) Other materials required by the particular legal aid center.

Where the victim is using another person as an agent, the power of attorney and basic materials documenting the agent relation are also required.



### 3. Seeking help from non government environmental organization(s)

With the arrival of the era of concern for the environment, there are more and more environmental civil society organizations that focus on protecting the environment. These institutions are supported by relevant professional volunteers and varying degrees of funding. Some of these organizations provide legal assistance to pollution victims--a pollution victim can seek legal aid from them. For example, the Environmental Legal Service Center of ACEF can supply pollution victims with free services to increase their confidence and power in seeking to protect their environmental rights.





## Seeking Rights Protection: A Checklist of Tips

### (1) How to collect and keep evidence for environmental pollution?

Pollution victims need to provide evidence of pollution violations. The evidence can include: photographs or video of the pollution situation; evidence of the damage caused by pollution-for example, saved (frozen) dead fish from water pollution or certificates issued by a doctor related to human harm that may have been caused by pollution.

Use certificated monitoring authorities. The monitoring costs must be paid first by the victims or their supporters, but during the litigation (or in settlement or mediation negotiations) pollution victims can seek to have the defendant assume these costs.

### (2) How to show that a person's harm comes from pollution?

In pollution cases there are often disputes about whether pollution has caused harm (for example, a person who is sick may have become sick for many other reasons-not only pollution). If a polluter objects to your evidence of pollution facts and damage or you do not agree with the evidence the polluter shows the court, then you need to ask an appraisal organization to provide expert analysis.

You can enlist an appraisal organization by yourself or ask the court to appoint an appraisal organization. In any case you must pay attention to the qualification of the appraisal organization. First check to see if it has a judicial authentication license and then check to see whether the scope of business permitted under the judicial authentication license includes the environment.



### (3) How to calculate the damage from environmental pollution?

Environmental pollution can cause physical damage to a person, mental damage to a person, and property damage. In the case of personal damage the costs that may be compensated include: medical expenses (doctors, medicine, hospitalization, food subsidies during hospital stay, nurse and nutrition fees, expenses for continuing treatment that may be needed), wages lost because of illness, and further related costs. In addition, loss of future ability to make a living should also be compensated according to the extent of the loss. In the case of death because of environmental pollution, the wrongdoer shall compensate for medical or rescue costs before death, funeral expenses, and necessary living expenses of the family dependents. In all cases, the victim (and his family or friends as relevant) should keep relevant invoices and receipts to claim compensation from the wrongdoer.

Mental damage from environmental pollution may occur. Although there is precedent in judicial practice for awarding compensation for mental damage, in China no law explicitly regulates such compensation. In determining the extent of property damage amounts, professional technical institutions can be asked to perform an evaluation. For example, a citizen claiming fishery loss can ask the Fishery Environmental Monitoring Station subordinate to the Agriculture Department and a citizen claiming damage to crops or fruit trees can ask the Agricultural Environmental Monitoring Station for evaluation. At present, there are also environmental damage evaluation and identification departments in the China Environmental Science Institute and the Environment Planning Institute.



#### (4) When does the polluter not bear responsibility for compensation for damages caused by environmental infringement?

According to relevant laws, the exceptions to environmental damage compensation include: 1) Pollution damage due to force majeure; 2) Pollution damage due to the fault of a third person; 3) Pollution damage due to fault of the person(s) suffering harm.

“Force majeure” refers to situations people cannot foresee that result in damage, or where damage cannot be avoided. Force



Majeure circumstances include, for example, natural disasters such as typhoons, earthquakes, tsunamis, or war, riots, or other unforeseen social events. For example, the sewage system of a paper mill may be badly damaged by a typhoon. Although factory technical personnel try to repair the sewage system, they cannot do so and the sewage outflow pollutes the surrounding land, killing crops. In this case, even if the injured farmers had sued the paper mill, compensation from the mill would not have been available. However, once the unexpected event occurred, the paper mill had a duty to try to repair the sewage system--if it failed to act reasonably, it could be liable to pay compensation for the incremental part of pollution caused by its failure to take timely efforts to mitigate damage. Similarly, if the damage were caused by a third person or the victim, the factory would not be liable for the damage.



### (5) What if you refuse to accept the original decision on environmental damage compensation made by the People's Court?

If a citizen refuses to accept the decision on environmental damage compensation made by the People's Court, the citizen can appeal to the People's Court of a higher level within 15 days of the delivering date of the original decision. If the citizen refuses to accept the original decision made by the People's Court, he or she must appeal to the People's Court of a higher level within 10 days of the delivering date of the original decision. Petitions in copies of the number of the appellants shall be submitted through the People's Court when appealing. When writing the petition, it is particularly important that the petition should address the original judgment-explaining the incorrect or improper elements of the original decision. Generally, the appeal should include the following elements: 1) Identification of mistaken facts on which decision being appealed was based on; 2) Specification of further mistakes in the original decision; 3) Identification of wrong or inadequate penalties or remedies in the original decision. The argument should be logical; the evidence must be sufficient, clearly stated and supported-not coming out of thin air.

### (6) What if the defendant who is found responsible still refuses to provide compensation after the decision of a court becomes effective?

Often, environmental pollution victims may win the lawsuit, but the defendant who is found responsible for compensation still refuses to provide the compensation. According to relevant China laws, the plaintiff can apply to the People's Court for enforcement.

In order to apply for enforcement: 1. The relevant legal documents-for example the court decision-must have come into effect; 2. The person seeking enforcement must have the rights to the compensation, and can show this by relevant legal documentation; 3. The person seeking enforcement must apply within the statutory time limit (which is two years); 4. The application must show the payment sought and clearly state the object of enforcement and the person (or organization) who must make the payment; 5. The person (or organization) who is being called on to provide the compensation must be shown to have failed to do so within the time limit specified in the legal document; 6. The application for enforcement must be within the jurisdiction of the People's Court in which enforcement is sought.



## (7) How and where to get environmental information?

According to Article 2 of China's "Environmental Information Public Methods (Temporary)"(环境信息公开办法 (试行) 国家环境保护总局令. 第35号), environmental information includes both government and enterprise environmental information.

Government environmental information is information that is produced or acquired and recorded and saved by environmental protection departments when performing their duties of environmental protection.

Enterprise environmental information is information that is recorded and preserved by the enterprise. The information is relevant to the environmental conduct and impact of enterprise activity.

As long as government information does not involve state secrets, trade secrets and personal privacy, citizens can apply for public disclosure of the information.

Note that enterprise environment information possessed by the environmental protection departments belongs to the category of government environmental information. In deciding whether to disclose the information to the public, the question of whether the information involves a business secret and should not be made public should be reviewed and decided by the environmental protection departments in accordance with the law and the facts, and not decided by the enterprise.

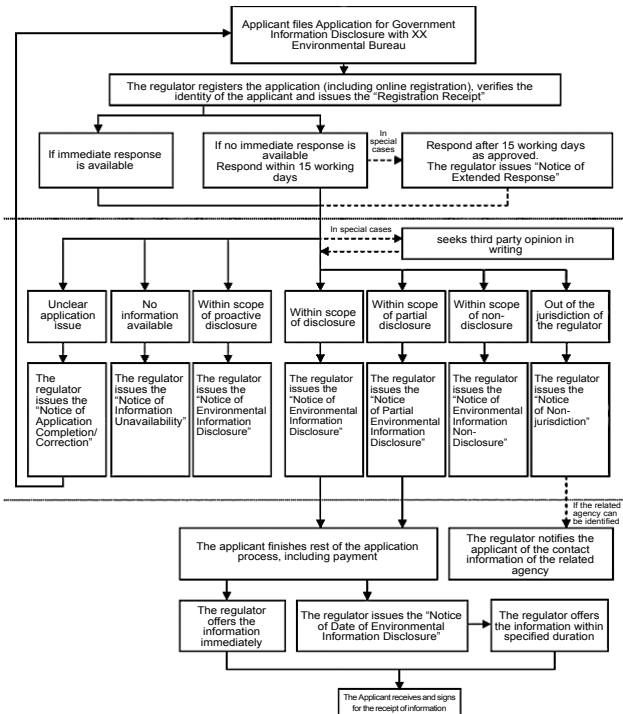
The public can access government environmental information and enterprise environmental information in the following ways:

1. Newspapers and magazines, radio, television, internet and other news media may have obtained the information and published it.
2. Citizens can apply to environmental protection departments for government or enterprise environmental information. The application can be written or oral.

Because the specific application procedures may differ from locality to locality, before making an application it is best to locate the telephone or E-mail of the local agency and contact the relevant staff before making application. Through email or telephone an applicant can learn whether a specific form of application is needed, and what certificates, if any, are needed to be presented with the application. If the application is brought in person, it is better to make an appointment time in advance.



In general, in submitting applications to the environmental protection departments the following steps are used: (1) Obtain the application form(s). Download the application form(s) from the website(s) of the relevant government department(s) or go to the relevant government department(s) to fill out the form(s). Note: If you go to a department to fill out the application forms, you must carry your ID card. Also, carry downloaded and printed application forms because every application for government documents requires an application form. (2) Fill in the application form(s). Describe the required environmental information in as much detail as possible and the law(s) to which the information is related. (3) Following submission of the form, ask for a document certifying that the government department(s) has received the “public information application form.” If the application is made online, make sure to keep a copy of the email to the government and the government reply, including the time received.





## Community (Public) environmental participation

Community (public) participation in environmental rights protection means that, from the beginning of the policy or project or program development process the public has the capacity to effectively participate in decision making, strategy and plan implementation, and benefits sharing.

When environmental problems affecting a community appear, how can the public effectively participate in solving them? Basic questions include:

### 1. Who will participate?

This is one of the most important factors in community participation. At present, in most cases, community environmental problems are mainly addressed by relevant government authorities, such as the local street agency (urban community), township government (rural community), the Environmental Protection Bureau and other authorities, sometimes including the Community Residents' Committees and Village Committee. Due to insufficient participation by community organizations, community residents may not understand and care about local environmental developments. This makes it difficult to take collective actions and if means solutions to community environmental problems may often be only superficial. Therefore, while solving community environmental problems, participants should include relevant government departments, community residents, professionals and NGOs among which residents are the most important. In this context, special attention should be paid to the participation of disadvantaged citizens and disadvantaged groups. In the case of specific environmental problems, it is critical to analyze which individuals, groups and agencies are the relevant stakeholders.



## 2. What to participate in?

Participation is not simply attendance at a meeting or gathering. Attendance is passive while participation is active, bottom-up and combines grassroots participation as well as that of officials. Participation is a process in which citizens exercise rights and responsibility, providing contributions and sharing the benefits. In more detail, participation includes:

Participation in identifying problems. The public has a right to know about environmental problems. Relevant government departments and enterprises should disclose information on community environment to the public. The public also can form voluntary groups to investigate the community environment. The enthusiasm of participation will emerge only after the public understands the environmental conditions of its own community.

Participation in seeking solutions to problems. In order to solve community environmental problems, stakeholders should work together to find solutions. It is important to encourage the stakeholders to discuss and negotiate, to express their ideas, to seek and to make action plans that all parties can participate in. In doing so, the public can use public meetings, discussion, project design, citizen advisory panels, Outlook BBS and other fora.

Participation in the implementation of solutions. During participation, members of the public express their ideas and put forward their own proposals. More importantly, they make contributions to the elimination of environmental problems through participation in the implementation of solutions.

Participation in supervision and evaluation. In the process of solving community environment problems, community evaluation of progress and, when activities are completed, outcome are critical. The supervision and evaluation process serves two purposes. First, good management of the process requires timely identification of problems and implementation of solutions. It will help to summarize the experience and identify problems in the process in a timely manner so that the implementation plan can be established and reach expected objectives. Second, public participation and related problem solving is a learning process, in which the participants can see their contribution and the changes in the environment due to their own contributions. This learning can enhance the participants' capacity for self management, increasing participants' confidence in their participation and in community public affairs.





### 3. How to participate?

In helping to solve community environmental problems, the public needs channels (or mechanisms) to enable participation. Participation mechanisms can be established with several aims and take many forms, for example:

**Information communication mechanisms:** Publications and educational activities, including information dissemination, public investigations, community interviews and exchanges, community work groups, information center or library setup.

**Dialogue and consultation mechanisms:** For example, fora, seminars, Outlook BBS, hearings, online BBS, community networks.

**Decision-making mechanisms:** For example, Community environmental project design activities, community environmental planning, a special working group on a designated topic or topics, expert steering committee(s).

**Supervision and evaluation mechanisms:** For example, Public questionnaires and surveys, participation in the formulation of supervision and evaluation indicators, evaluation work group(s), online evaluation, related workshops, and presentation of results in stories and drama performance by community residents.

The process of creating participation channels (or mechanisms) should itself enhance opportunities for public participation, help the community reach agreements on environmental problems and increase the participation capability of the public. The establishment of this process requires government, the community, the community residents, professional personnel, NGOs and work units to perform their own functions, fulfill their own duties and work together.





## Case analysis

### (1) The case of the Beijing Liulitun Incineration plant




At the end of 2006, owners of Baiwang Xincheng housing learned from the 11th Five-Year Plan of the government of Haidian District, Beijing and a visit to the New

North Zone Planning Exhibition in Haidian, that the Government intended to invest more than 800 million Yuan to build a new waste incineration power plant in the south side of the Liulitun landfill. They learned the plan was to start the construction in March 2007. The plan caused owners to believe that the government's initiative would not fundamentally solve the public nuisance of odor emanating from the Liulitun landfill. Rather, the plan would lead to further deterioration of the surrounding environment. Therefore, beginning in late December 2006, owners of the Zhonghai Fenglian Villa began to defend their rights. The task was completed in a half year--on June 7, 2007.

On December 29, 2006, Baiwang Xincheng community residents sent a letter of complaint to oppose the building of the Liulitun incineration plant. In January 2007, the owners told the Beijing Municipal Environmental Protection Bureau that the Liulitun incineration plant might produce dioxin, a toxic substance which can pollute the surrounding environment. In response, they were told that the Liulitun waste incineration power project was not just a problem of environmental impact assessment, but also a problem of planning.





Thus, the owners applied to the Beijing Municipal Government for administrative reconsideration. In doing so they stated: (1) the project site violated relevant state regulations; (2) the project site apparently contradicted the overall planning for Haidian District of Beijing; and (3) the project site lacked overall planning basis. They further stated that bias in the location planning guidance caused the error in project location. The owners called on the government to: (1) revoke the Urban Planning regulation document (No. 0276) regarding the waste incineration power plant construction project site for Liulitun; (2) take back the construction land planning permit and (3) require that a construction site be chosen again.

On May 25, 2007, the owners received the results of the administrative reconsideration. They were told that the Liulitun waste incineration power plant project was one of the projects identified in the White Paper for Beijing Garbage Disposal issued by the government, a key infrastructure construction project of Haidian District. In the selection process for the construction project, the construction company had held a number of expert seminars and discussion meetings with relevant departments to analyze and appraise the project location and protective distance. The citizens were told that the construction project location was chosen with consideration of the environmental impact on the surrounding residents and was in line with the provisions of the Urban Planning Law of the People's Republic of China and the Beijing Urban Planning Ordinance. The citizens were told that if they refused to accept the decision, they could bring an administrative lawsuit to the People's Court, in accordance with the law, within 15 days of receiving the decision.

Upon hearing the reply, the owners did not give up. They raised funds in the district, produced posters, banners and display panels to publicize their concerns in a nearby district. These activities stimulated the enthusiasm of the owners to continue with their rights protection efforts. In the meantime, the owners also sought the support of the China Business Times, Beijing Times, Science Times, Beijing News and other media. CCTV also reported on the matter.





The owners submitted an administrative reconsideration application to the State Environmental Protection Administration (now the Ministry of Environmental Protection). The application called for the repeal of the approval of the environmental impact report of the Haidian District for the waste incineration power generation project issued by Beijing Municipal Environmental Protection Bureau. The application asked for a new environmental impact report, which should be prepared scientifically, comprehensively and impartially in accordance with the law, and submitted to the Environmental Protection Administration for re-approval in accordance with the law. The application asked that the Municipal Commission of Haidian District be ordered to stop the preparation work for the incineration plant construction.

On June 7, 2007, Pan Yue, deputy director general of the former State Environmental Protection Administration (SEPA), informed the media that he was recommending that the waste incineration power generation project should be postponed. On June 12, 2007, SEPA announced the decision on administrative reconsideration: the project should be postponed for further proof and a full analysis, and opportunities for the public to give comments should be expanded. The results of the new review, including public comments, must be submitted to, approved and announced by the Beijing Municipal Environmental Protection Bureau and then reported to SEPA. Until these actions were taken, the project should not be constructed. In the end, the incineration power generation project was canceled.

In this case, the residents affected by environmental pollution used a variety of means to protect their rights. In addition to applying to the environmental protection department for administrative reconsideration, the residents also sought and received support from the media. They ultimately obtained good results through reasonable and legal means.



## (2) The Lead poisoning case in Henan Lushi County

On June 5, 2007, China's environmental newspaper published an article headlined "poison as scorpion, lead harmed four hundred people." The article reported that a coarse lead smelter production plant in a Village of Lushi County in Henan Province engaged in illegal production that resulted in 334 people suffering from lead disease, 59 people suffering from mild lead poisoning and 44 people suffering from moderate lead poisoning. After six months had passed, with none of the victims being compensated, the Environmental Law service center of ACEF sent research staff and volunteer lawyers to the field to gather the basic facts of the contamination and damage. The injured parties were eager for legal assistance, and hoped to get compensation as soon as possible.

After finding the relevant facts, staff of ACEF went to inform the village to tell the villagers about laws and facts, seeking to help them assert their legitimate claims and rights. ACEF found: (1) the source of pollution--emissions of lead-based substances; (2) the effect of pollution--334 people poisoned. ACEF calculated the loss, in light of the causal relationship between the pollution and harm. The injured villagers came to understand the relevant laws and rules and accepted our proposals.

Initially, the representative of the corporation that caused the pollution accident did not cooperate and did not want to directly compensate for the villagers' losses. The county Environmental Protection Agency and the town government staffs worked to inform the legal representative of the enterprise that pollution compensation cases use the principle of "reverse burden of proof" and thus the company had the burden of proof in the analysis of whether there was a causal relationship between the damage and the company's conduct. By consequence of these efforts, the representative of the company was eventually convinced. The company signed an agreement and paid 200,000 Yuan in compensation.





**Staff of ACEF and volunteer lawyers talking with the public  
at the investigation scene**

The satisfactory solution in this case was inseparable from the attention provided by local governments and relevant departments, who helped assure the rights protection of victims, and were actively involved in coordinating among the involved parties. After the incident, the representatives of both local governments and party committees focused on the problem. The government took measures to deal with the pollution sources, including; (1) ordering plant to shut down; (2) imposition of an administrative penalty against the responsible individual; (3) provision of medical treatment to the victims of the pollution, including the timely organization of health workers to provide blood tests and needed diagnosis and treatment for the local villagers. Initially, some of the victims were emotional and there was an interest in large-scale petition. ACEF staff's explanation of the law and facts caused the villagers to shift their thinking and take the steps to protect their rights according to law. The blood lead poisoning case took more than seven months, but the ultimate outcome was satisfactory to the citizens, the local government, and the company.



### (3) Fish death caused by alcohol plant pollution in the Beihai Tieshangang district of Guangxi

Mr. Liang, Mr. Deng and Mr. Lan are raft cage farmers in a village of Tieshangang district of Beihai City. On July 20, 2008, they found many of their fish had been killed, dead afloat within the seawall.



The direct economic losses amounted to 150 thousand Yuan. They checked the water quality and found the fish may have died due to contamination of the sea water. They negotiated with the seawall guard and asked him to close the sluice gates for one day to identify the cause of the fish deaths. In the afternoon of July 23, 2008, Mr. Liang, Mr. Deng and Mr. Lan related the situation to the government of Panying Camp town and the Municipal Environmental Protection Bureau and the Fishery Bureau of Tieshangang district. Staff of Environmental Protection Bureau visited the polluted sea water, and took samples and photographs. On August 24, 2008, the three fishermen found more of their fish had died and immediately reported this to the Municipal Environmental Protection Bureau of Beihai. The staff of the Municipal Environmental Protection Bureau arrived at the scene on the same day and tested and photographed the water. The Initial investigations revealed that the polluter was possibly a alcohol plant of Tieshangang district.





On September 27, 2008, the Beihai Municipal Environmental Protection Bureau issued the “Pollution Source Investigation Report of Farming and Crop Damage of Tieshangang Regional Pollution.” The report indicated that the wastewater discharged by the alcohol plant caused the pollution. The report proposed that the fishery and agricultural bureaus confirm the cause of the fish (seafood) death as soon as possible. On August 28, 2008, the Aquatic Animal Husbandry and Veterinary Bureau of Tieshangang district of Beihai city issued the “Mortality Survey Report of the farming fish of Panying town Tieshangang district” which indicated that fish died due to extreme hypoxia caused by seawater contamination. In February, 2009 the damaged fishermen came to the All-China Environment Federation for support. On January 11, 2010 the fishermen reached mediation agreement with the alcohol plant under the mediation of Beihai Maritime Court, with the help of the staff of the Federation. According to the agreement, the alcohol plant provided 230 thousand Yuan in compensation to the three fishermen. The litigation costs were borne by the alcohol plant.

The final successful result was obtained by citizens’ use of a variety of means of rights protection. In this case, the fishermen complained to the Environmental Protection Department, asked the Fishery Bureau to identify the loss, sought help from the environmental protection organization and finally reached a mediation agreement with the polluter under the auspices of the court.



#### (4) The environmental pollution case of a steel company in Zibo City, Shandong Province

On November 16, 2005, ACEF received a petition from the Tieshan district of Zibo City, Shandong Province. The petition stated that a steel Co., Ltd in Zibo City polluted the environment (the case was transferred from the Letters and Visits Office of the former State Environmental Protection Administration). The Petition explained that at the end of 2003, the steel Co., Ltd invested to build an iron plant less than 100 meters from the north Tieshan district. Around June 2004, the plant was put into operation without any environmental clearance, causing serious noise and dust pollution to the residents. The residents appealed for a solution many times (with more than 20 petitioners), but with no effect. They therefore decided to use the law to sue the steel Co., Ltd, and they requested support.

Through ACEF field research in the Tieshan district of Zibo City, Shandong Province, it was found that the steel Co., Ltd construction project was indeed illegal, undertaken without environmental approvals. The project was less than 100 meters from the Tieshan district, in violation of the health protection zone of 1000-1400m required by the Ironworks Health Protection Standard. Moreover, the blast furnace design production standards of 350m<sup>3</sup> was lower than the minimum condition of 1,000m<sup>3</sup> for steel construction projects (as provided in the "Notice on Suppressing Blind Investment in Steel, Electrolytic Aluminum and Cement Industries" issued by the General Office of State Council to the Development and Reform Commission and other departments) (General Office of the State Council [2003] No. 103). The project involved an obsolete facility in a regulated industry. Dust, noise and pollution discharged by the enterprise after production seriously impacted the normal life and physical health of Tieshan residents.





ACEF supported the residents of Tieshan district in bringing a civil action in court against the steel Co., Ltd. The suit requested that the defendant immediately stop its law infringement,

eliminate the hazard and provide compensatory damages. However, the court delayed the filing for a long time. On November 8, 2006, ACEF we sent a letter to the Higher People's Court of Shandong Province recommending that the Shandong High Court actively take measures to properly solve the problem. No reply was received.

ACEF then tried a variety of alternative approaches. These included seeking help from media, submitting judicial proposals, and reporting to the Ministry of Environmental Protection, but the results were not obvious. In January 2008, ACEF went to Zibo City to negotiate with the company and communicate with the residents of Tieshan district again, but only reached an agreement on certain issues. Both sides still fiercely contested the relocation of the sintered pellet plant as well as the compensation for pollution damage and other issues. At the same time, ACEF repeatedly reported the case to the Ministry of Environmental Protection. In March 2008, The Environmental Monitoring Bureau of the Ministry of Environmental Protection went to the field for investigation and the company halted its misconduct.

On June 20, 2008, the Steel Co., Ltd in Zibo City finally signed a settlement agreement with the residents of Tieshan district. The agreement called for investment of 31 million Yuan to improve the environmental protection facilities, actively strengthen



environmental remediation and seek to achieve discharge standards in harmony with the surrounding residential community. In sum, with the coordination of the All-China Environment Federation, and continuing for nearly four years with twists and turns, the environmental dispute between the steel company and the 815 inhabitants of Tieshan district finally came to a satisfactory conclusion.



Residents of Tieshan Village in Zibo of Shandong Province presenting silk banner to ACEF

In the case, the pollution victims negotiated with the polluters with reason, seeking help by lawful means. ACEF was gratified by the determination and reasonableness of the citizens in the actions they took to safeguard their own environmental rights.



## (5) The case of environmental pollution by XX paper mill in the WuDang district of Guiyang city of Guizhou province

XX paper mill is located on the bank of Nanming River, the mother river of Guiyang city. The mill regularly operated during the day, but did not discharge waste water into the Nanming River. In the evening, the cave between the mill district and the Nanming River disgorged large amounts of waste water. Bubbles produced by the pollution merged with water from the stream of the Nanming River, forming a long polluted area, leaving the river unbearable.

On October 18, 2010, ACEF received a complaint and went to the XX village of Wudang district, Guiyang city for investigation. The ACEF team found that during 2003-2005 the local government issued a deadline and penalty for the discharge of untreated wastewater. The paper mill committed that "if waste water were being poured directly into the river in the future, it would close factories to ensure zero emissions of industrial sewage". However, the mill did not keep its commitment, greatly damaging the Nanming River and the Wujiang, important downstream tributaries of the Yangtze River.

To protect public environmental interests, on November 19, 2010 we brought environmental public interest litigation to the court in Qingzhen city, Guizhou province, along with the Guiyang public environmental education center. ACEF asked for an order that; (1) the defendant immediately stop the river discharges, the secret pouring of production waste water and pollution into the Nanming River and Wujiang River; (2) the defendant pay reasonable expenses of the plaintiff, amounting to 10000 Yuan (attorney's fees); and (3) the litigation cost of the case should be assumed by the defendant. The People's court of Qingzhen city accepted the record on that day.

ACEF applied to the court for the preservation of evidence. On November 23, the judge and bailiff of the Qingzhen environmental protection court went to the paper mill's Wudang district site for evidence preservation. The factory was found discharging waste water to the Nanming River; the situation was in accord with the



facts of pollution described in the complaint. Judges of Qingzhen environmental court asked the chief official of the company to report on the sewage situation at once. The official said that the paper mill secretly set out sewage every night (approximately 7 o'clock) to the next morning (about 7 o'clock) through the cave to the Nanming River. The Qingzhen environmental protection court entrusted the Guiyang city environment monitoring center to test the discharged sewage samples.

On December 30, 2010, the Qingzhen environmental protection court heard the case. After the trial, Qingzhen environmental protection court decided in support of the plaintiffs' entire lawsuit.



### Court Hearing Scene

In this case, ACEF submitted pollution discharge photos and video material as evidence of the defendant's conduct. Plaintiffs asked the court to order the defendant to cease its misconduct immediately.



At present, thirty nine environmental protection courts have been founded in eleven provinces. These include the ecological resources judicial tribunal of Fujian Zhangzhou intermediate people's court, the environmental protection tribunal of Guiyang QingZhen people's court, the environmental protection tribunal of Wuxi city intermediate people's court, and the environmental protection tribunal of Kunming, Yunnan intermediate people's court. The duty of these environmental courts is environmental protection. They are responsible for examination of pollution torts, damages compensation, and environmental public interest litigation. The cases may relate to mountain forest protection, water and soil and other environmental protection, and related criminal, civil and administrative cases within court jurisdiction.



## Document Samples

### Statement of Claim

**Accuser:** All-China Environment Federation  
The legal representative: xxx  
Address: Huabiao Building 6th  
Floor, Qing Nian Gou Dong Lu,  
Hepingli, Chaoyang District,  
Beijing, 100013. P. R. China.  
Tel: xxx

**Respondent:** Guizhou xxx Co., Ltd  
The legal representative: xxx  
Address: Number xx of xx town xx  
county Guiyang, Guizhou  
Tel: xxx

**Cause of action:** Water pollution tort

### Litigation claims:

1. Request that the defendant be ordered to immediately cease the violation of discharging wastewater with excessive pollutants and stop polluting the coast along the outfalls as well as the downstream Taoyuan River and Wujiang River;
2. Request the defendant be ordered to eliminate the dangers to the coast along the outfalls and take repair measures to mitigate the pollution of the coast along the outfalls and downstream rivers;
3. Request the defendant be ordered to pay RMB XXX compensation for environmental pollution and that the compensation shall be incorporated into the Guiyang City Two Lakes and One Reservoir Environmental Protection Fund to pay for the Environmental Improvement of Taoyuan



River and Wujiang River supervised by the Foundation;

4. Request that the court order that costs, attorneys' fees and detection and identification fees in this case shall be borne by the defendant.

## Facts and Reasons:

### First, damage related facts

For a period of time, neighboring residents of the defendant found the defendant indiscriminately discharged industrial wastewater with abnormal traits and odor along the slope adjacent to the plant and the highway. Residents accused the defendant of not strictly enabling sewage treatment facilities and complained to us many times that the defendant's excessive sewage discharges influenced the productivity, life, health and natural environment of the surrounding residents.

We sent people to visit the fields and sampled the sewage water of the outfall of the defendant for testing. According to the accreditation body's test results, the suspended solids (SS) are as high as 106mg/L, biochemical oxygen demand (BOD) is as high as 164mg/L, chemical oxygen demand (COD) is 456mg/L, and ammonia is 24.9mg/L, all of which exceed the national standards.

Industrial waste water beyond the standard range of the emissions affects natural production and farmer's lives. Discharge into water bodies can lead to the death or variation of fish and other aquatic animals and plants. The effect is even more serious if people along the coast of the downstream Taoyuan River and Wujiang River drink the river water, which will seriously affect personal safety and physical health.



## Second, legal grounds

Article 6 of “Environmental Protection Law of the People’s Republic of China” provides that all units and individuals have the obligation to protect the environment. It also provides the right to report and prosecute the units and individuals polluting and destroying environment. Article 88 of “Water Pollution Control Act” provides that if the damage due to water pollution effects many people, the parties can elect representatives for a colitigation according to law. The environmental protection departments and relevant social groups can support, in accordance with the law, parties harmed by water pollution by commencing a lawsuit in the People’s court. The government encourages legal services agencies and lawyers to provide legal assistance to the victims of water pollution. The Implementation of Scientific Outlook on Development and Strengthening Environmental Protection (2005) of the State Council stressed the need to perfect the mechanism of legal aid for victims of pollution, to study the establishment of the environment, civil and administrative prosecution system, and the role of environmental public interest litigation.



### Third, the plaintiff status of ACEF

Approved by the State Council of the People's Republic of China, registered by the Ministry of Civil Affairs and managed by the Environmental Protection Department supervisor, ACEF is a non-profit and national social organization voluntarily formed by people, enterprises and institutions supportive of environmental protection. Its aim is to fully embody the organization advantages of "Great China, Great Environment, Great Union", to play the bridge and link society and government, to promote the development of China's environmental protection and to promote the progress of environmental protection of all mankind, centering on protecting public and social environmental rights.

Article 6 of "Rules of Procedure of All-China Environment Federation" expressly provides that one of its main tasks is to organize and coordinate all aspects of social resources to participate in environment protection, strengthen social supervision, safeguard public environmental rights, assist and oversee the government in efforts to achieve national environmental protection goals and promote the development of China's environment protection.

As an association registered by the Ministry of Civil Affairs, having independent civil rights and capacity to act, ACEF has the legal status to safeguard environmental rights within China. Faced with serious cases of environmental damage to the interests of non specific subjects, in a time when the country's natural resources have been violated, it has a responsibility and obligation to commence environmental public interest litigation to your court.

With the best wishes

Environmental court Qingzhen City of Guizhou province

Complainant: All-China Environment Federation

Legal Representative: xxx

Date: xx/xx/xx



## Government Public Information application form

Applicant information	Civil	Name			
		Tel		Fax	
		E-mail		Postcode	
		Address			
	Legal person/other organization	Name			
		Name of contact person			
		Tel of contact person		Fax	
		Address			
		E-mail			
	Application time		Year	month	day
Needed information	Contents of the needed information				
	Function of the needed information				
	Ways to obtain the information (optional) <input type="checkbox"/> Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Come and get				



If your environmental rights are violated, you can call 010-51230023 to complain; or you can log in [www.hjjk.com](http://www.hjjk.com) (Environmental Case Information of All-China Environment Federation) to get more information and knowledge about environmental cases, environmental laws, technical standards, environmental experts, judges, and related matters.



Copyright & Disclaimer: This handbook is to be used for the development of public understanding of the environment and environmental law, and not used for commercial purposes. This handbook aims to help citizens become familiar with the kinds of skills needed in the process of protecting their own environmental rights. In protecting their rights according to the contents of the handbook, users should seek to ensure that their actions and methods are in line with the provisions of laws and administrative regulations of China. ACEF does not assume legal responsibility for any action taken by users of this handbook.

Address: Huabiao Building 6th Floor, Qing Nian  
Gou Dong Lu, Hepingli, Chaoyang District,  
Beijing, 100013. P. R. China.

ZIP: 100013

Tel: 86-10-51266665

Fax: 86-10-51230006

## Environmental Rights Protection Fund Hotline ——10699909——

- China mobile users can send text messages of any numbers between 1 and 30 to 10699909 to donate RMB1-30 to the environmental rights protection community in China.
- Many a little makes a mickle (accumulating a little each time becomes many). We need to provide legal aid for more pollution victims.

