Public Participation in Environmental Enforcement…with Chinese Characteristics?: A Comparative Assessment of China’s Environmental Complaint Mechanism

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Abstract

Over the past years, it has become clear that China’s rapid economic development has come at a significant environmental cost. China has responded with an ambitious law reform program that has resulted in a multitude of major environmental laws or revisions over the past two decades and significantly increased resources spent on addressing environmental problems. However, public concerns about environmental issues have continued to be flashpoints for public unrest and violent clashes with public authorities. As a result, serious tensions remain between efforts to encourage public participation, especially through channels that allow for peaceful expression of dissent, and contrary official reactions that seek to tighten control over civil society and restrict environmental activism.

It is in this context that the government’s increasing attention to its environmental complaint mechanism is one of the most intriguing developments in China’s efforts to enhance environmental governance. China’s environmental complaint mechanism allows citizens to report violations by pollution sources and petition the government for appropriate action. It can be likened to an accountability mechanism for polluters and government officials, with some interesting similarities to US environmental citizen suits.

Outside of China, this mechanism is not well known, though it has increasingly become the subject of research. In 2008, the top enforcement officer of the Chongqing Environmental Protection Bureau was honored by the Asian Environmental Compliance and Enforcement Network for work on the environmental complaint mechanism.

This paper introduces China’s environmental complaint mechanism and seeks to provide an assessment of its effectiveness. Drawing on Chinese and English language research, including newly available statistical data on complaint numbers and our own practical experiences, our study shows that the mechanism has been heavily used by the general public to voice its concerns and frustrations with environmental problems and has largely been successful in promoting environmental awareness and engaging the public. At the same time, its effectiveness in protecting public health and the environment, in strengthening environmental enforcement and compliance, and promoting the rule of law and good governance is much more questionable. Our study also suggests more generally that the role and function of public participation is greatly dependent on the broader governance framework within which it is embedded and that “channeling” of environmental activism into key governance areas can significantly influence its effectiveness.
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1. Introduction

As environmental law has evolved in the past few decades to meet growing environmental challenges, awareness of public participation as a critical component of sustainable development and effective environmental governance has also increased. International recognition can now be found in instruments such as Article 10 of the Rio Declaration on Environment and Development and the Aarhus Convention as well as in the national laws and policies of governments across the globe. Within the U.S., public engagement on environmental issues was a leading force in the enactment of our modern environmental regulatory system and continues to play a critical role both in the regulatory process, such as notice-and-comment rulemaking, and in compliance monitoring and enforcement, such as through environmental citizen suits. In fact, many countries view public participation as an important source of information for environmental monitoring and enforcement.

Such lessons have not been lost on officials and environmentalists elsewhere, including in China. With China’s rapid economic development, recently surpassing Japan to become the world’s second largest economy, it has become clear that progress has come at a significant environmental cost. China has responded with an ambitious law reform program that has resulted in a multitude of major environmental laws or revisions over the past two decades and significantly increased resources spent on addressing environmental problems. But there is no
question that the governance system designed to ensure effective implementation and enforcement, especially the role of civil society, remains a source of serious concern. Environmental Protection Vice Minister Pan Yue, one of China’s most outspoken environmental officials, even noted that “the root of [the country’s environmental] problem lies [in] . . . the lack of public participation in China.”

Compared to civil society’s role in other countries, regardless of whether industrialized, developing, or emerging economy, its minor role in China is probably one of the most glaring deficiencies. For example, China has a negligible number of environmental lawyers. Its environmental NGOs are strictly controlled through licensing requirements, and opportunities for formal public participation in regulatory and most other governmental decision-making processes are limited.

Measures to bolster public participation have been part of a broad range of responses to China’s broader governance weaknesses. In addition to welcoming training and other technical assistance by Western NGOs, enhanced public participation provisions were included in the 2002 Environmental Impact Assessment Law and in the 2008 amendments to the Water Pollution Control Law. However, public concerns about environmental degradation have continued to be flashpoints for public unrest and violent clashes with public authorities. As a result, serious tensions remain between efforts to encourage public participation, especially through channels that allow for peaceful expression of dissent, and contrary official reactions that seek to tighten control over civil society and restrict environmental activism.

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10 For examples, see discussion infra section 2.1.


It is in this context that the government’s promotion of the environmental complaint mechanism is one of the most intriguing developments in China. China’s environmental complaint mechanism allows citizens to report violations by pollution sources and petition the government for appropriate action. It can be likened to an accountability mechanism for polluters and government officials.

Outside of China, this mechanism is not well known, though it has increasingly become the subject of research. In 2008, the top enforcement officer of the Chongqing Environmental Protection Bureau was honored by the Asian Environmental Compliance and Enforcement Network as a pioneer in establishing a 24-hour hotline for the environmental complaint system. In many other regions of China, accepting and responding to citizens’ complaints has become a top priority of local EPBs.

Yet, its novelty is only superficial. It is largely an outgrowth or extension of China’s centuries-old system of “Letters and Visits,” also referred to as “Xinfang” system. The Xinfang system allows ordinary citizens to petition successively higher levels of government for redress for grievances of all sorts. The environmental complaint mechanism is in essence an adaptation of the Xinfang system to environmental issues.

The dominant use of the environmental complaint mechanism has been to advance objectives and values quite different from those ascribed to public participation processes in the United States and other systems. Yet, the parallels, which enable private individuals to participate in compliance monitoring and enforcement as well as to pressure government officials on pollution issues, are striking. Gaining a better understanding of China’s environmental complaint mechanism could provide us not only with a view into its potential contribution to addressing the country’s environmental challenges but also broader insights into the role and function of public participation in environmental governance generally. This could yield especially interesting conclusions given that it is operating in a political structure that in the past has viewed citizen activism independent of the government and outside of the communist party with deep suspicion.

This paper introduces China’s environmental complaint mechanism and seeks to provide an assessment of its effectiveness. Drawing on Chinese and English language research, including newly available statistical data on complaint numbers, our study shows that the mechanism has been heavily used by the general public to voice its concerns and frustrations.
with environmental problems and has largely been successful in promoting environmental awareness and engaging the public. At the same time, its effectiveness in protecting public health and the environment, in strengthening environmental enforcement and compliance, and promoting the rule of law and good governance is much more questionable. Our study also suggests more generally that the role and function of public participation is greatly dependent on the broader governance framework within which it is embedded and that “channeling” of environmental activism into key governance areas can significantly influence its effectiveness.

With respect to the data sources, the article provides an unprecedented view on a set of Chinese language research, primarily by local Chinese environmental protection staff covering 28 provinces, municipalities, and district/county systems. This research is generally based on the practical experiences of the authors and thus provide invaluable first-hand insights into the operation of the local complaint mechanisms that would otherwise generally not be accessible to foreign researchers.

The remainder of the paper is organized as follows. Section 2 introduces the regulatory and institutional system in which China’s environmental complaint mechanism operates. Section 3 provides a statistical overview of the complaint mechanism’s operation, especially identifying factors explaining the steady rise in complaint numbers and noting the predominance of noise and air pollution grievances.

With section 4, the paper turns to an assessment of the complaint mechanism, first by providing a qualitative evaluation, including a review of the existing Chinese and English research. It identifies trends and problem areas limiting the mechanism’s effectiveness. Section 5 then shifts to a comparative examination. We put the Chinese environmental complaint mechanism in the context environmental public participation in the U.S., focusing on the citizen suit system. While such a comparative evaluation is imperfect, it finds justification in the institutional structures and the relationships that each mechanism enjoys with the judiciary and bureaucratic sources of power as well as the gap between law-on-the-books and law-in-action in China. The comparison is able to highlight limitations of the Chinese complaint system with regard to effectiveness, ability to engage the citizenry, and impact on environmental governance and the rule of law more generally. Section 6 discusses the broader implications of this paper for environmental governance, public participation, and rule of law development. Section 6 also provides several reform suggestions for improving the environmental complaint mechanism.

2. China’s Environmental Citizen Complaints System

In recent years, the China’s central government has increasingly emphasized the importance of public participation in addressing environmental concerns. While environmental NGOs in China, both the local affiliates of international organizations such as Greenpeace and Natural Resources Defense Council (NRDC), as well as home-grown NGOs such as the Center for Legal Assistance to Pollution Victims and the Institute for Public and Environmental Affairs, are becoming increasingly important in public dialogues, the channels through which they can be

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20 Our article is premised on basic familiarity with the US system of environmental law and governance, and hence we provide a detailed explanation only of China’s system.
active, and accordingly their influence, remains limited. The most commonly used channel for
direct citizen participation in environmental protection is the environmental complaint
mechanism.

Because the environmental complaint mechanism operates in close connection with
China’s broader environmental governance system, we start our overview with a brief primer of
system.21

2.1. A Brief Primer on China’s Environmental Governance System

Similar to environmental governance systems elsewhere, China’s system is made up of
multiple components.22 Its most sizable one is an administrative regulatory structure established
through a growing set of environmental laws that entrusts oversight authority principally to the
Ministry of Environmental Protection (MEP), the general counterpart to the U.S. Environmental
Protection Agency, but also other regulatory agencies. The system incorporates accountability
mechanisms that rely predominately on administrative enforcement processes, with a relatively
insignificant portion on judicial enforcement, as well as private party judicial remedies for those
harmed by pollution. Regulatory implementation tools include pollution permits, environmental
impact assessment, pollution fees, and requirements to operate pollution control equipment.23 Its
institutional participants range from regulatory agencies and courts to civil society institutions
and business.

The system’s legal foundations can be found primarily in statutes addressing problems
ranging from media pollution to chemicals and natural resource conservation and management,
including a particular statute devoted to environmental impact assessments.24 At the foundation

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21 For more detailed examinations of China’s environmental regulatory system, see e.g., Charles McElwee,
CHARLES McELWEE, ENVIRONMENTAL LAW IN CHINA: MITIGATING RISK AND ENSURING COMPLIANCE (2011);
Richard J. Ferris & Hongjun Zhang, Reaching out to the Rule of Law: China’s Continuing Efforts to Develop and
Effective Environmental Law Regime, 11 WILLIAM AND MARY BILL OF RIGHTS JOURNAL 569 (2003); XIAOYING MA
AND LEONARD ORTOLANO. 2000. ENVIRONMENTAL REGULATION IN CHINA: INSTITUTIONS, ENFORCEMENT, AND
COMPLIANCE, Rowman & Littlefield Publishers; Xuehua Zhang, China’s Environmental Administrative
Moser and Tseming Yang, Environmental Tort Litigation in China, forthcoming in ENVIRONMENTAL LAW
REPORTER (2011), available at _______.
22 For an elaboration of the role environmental governance and discussion of some core precepts, see Scott Fulton
and Antonio Benjamin, Effective Environmental Governance – A Key to Sustainable Development, forthcoming in
Brazil_Final.pdf.
23 There are also a variety of extra-legal administrative tools, such as the administrative responsibility system, five-
year plan, and party discipline mechanisms that have been used to varying degrees to promote environmental
objectives. See, e.g., Dan Guttman and Yaqin Song, Making Central-Local Relations Work: Comparing America
24 Department of Policies, Laws, and Regulations (Ministry of Environmental Protection).
qinquan zeren fa) (2010); Circular Economy Law (zhonghua renmin gongheguo xunhuan jingji cujin fa) (2008),
Water Pollution Prevention and Control Law (zhonghua renmin gongheguo shuiwuran fangzhi fa) (2008); Urban
Planning Law (zhonghua renmin gongheguo chengxiang guiha fa) (2007); Energy Conservation Law (zhonghua
renmin gongheguo jieyue nengyuan fa) (2007); Renewable Energy Law (zhonghua renmin gongheguo ke zaisheng
nengyuan fa) (2005); Solid Waste Prevention Law (zhonghua renmin gongheguo guiti feiwu wuran huanjing fangzhi
fa) (2004); Desertification Law (zhonghua renmin gongheguo guofang zhisha fa) (2003); Radiation Prevention Law
of these laws is China’s Environmental Protection Law. Enacted first in 1979 on a trial basis, it was given permanent status in 1989 and elaborates a general framework and set of principles for pollution control and regulation that are applied more specifically in the various media statutes. Many of these statutes are patterned on those found in the US and other industrialized countries.25

As a cabinet-level ministry, MEP is one of 27 ministries and commissions and 17 organizations that report directly to China’s State Council. Like many other governmental systems, regulatory jurisdiction over environment and natural resource related issues can be found in a number of other government ministries, including in overlapping authority with MEP. For example, the Ministry of Water Resources manages water supply issues (as contrasted to water quality issues), the State Oceanic Administration administers marine resources, the State Forestry Administration oversees the country’s forestry activities. Furthermore, the National Development and Reform Commission has responsibilities for climate change policy, and the Ministry of Housing and Urban-Rural Development is in charge of construction of infrastructure projects, including water waste treatment facilities, and the General Administration of Quality Supervision, Inspection, and Quarantine has authority to set product and safety standards, including relevant environmental standards.26

MEP is replicated in function and oftentimes also structure, at the provincial, city, city-district/county level, and, in some places, township level, usually referred to as Environmental Protection Bureaus (EPBs). Many of MEP’s functions mirror those of the US EPA, involving regulation, standard-setting, and some enforcement activities. While MEP’s staffing remains small, less than 400 employees by some counts, as of 2008 there were more than 180,000 staff

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25 The Chinese government has purposely sought to emulate significant parts of the environmental regulatory systems of the United States, Europe, and other industrialized nations through comparative law research, law transplantation, accepting capacity-building collaborations, and adoption of regulatory mechanisms and environmental standards. See, e.g., Tseming Yang and Robert Percival, The Emergence of Global Environmental Law, 36 E.L.Q. 615 (2009). This is of course part of a broader trend in the convergence and integration of environmental law globally. See id.; Robert Percival, LIABILITY FOR ENVIRONMENTAL HARM AND EMERGING GLOBAL ENVIRONMENTAL LAW, 25 MD. J. OF INT. L. 37 (2010).

working at the sub-national level in approximately 3000 local EPBs throughout the country.\textsuperscript{27} MEP provides local EPBs with policy directives and guidance for the implementation of national regulations.\textsuperscript{28}

The chief responsibilities of EPBs at and below the provincial levels are to enforce laws and policies designed by MEP and to assist in drafting local rules to supplement central ones. Like most of China’s other local government bureaucracy, EPBs operate under the “dual leadership” system under which EPB officials report both directly to higher tier EPBs (all the way up to the MEP) as well as the leadership in the local government within which they reside. As a practical matter, the EPB operational budget comes from and staffing decisions (including promotions) are made by local government leaders, leaving local officials leaders with practical control over most EPB operations. In the context of environmental citizen complaints, both MEP and local\textsuperscript{29} EPBs accept, investigate, and resolve complaints though local EPBs also receive guidance and supervision from MEP.

Local EPBs rely on a number of specific regulatory instruments to control industrial pollution and have authority to issue up to seven forms of administrative sanctions for enforcement and compliance assurance: warning letters, fines, unlawful gains confiscation, stoppage of production or use, discharge permit revocation, enterprise closure, and relocation orders.\textsuperscript{30} In practice, the most frequently applied punitive measure is a fine. In addition, compliance schedules (“pollution control within deadlines”) are also a frequently utilized compliance tool and, like in U.S. regulatory practice, require enterprises to reduce their pollution releases to acceptable levels by a specified date. In practice, EPB officials generally cannot apply the most severe sanctions, enterprise closure, permit revocation or production stoppage, without approval from the local government leadership.\textsuperscript{31}

There are three relevant review mechanisms designed to check or review EPB administrative enforcement decisions: internal review, administrative review, and court review. Under the internal review process, a higher-tier EPB can take the initiative to check on the enforcement work of lower-tier EPBs. Administrative review of a lower-tier EPB decision constitutes a more formal type of review, carried out by the legal office of the same-level government or a higher-tier EPB, when the review entity receives a request from a regulated party who disagrees with the lower-tier EPB decision.\textsuperscript{32}

\textsuperscript{28} See, e.g., McElwee, \textit{supra} note \_, at 113-118.
\textsuperscript{29} It is common to refer to any environmental protection agency below the national level as “local” EPB, and we follow that custom here.
\textsuperscript{31} For example in one incident in Guzhen, local EPB officials were fired for enforcing laws, \url{http://www.cenews.com.cn/ztbd1/gzjttzsj_zt/201007/t20100714_661607.html}.
\textsuperscript{32} Like the US, China includes within their governance systems a set of laws channeling the exercise of administrative authority and allowing citizens to sue government authorities when bureaucratic decisions are made contrary to the law. \textit{See} Law of the People’s Republic of China on Administrative Reconsideration, (Adopted at the
China’s administrative review process is analogous to administrative appeals encountered in US regulatory practices, for example appeals of an initial permit denial or other administrative decisions within the U.S. EPA to the Agency’s Environmental Appeals Board.\textsuperscript{33} Court review of EPB decisions is usually initiated by regulated parties under China’s Administrative Litigation Law (ALL). This process finds a rough analogue in the American legal system’s process of judicial review of agency actions under the US Administrative Procedure Act.\textsuperscript{34}

When regulated entities fail to comply with EPB administrative orders, judicial enforcement is available also through the ALL. The courts can assist with the collection of pollution levies or fines.\textsuperscript{35} For serious pollution incidents, especially when human life is lost or serious harm is caused, China’s environmental laws and criminal law provide for criminal sanctions.\textsuperscript{36} In particular, the 1997 amendments to the Criminal Law formally introduced provisions that criminalize serious violations of environmental law. For example, individuals involved in illegally discharging pollutants resulting in serious environmental consequences, face up to three years imprisonment and/or a fine; when consequences are especially serious, imprisonment can range up to 7 years.\textsuperscript{37}

More recently, recognition that weak implementation and enforcement of environmental laws and regulations remain a key bottleneck has led central government, provincial and lower level authorities to experiment with various reforms. One particular high-profile effort has been the creation of Regional Environmental Supervision Centers (RSCs) by the then-State Environmental Protection Administration in 2006. The RSCs were designed to enhance central government reach and control over enforcement and compliance issues at the provincial level.\textsuperscript{38} In recent years, the State Council has also promulgated open-government regulations allowing

\textsuperscript{33} For an overview of the work of EPA’s Environmental Appeals Board, see Nancy Firestone and Elizabeth Brown, \textit{Ensuring the Fairness of Agency Adjudication: The Environmental Appeals Board’s First Four Years}, 2 ENVTL. LAW 291 (1996); Anna L. Wolgast, Kathie A. Stein, and Timothy R. Epp, \textit{The United States Environmental Adjudication Tribunal}, 3 J. COURT INNOVATION 185 (2010).


\textsuperscript{37} Criminal Law of the People’s Republic of China (1997), art. 338.

for greater access to government information. MEP implemented this State Council initiative with its own environmental disclosure rules. At the local government level, authorities have experimented with the establishment of specialized environmental courts which focus judicial attention and resources on enforcement and adjudication. All of these efforts hold promise, though their overall impact remains to be seen.

China's legal system also provides for a set of civil remedies, based in tort law principles. They can be found in China's recently enacted Tort Law, the general Civil Law Code, and the 1989 basic Environmental Protection Law framework legislation. Paralleling American common law tort principles, these provisions spell out principles of liability and proof, as well as processes for individuals to litigate claims for personal and property damages caused by pollution. They are heavily relied on by activists, including the Center for Legal Assistance to Pollution Victims, to vindicate environmental interests. Consistent with a broad rise in use of the environmental complaint system, discussed in greater detail below, environmental tort litigation has increased annually on average about 25% since 1998.

Thus, China's system possesses most of the necessary governance building blocks. Of course, this regulatory system remains not only a work-in-process but also of limited effectiveness. Implementation and enforcement remain weak. Permitting mechanism still have much room for improvement, accountability processes such as criminal and non-criminal judicial enforcement need to be strengthened, and institutional participants such as a private environmental bar are only in the early stages of development. In our own personal experiences working on environmental governance issues in China, these are areas where China will also need to make significant progress in order to address its environmental challenges more effectively. Such broader questions, however, are beyond the scope of this paper, and we do not

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40 Measures on Open Environmental Information (For Trial Implementation (adopted by Ministry of Environmental Protection of China, effective May 1, 2008).
42 See chapter 8 of the Tort Law of the People’s Republic of China; art. 124, General Principles of the Civil Law of the People’s Republic of China; art. 41, Environmental Protection Law of the P.R.C. See generally Adam Moser and Tseming Yang, Environmental Tort Litigation in China, forthcoming ENVIRONMENTAL LAW REPORTER (on file with authors); Alex Wang, The Role of Law in Environmental Protection in China: Recent Developments, 8 VT. J. ENV. L. 195 (2007).
43 Environmental tort plaintiffs encounter challenges in vindicating their claim similar to those encountered in other legal systems, ranging from legal issues such as proof of causation and quantifying damages to practical ones such as finding competent counsel. Nevertheless, there are aspects that are more favorable to plaintiffs than the American system, for example, shifting of burden of proof on some causation issues. See Moser and Yang, supra note ____, at 5-6.
45 For one study of the enforcement operations of EPBs, see BENJAMIN VAN ROOIJ, REGULATING LAND AND POLLUTION IN CHINA, LAWMAKING, COMPLIANCE AND ENFORCEMENT: THEORY AND CASES (2006).
plan to address them except as they arise in our discussions of the environmental complaint mechanism.

2.2. Regulations and Measures on Environmental Complaints

The practice of filing complaints with local authorities, commonly known as “letters and visits” (xinfang), is not new and has existed since imperial times. As described by Carl Minzner, it is a traditional means of seeking justice firmly rooted in Chinese history. Defined broadly as an effort to “go past basic-level institutions to reach higher-level bodies, express problems and request their resolution,” petitioning includes a variety of practices that parallel, overlap, and in some cases replace formal legal channels. These practices have survived into the post-1949 People's Republic of China in the form of citizen petitioning of numerous “letters and visits” (xinfang) bureaus distributed throughout all Chinese government organs, including the courts.

Since the 1990s, Chinese authorities have passed a web of national and provincial regulations governing this practice. The basic framework is governed by the “Regulations Regarding the Management of Letters and Visits (Xinfang)” promulgated by the State Council in 1995 and revised in 2005. The national regulations outline multiple functions of the xinfang system, including 1) information collection, 2) “citizen input into policy-making,” 3) “monitoring the conduct of local government officials,” 4) “maintaining social order,” 5) advancing government propaganda, and 6) handling individual grievances. They also require the establishment of a broad organizational network for dealing with xinfang petitions, lay out the responsibilities of xinfang bureaus, and define the legal liabilities for misconducts. The procedures governing the Xinfang process resemble judicial procedures in their detail and emphasis on procedural integrity, including truthfulness, confidentiality, and impartiality.

Pursuant to the national xinfang regulations, three measures were adopted specifically to guide the operation of the environmental complaints mechanism. The National Environmental Protection Administration (an early predecessor of MEP) promulgated the “Measures Concerning the Management of Environmental Protection Complaints” in 1990, which went into effect in 1991. Revised measures went into effect in 1997 and were revised again in 2006. The rules defined the scope of allowable complaints and channels for voicing those them, responsibilities of officials and citizen rights, governmental structures and budgetary allocation requirements, and the management procedures.

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47 Minzner, Xinfang, supra note ___, at 104.
49 Minzner, Xinfang, supra note ___, at 120.
50 Minzner, Xinfang, supra note ___, at 129-30.
51 Brettell, "Channeling Dissent," 2007. Brettell’s study analyzed and compared the contents of these three measures and concluded that the measures have facilitated the standardization and institutionalization of the environmental complaints system over time.
2.3. Procedures and Institutions

The process governing environmental complaints is relatively straightforward. If a citizen has a complaint, suggestion, opinion, or request, they can, among other methods, write (letters), call, email, fax, or visit the offices of MEP and EPBs in charge of the administrative area or the next highest level. Citizens may file environmental complaints with the complaint offices (xinfang bureaus) in the central and local people’s governments or people’s congresses, which are responsible for receiving a wide range of complaints on various issues. These complaints are normally passed along to MEP or local EPBs for investigations. If approached, personnel in other government/party organs would also instruct the petitioners to take their complaints to the EPBs at the appropriate administrative level. The majority of citizen complaints about the environment are lodged at local EPBs.

Within each EPB, usually its administrative headquarters and a subsidiary unit, the environmental supervision center (ESC), are primarily involved in handling citizen complaints. Generally, the ESC carries out the EPB’s compliance monitoring and enforcement responsibilities, including onsite inspections of polluting sources. In fact, ESCs spend a substantial amount of resources and time conducting extensive on-site inspections. Such inspections fall into two categories: 1) routine inspections, scheduled regularly and announced ahead of time to facilities; 2) surprise inspections that are unannounced and initiated either by EPB inspectors themselves or by complaints from citizens. In recent years, surprise inspections have increasingly been triggered by citizen complaints. One city EPB reported that citizens in 2002 alone identified about 60 percent of the violations that were subsequently verified by the EPB investigation as valid and led to the imposition of administrative penalties.

Most EPBs have similar procedures for managing complaints. Once a citizen or legal entity contacts an EPB about an environmental grievance, officials are obliged to review and respond appropriately and quickly. The relevant offices, usually EPB administrative headquarters or a designated office of ESCs, first record a complaint and provide a written notice of receipt within 15 days. ESC inspectors, sometimes even high-ranking EPB officials on important complaints, are then dispatched to investigate. The time limit for investigating and resolving complaints is 60 days. Resolution of complaints involving complex problems or passed down from an EPB at a higher administrative level is permitted to take up to 90 days.

If a citizen is not satisfied with the EPB decision after the investigation, she or he can request in writing a review from the government at the same administrative level or the next higher-level EPB (MEP if a complaint is first filed with a provincial EPB) within 30 days of receiving the EPB decision. If the citizen is still unhappy with the first review, she or he can

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52 Article 2, the 2006 “Methods of Environmental Letters and Visits (xinfang).”
53 The discussion in this paragraph is largely drawn from the interviews the author conducted with a county EPB in July 2004 in Zhejiang Province of China.
54 Notes from the field research in Zhenjiang city of Jiangsu Province conducted in 2004.
56 Item 4 of Article 22, the 2006 “Methods of Environmental Letters and Visits (xinfang).”
57 Article 30, the 2006 “Methods of Environmental Letters and Visits (xinfang).”
58 Article 31, the 2006 “Methods of Environmental Letters and Visits (xinfang).”
within 30 days request in writing another review. In other words, a citizen has the right to appeal twice. After higher-tier EPB or other governmental authorities have reviewed the original investigation results a second time, they are free to ignore the complaint filed by the same citizen and based on the same facts and reasons.

In many regions, accepting and responding to citizens’ complaints has become an important priority for local EPBs. Starting in 1997, the State Environmental Protection Agency (SEPA, the predecessor of MEP) required that each local EPB establish an environmental hotline, known as “Green 110,” to handle citizen reports of potential environmental violations. This hotline was created in cooperation with local Public Security Bureau. In early 2001, SEPA set up a unified, toll-free hotline number, 12369, for receiving reports on environmental violations throughout the nation. Some cities have placed this hotline within the special Citizen Reporting Center, which accepts xinfang petitions generally, including non-environmental complaints, and distributes them to relevant government agencies.

EPBs are required to take complaints 24 hours a day, leading many to institute a “rotation system” whereby the entire staff of an EPB rotate taking night shifts to answer phone calls. In urban areas of one province, where one of us conducted field research in 2004, the EPB staff was required to arrive at the affected areas within 2 hours after receiving a complaint; this time limit was extended to 6 hours in rural areas. To accommodate the high volume of environmental complaints, EPBs in many localities have established a new complaints department under the direction of the EPB administrative headquarters or the ESCs. This department is responsible for accepting letters, visits, phone calls, and e-mails, arranging follow-up inspections by the EPB supervision station, and delivering responses to the complainants.

3. Trends with Respect to Environmental Citizen Complaints

An analysis of national environmental complaints statistics reveals two important findings. One is the continuing increase of total environmental complaints throughout the nation since the early 1990s. Another is the predominant focus of the complaints on air and noise pollution, especially smoke, bad smell, or noise in urban neighborhoods, usually from restaurants, construction sites, or other small businesses. Such issues are oftentimes characterized as nuisances associated with urban living rather than significant public health threats resulting from toxic or industrial emissions. Within the American system, issues of noise and odor are usually regulated through local government ordinances rather than by U.S. EPA or state environmental agencies.

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59 Article 32, the 2006 “Methods of Environmental Letters and Visits (xinfang).”
60 Article 34, the 2006 “Methods of Environmental Letters and Visits (xinfang).”
63 This is an entity different from the Xinfang bureaus.
64 Of course, regardless of whether smoke and particulate matters are emitted by small businesses or large industrial plants, they can give rise to serious air quality problems and cause significant adverse health effect such that they have been carefully regulated by the federal government.
3.1. Increases in Complaint Numbers

Overall, the total number of environmental complaints filed with national and local environmental agencies has increased since 1992 (See Figure A below). There is an unexpectedly dramatic decline in 2007: the number of complaints is 167,266, nearly 80 percent lower than that either in 2006 or 2008. This drop cannot be logically explained. We believe this to be a reporting error. In 2007, MEP changed the data reporting formats significantly to include more breakdowns in the types of environmental issues involved in complaints. This might have caused confusion for local EPBs and potentially be responsible for misreporting.

Figure A: Total Number of Environmental Citizen Complaints Received in China, 1992-2009

The overall trend of the national complaints data in Figure A shows a steady rise, with dramatic increases from 1997 to 2004. The first large increases took place in 1998 and 1999, in which the complaints climbed about 38 percent and 43 percent respectively. The second big increase occurred in 2001 when complaint numbers rose roughly 45 percent. The numbers seem to peak in 2004 and continued to increase more slowly afterward (excluding 2007). A city EPB of Shandong Province reported an increase of 5%-15% in the local complaint number per year and that nearly 30% of the EPB enforcement work involved receiving and responding to those environmental complaints. In Jiangsu Province, the Xuzhou city EPB saw an annual increase of

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65 CHINA ENVIRONMENTAL YEARBOOK, 1993-2010.
20% (on average) in complaint numbers from 2003 to 2007, and the number of the complaints received by the Sheyang County EPB tripled over a five year period beginning in 2002.

The existing English language studies on the environmental complaints mechanism and local practices have noted the dramatic rise in complaints after 1996 and identified variables that might explain such increases. For example, a 2003 study by Mara Warwick in Shanghai municipality demonstrates that the number of environmental complaints lodged annually fluctuated roughly in accordance with the pace of economic development. The majority of complaints in that study pertained to noise and local air pollution issues (e.g., dust), both of which are associated with construction near residential areas (an issue discussed in the next section).

Anna Brettell conducted a quantitative analysis of the national and provincial environmental complaints data for 1991-2004 to assess explanations for variations in complaint numbers. The study constructed linear multiple regression models based on the provincial level pooled panel data to test the relevance of level of education, pollution (emissions of industrial SO2 and wastewater effluent), and economic well-being to variations in complaints over time; the results of all models indicated that none of those three variables alone were sufficient for explanation. However, combining the three variables in one statistical model does explain approximately 77 to 79 percent of the rise. The increases in petitions also track a broader rise in petitioning activity on all issues since 1993.

Many of the Chinese language environmental complaint studies discuss these three factors, education, pollution, and economic well-being, as the major contributors to the steady and rapid increase in number. To a large degree, they have also led to increasing environmental awareness by the public, another important contributor identified by some Chinese studies to explain the increase.

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71 See Minzner, *Xinfang, supra* at 158-159.
Many Chinese articles also have pointed to additional factors. First, there has been dramatic expansion of tertiary (service) businesses, such as restaurants, public bathrooms, karaoke, and bars, in recent years. This is often accompanied by the rapid development of real estate. All of those businesses produce loud noise, dust, and unpleasant odors, usually located right next to residential areas. Since implementation of EPBs’ “first approval rights” for such new projects and businesses has traditionally been weak, such businesses oftentimes do not obtain environmental impact assessment (EIA) approvals from EPBs before commencing operation. This has left many polluting sources outside the EPB enforcement reach. For example, in 2003, the Harbin City EPB of Heilongjiang Province conducted a comprehensive investigation of all restaurants and entertainment entities. The investigation revealed that more than 80% of such businesses had not obtained EIA approval from the EPB.

Second, the rapid growth of local economies has often led to increasing pollution that triggers complaints. Chinese researchers reported that in order to attract outside investments and promote local economic growth, many local governments have loosened environmental requirements on some heavily polluting business and prevented their local EPBs from strictly implementing or enforcing applicable environmental laws. As a result, many new businesses are allowed to start operation without meeting the relevant environmental requirements. The results have been severe pollution issues, triggering local complaints, especially as evidenced by numerous violations committed by local polluters.

Third, some studies suggest that the resurgence of the 15 types of small businesses, widely known as “the Fifteen Small (shiwu xiao),” have also contributed to increasing complaint numbers. On August 1996, the State Council issued the “State Council Decision on Several Problems Concerning Environmental Protection,” which required that 15 types of heavy-polluting small businesses be shut down. The Fifteen Small usually refers to heavily polluting township and village enterprises (TVEs) such as paper factories that produce less than 5,000 tons a year, tanneries that treat less than 30,000 hides a year, dye factories that produce less than 500 tons a year, coking enterprises and sulfur smelting enterprises using outdated technology, enterprises that use artisanal methods to smelt arsenic, mercury or lead-zinc, or to refine oil or extract gold, enterprises that use pesticides, bleach and dye, or electroplating, and enterprises that produce radioactive and asbestos products. These small businesses generally do not utilize any

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75 Environmental Protection Law of the People’s Republic of China, article 13. See also Shi Jiangtao, Chemical Plant at Centre of Suspicion, SOUTH CHINA MORNING POST, Aug. 14, 2011.

76 Niu el, 2004; Xu 2007; Yang, Zhao, and Yang 2004.

77 Yang, Zhao, and Yang 2004.

78 Lin et, 2003; Cui 2008; Wang 2009; Xu 2007; Wu, Xu, and Ding 2007; Feng 2009.


pollution control facilities and thus release significant amounts of pollution as a result. Since the issuance of this State Council Decision, the resurgence of those heavily-polluting small businesses has been a major concern of China’s local environmental enforcement efforts.

The fourth factor is insufficient enforcement of environmental regulations by EPBs.\footnote{Lin et, 2003; Chen 2003; Niu el, 2004;Wu, Xu, and Ding 2007; Feng 2009.} Given frequent intervention by local government leaders into the work of EPBs, researchers have reported that some EPBs are reluctant to impede local economic development and thus often turn a blind eye to large polluters. Furthermore, local EPBs frequently lack sufficient enforcement authority as well as necessary resources to properly control pollution emissions, contributing further to collective petitions by pollution victims.

Interestingly, Brettell also identified several probable legal, institutional, and political variables with power to explain why environmental complaints increased in China in 1990-2004.\footnote{Brettell, “Channeling Dissent,” 2007.} One such variable is improvement in EPB organizational capacity. One Chinese study provides some empirical evidence for such a causal factor, reporting that the Shandong provincial EPB designated a special office to deal with environmental complaints and that some municipal EPBs also established complaint offices. This resulted in a total of 28 full-time EPB employees and 11 part-time ones being assigned to deal with complaints.\footnote{Yong Wang, Yan Guo, and Liping Zhou. 2003. \textit{Making Breakthrough on the Environmental Complaints Work Under the Guidance of the Three Representatives} [yi sange daibiao sixiang wei zhidao tupoxing de zuohao huanjing xinfang gongzuoj], SHANDONG ENVIRONMENT, No. 118.} The other three variables are standardization and institutionalization of the complaint management system, pressure from central-level officials to be more responsive to citizen demands at the local level, and encouragement by environmental protection authorities to utilize the complaint system.

These four legal, institutional, and political variables identified by Brettell might, arguably, be encompassed within the Chinese central government’s increased emphasis on accepting and responding to citizen complaints, as indicated in Warwick’s study of the Shanghai environmental complaints system in 2001.\footnote{Warwick 2003, p 220.} This is evident, for example, in the passage of the first general complaint regulations in 1995 by the State Council,\footnote{Brettell, “Channeling Dissent,” 2007.} revisions of the national measures on managing environmental complaints in 1997 and 2006 respectively, the “State Council Decision on Several Problems Concerning Environmental Protection” issued in 1996 and calling on EPBs at all levels of government to establish systems to accept citizen complaints about environmental matters,\footnote{For details of the 1996 Decision, see \url{http://www.cecic.com.cn/292-842-1187.aspx}.} and a mandatory requirement of the nation-wide installation of 24-hour telephone “hotlines” in 2001. With greater central government emphasis on citizen complaints, local EPBs have accordingly devoted more resources to accept and handle the complaints.

### 3.2. Predominance of Noise and Air Pollution
A striking feature of the national data on environmental complaints is the predominance of noise and air pollution concerns. Table 1 shows that, on average, the percentage of air and noise complaints is 38 percent and 38.3 percent, respectively. Together, these two categories make up approximately three-quarters of all complaints filed with environmental agencies.

Table 1: Percentage of Environmental Citizen Complaints Addressing Water, Air, Solid Waste, and Noise Pollution Issues, 1992-2009

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Complaints Received</th>
<th>% of Water Complaints</th>
<th>% of Air Complaints</th>
<th>% of Solid Waste Complaints</th>
<th>% of Noise Complaints</th>
<th>% of All Complaints Resolved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>105,309</td>
<td>20.5%</td>
<td>33.3%</td>
<td>2.9%</td>
<td>27.1%</td>
<td>89.5%</td>
</tr>
<tr>
<td>1993</td>
<td>98,207</td>
<td>23.4%</td>
<td>36.2%</td>
<td>3.0%</td>
<td>30.4%</td>
<td>87.4%</td>
</tr>
<tr>
<td>1994</td>
<td>107,338</td>
<td>22.8%</td>
<td>34.7%</td>
<td>3.1%</td>
<td>33.0%</td>
<td>88.4%</td>
</tr>
<tr>
<td>1995</td>
<td>109,650</td>
<td>20.7%</td>
<td>35.1%</td>
<td>3.4%</td>
<td>35.6%</td>
<td>90.5%</td>
</tr>
<tr>
<td>1996</td>
<td>114,982</td>
<td>17.3%</td>
<td>35.2%</td>
<td>3.5%</td>
<td>37.4%</td>
<td>93.2%</td>
</tr>
<tr>
<td>1997</td>
<td>135,887</td>
<td>17.5%</td>
<td>34.8%</td>
<td>2.7%</td>
<td>40.9%</td>
<td>94.3%</td>
</tr>
<tr>
<td>1998</td>
<td>187,781</td>
<td>15.1%</td>
<td>33.9%</td>
<td>2.5%</td>
<td>49.5%</td>
<td>95.1%</td>
</tr>
<tr>
<td>1999</td>
<td>268,592</td>
<td>12.6%</td>
<td>33.2%</td>
<td>2.7%</td>
<td>43.4%</td>
<td>95.5%</td>
</tr>
<tr>
<td>2000</td>
<td>309,800</td>
<td>13.8%</td>
<td>37.8%</td>
<td>2.6%</td>
<td>42.8%</td>
<td>96.5%</td>
</tr>
<tr>
<td>2001</td>
<td>450,287</td>
<td>14.5%</td>
<td>39.3%</td>
<td>2.2%</td>
<td>40.0%</td>
<td>94.8%</td>
</tr>
<tr>
<td>2002</td>
<td>526,166</td>
<td>11.9%</td>
<td>37.6%</td>
<td>2.2%</td>
<td>38.1%</td>
<td>92.8%</td>
</tr>
<tr>
<td>2003</td>
<td>611,016</td>
<td>12.5%</td>
<td>37.4%</td>
<td>2.6%</td>
<td>37.2%</td>
<td>94.3%</td>
</tr>
<tr>
<td>2004</td>
<td>682,744</td>
<td>12.3%</td>
<td>39.6%</td>
<td>2.1%</td>
<td>41.1%</td>
<td>94.5%</td>
</tr>
<tr>
<td>2005</td>
<td>696,482</td>
<td>12.0%</td>
<td>38.7%</td>
<td>2.1%</td>
<td>40.7%</td>
<td>87.6%</td>
</tr>
<tr>
<td>2006</td>
<td>687,409</td>
<td>12.7%</td>
<td>39.4%</td>
<td>1.6%</td>
<td>41.2%</td>
<td>92.9%</td>
</tr>
<tr>
<td>2007</td>
<td>167,266</td>
<td>20.4%</td>
<td>37.4%</td>
<td>3.1%</td>
<td>31.4%</td>
<td>95.0%</td>
</tr>
<tr>
<td>2008</td>
<td>748,989</td>
<td>15.6%</td>
<td>40.6%</td>
<td>2.1%</td>
<td>33.6%</td>
<td>92.2%</td>
</tr>
<tr>
<td>2009</td>
<td>738,304</td>
<td>15.0%</td>
<td>37.4%</td>
<td>2.2%</td>
<td>34.3%</td>
<td>92.8%</td>
</tr>
<tr>
<td>Average</td>
<td>374,789</td>
<td>14.2%</td>
<td>38.0%</td>
<td>2.3%</td>
<td>38.3%</td>
<td>92.8%</td>
</tr>
</tbody>
</table>

Most Chinese articles we reviewed indicated that the majority of the complaints were the result of noise pollution associated with construction sites or service businesses, such as restaurants and Karaoke shops, as well as dust and restaurant fumes. Approximately 88% of the complaints received by a city EPB in Shandong Province in 2003 were about noise and dust. The director of one city EPB’s Environmental Supervision Center pointed out that slightly more

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88 CHINA ENVIRONMENTAL YEARBOOK (1993-2010)
90 Zhang and Zhang 2003.
than 50% of the complaints involved noise pollution, which mostly came from construction sites.91

Consistent with this general pattern, information from a South China municipality’s EPB showed that about 58% of all of its 6818 environmental pollution complaints in 2007 concerned air and 30% concerned noise pollution issues, almost 90% of all environmental complaints. The primary cause of the air pollution complaints stemmed from the “smell of smoke and stench from the city” as well as “airborne grease from the food-service industry,” which are “located in places . . . highly populated [or are operated] in residential buildings [and which had] no special pipeline for ejecting the smoke.”92 Similar concerns related to the location of food and the entertainment business, such as Karaoke bars, within densely populated city areas constituted the primary basis for noise-related complaints.93

There do appear to be regional variations with respect to complaint-type break-downs. For example, in the city of Chongqing, one of China’s four cities directly administered by the central government, noise and air pollution complaints made up a similar 95% of a total of 131801 complaints lodged between June 2002 and November 2007, though the breakdowns were different, with 60% noise and 35% air complaints.94 In Xuzhou city of Jiangsu province, noise and air issues dominated the number of complaints filed in the city area, while the majority of complaints from the surrounding rural areas were concerned with wastewater problems.95 This was described as due to the rapid expansion of service businesses in the city and the relocation of heavy-polluting sources to the rural areas. The predominant complaint type received by the Shandong provincial EPBs (roughly 52% of all the complaints) involved water pollution issues; among them, more than 90% were concerned with illegal discharge of wastewater resulting from non-operation of pollution treatment facilities.96

Clearly, the majority of environmental complaints relate to issues directly affecting the daily lives of urban residents.97 Figure B demonstrates that the trend in number of noise and air related complaints closely follows the overall trend in number of complaints received, whereas the number of solid waste and water related complaints has remained relatively constant during the period 1992 to 2009.

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91 Chen 2003.
92 Personal communication with EPB official (on file with authors).
93 Id.
95 Wang 2009.
97 Warwick 2003.
Figure B: Number of Environmental Citizen Complaints Addressing Water, Air, Solid Waste, and Noise Pollution Issues, 1992-2009

Warwick and Ortolano’s Shanghai study of environmental citizen complaints filed in 2001 also revealed that nuisance complaints dominated the complaints mechanism. A significant portion (68 percent) of the calls (nearly 28,000) received by the Shanghai EPB were either unrelated to environmental protection or did not concern issues requiring enforcement and therefore did not result in EPB inspections. Only 12 percent of the calls received were inspected by the Shanghai ESC and only 13 percent of those inspected complaints uncovered illegal acts resulting in a formal fine. One conclusion that one might draw is that the majority of the complaints were nuisance issues that were either trivial or insignificant for environmental quality.

4. A Qualitative Evaluation of the Chinese Environmental Complaint System

As the rise in numbers indicates, China’s environmental complaint mechanism has rapidly become a widely used tool to raise concerns about pollution and environmental violations. One indicators of success is arguably the sharp rise in the mechanism’s utilization. Nationwide, the number of complaints rose over seven-fold, from 105,309 in 1992 to 738,304 in 2009, the most recent numbers available.

Another measure of success can be found in the reportedly high rate of complaint resolution. As indicated in Table 1 before, the national average response rate was

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98 CHINA ENVIRONMENTAL YEARBOOK (1993-2010)
100 Unfortunately, it is not possible to assess the reliability of the data nor how EPBs concluded that a complaint was “resolved,” especially whether that also meant satisfactory resolution from the perspective of the complainant. As
approximately 92.8% for the period of 1992-2009. In other words, local EPBs successfully responded to nearly 90% of the complaints they received. Locally, within the municipality of Chongqing, its EPB received 127,056 valid complaints between June 2002 and November 2007, and it was able to effectively resolve 122,609 (96.5%) of them. Another EPB, responsible for a South China municipality, has reported in internal documents that of 5857 complaints received in 2007, 98.56% (5773) were responded to and successfully dealt with, though it is not clear what the particular outcomes were.

The complaint system is also believed to have had other beneficial impacts. For example, the head of the Chongqing environmental complaint system has indicated that the complaint system has generated “enthusiasm for citizen participation, . . . provided information for rapid control and [management of] emergent environmental accidents, . . . improved . . . enforcement efficiency, [and] . . . provided scientific ground[s] for government environmental decision making.” Another perceived benefit has been the enhancement of government legitimacy.

With greater interest in the environmental complaint mechanism, however, has also come increased scrutiny of its operation. In particular, the research has highlighted serious shortcomings that appear to hinder the effectiveness of the complaint system. In this regard, the conclusions of the Chinese and English literature differ.

The English language literature has primarily examined the effectiveness of the complaint system from the perspective of environmental enforcement and compliance and concluded that citizen complaints were not reliable sources of information with respect to local environmental problems for EPBs. For example, a simple econometric model constructed by Dasgupta and Wheeler was tested with a province-level panel dataset developed from the China Environment Yearbook (1987-1993). The study revealed that citizen complaints, which largely addressed highly visible pollutants such as particular matters, are a significantly biased index of environmental damage.

Warwick and Ortolano’s more recent case study in Shanghai, which primarily relied on in-depth interviews to evaluate the effectiveness of citizen complaints, found that, as of 2002, citizen complaints were a supplementary source of information on pollution discharges for local EPB. Their analysis pointed out that the opportunity costs of the Shanghai citizen complaints system are significant. These costs result primarily from the dominance of complaints about nuisance problems such as noisy air conditioning motors on apartment buildings, which divert inspection resources away from key environmental problems. Anna Brettell’s research identified other serious problems with the existing complaint system such as exclusion of township.

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101 Tang, supra note ___, at slide 12.  
102 Personal communication by EPB official (on file with authors).  
104 Warwick and Ortolano 2007.  
106 Warwick and Ortolano. 2007.
environmental protection offices from the complaint system, official brutalism and disregard for and non-resolution of complaints often due to local economic protectionism and corruption (turning complaints into protests), lack of accountability and oversight in the system, restricting the number and nature of environmental groups, and procedures that lead to arbitrary decisions by officials.  

Surprisingly, none of the Chinese language research viewed the increasing devotion of EPB enforcement resources to handle complaints, largely addressing nuisance issues, as potential misallocation of EPB monitoring and inspection resources. While recognizing the tremendous pressure on EPBs to respond to every single complaint timely and quickly, many authors actually suggested that more resources be designated to handle complaints.

The Chinese articles primarily examine the effectiveness of the complaint mechanism in addressing the environmental concerns of the general public. According to these studies, and as explained in more detail below, the ineffectiveness of the system is most evident in the increasing incidence of repeated (chongfu shangfang), “leapfrog” (yueji shangfang), and collective complaints (jiti shangfang). The increasing prominence of these three types of complaints is evidenced by some available local statistics. Among the environmental complaints received by the Haimen City EPB of Jiangsu Province, the number of repeated complaints was 349 in 2003, approximately 35% of all the complaints. The number of collective complaints involving more than three individuals was 76, roughly 8%. The number of the complaints transferred from a higher-tier authority because of leapfrog complaints also rose to 22.

Specifically, “leapfrog” complaints usually refer to complainants who go directly to the higher-tier government agencies; they fail to file the complaint at the appropriate governmental level. For example, a resident of County A may be required by regulation to lodge complaints with the relevant agencies within County A and then appeal to the relevant higher-tier city-level agencies or city government if he/she is dissatisfied with the responses from the county agencies. When such an individual does not go to the appropriate county-level agencies but approaches the city-level, provincial-level, or even national government agencies directly, such complaints are considered “leapfrog” complaints. As a practical matter, leapfrog complaints often arise when the complainants perceive the lower-tier EPBs as incapable of resolving the issues or they come to believe that the higher-level authorities have the power to better deal with the problems. For example, a city EPB in Jiangsu province reported an increase of 112% in 2007 in the number of complaints handed down from the higher-tier EPB and government.

Collective petitions usually involve more than three complainants at one time, primarily arising when a group of citizens affected by the same environmental problems decide to lodge the complaint collectively. Such collective complaints often involve severe environmental

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109 Lin et al., 2003; Zhang and Zhang, 2003; Wang, Gao, and Zhou 2003; Niu et al., 2004; Xu 2007; Lv 2008
110 Niu et al., 2004;
112 Cui 2008.
problems, have attracted widespread attention, and have proven difficult to resolve. Rising numbers of this type of complaint is indicative of the severity of local environmental pollution.

However, increasing numbers of repeated complaints are probably the most important indicator of the ineffectiveness of the complaint system in addressing the public’s environmental concerns and resolving conflicts. In repeated complaint situations, complainants are unhappy with the government’s response and resolution, so repeatedly bring complaints to the EPBs about the same problems over an extended period of time. The rate of repeated complaints is reported to be 30% to 40% in Xuzhou city of Jiangsu Province. The Xuzhou EPB believes that this has primarily been due to its inability to close down sources of serious pollution, resulting in continued pollution and difficulties in fully addressing the noise, dust, and smell problems from the nearby tertiary businesses that support the primary polluting facility.

Some Chinese articles have identified three other factors that might explain the increasing incidents of repeated complaints. First, polluting sources often offered various forms of compensation, e.g., covering the water or electricity bill or partial salary of the pollution victims, in settlement of the complaints, but usually did not take measures to control or reduce their pollution. The result was to resolve the grievance only temporarily. Complaints were usually re-filed when the complainants realized not only that pollution continued but also was contributing to more health and environmental harm.

Second, EPBs often imposed a fine in response to complaints raising legal violations, without forcing the violator to abate the pollution, giving rise to similar issues. When pollution resumed or continued, the affected individuals would usually re-lodge their complaint. Thus, the pollution complaint would not only be re-initiated but the trust of the public would have been eroded, which in turn would then choose to bring the complaints to a higher-tier authority.

Finally, EPBs lacked the capability to respond to the complaints at times and used the excuse of “no clear regulations addressing the problems” to avoid coming up with solutions. These three types of EPB responses left complainants usually frustrated and without a substantive and permanent solution, leading them frequently to complain again or appeal to the high-tier EPBs.

5. A Comparative Assessment of the Complaint System

As the research shows, China’s environmental complaint system is far from perfect. But perfection is neither a practical nor an appropriate standard by which to judge systems operating in the real world. Nevertheless, assessment is important for making appropriate policy choices. One valuable assessment approach is through comparative evaluation, referencing similar mechanisms found in other environmental governance systems. Such comparative study

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113 Wang 2009.
115 Niu al., 2004;
116 Niu al., 2004;
provides a realistic benchmark for what governance mechanisms can achieve in the “real world” and provides a gauge of the environmental complaint mechanism’s relative effectiveness in achieving explicitly articulated goals for it. As an added bonus, it can also provide important insights into the roles and functions that have been implied or ascribed to public participation in environmental governance more generally.

Of course, the lack of direct parallels in other well-studied environmental regulatory systems presents a challenge for a comparative assessment. However, a second-best option is examination of functional analogues. One such functional analogue is the American environmental citizen suit mechanism.

There is, to be sure, one obvious and striking distinction between the two mechanisms. In China’s environmental complaint mechanism, the primary authority to which citizens direct their appeals is the government’s executive authority (or bureaucracy). In contrast, in the American system, it is the judiciary that is the primary addressee of appeals for higher level review and remedial action. In other words, the institutional mechanisms appear to operate very differently.117

Yet, the practical and functional distance between the two systems is not as great as this structural difference would suggest.118 As we explain below, the functional characteristics and operational outcomes of the U.S. citizen suit system can provide a useful reference point for evaluating the effectiveness of China’s environmental complaint mechanism. We consider in particular the complaint mechanism’s efficacy in contributing to enforcement and protection of the environment and public health, in engaging civil society in environmental protection activities and governance, and in promoting good governance and the rule of law.

5.1. The U.S. Environmental Citizen Suit System as Functional Analogue to the Environmental Complaint Mechanism

While their institutional contexts differ, a close examination reveals important parallel characteristics between U.S. citizen suits and China’s environmental complaint mechanisms. Both serve as adjuncts, albeit important ones, to larger multi-component environmental governance systems that include private law remedies as well as administrative regulatory oversight over pollution sources. Both share important functional objectives and operational

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117 The U.S. Administrative Procedure Act (APA) provides private individuals with the ability to petition administrative agencies such as EPA to engage in rulemaking or take other administrative actions. However, the practical impact and nature of such petition processes is quite different from China’s environmental complaint process. Such APA petitions ultimately turn into judicial review processes when the petitioners are dissatisfied with the outcome and are evaluated by the courts like other administrative agency decisions.

characteristics. Both are tools through which civil society can participate in compliance monitoring and enforcement activities, engage government officials on environmental policy issues, and hold them accountable. And both mechanisms are ultimately positioned in similar relationships to sources of effective government power and oversight over the environmental issues and actors of concern.

Environmental citizen suits are described in much greater detail in other publications, but a brief review here is in order for context. Citizen suit provisions are included in almost all major US environmental laws. They allow private individuals to bring cases against polluters for violations of environmental laws or against the government when an agency has failed to fulfill a statutory duty, oftentimes the failure to promulgate a regulation or to take other legally required actions by a statutory deadline.

As a prerequisite to a suit, the plaintiff must usually provide a 60-day notice of the intent to file a complaint. The 60-day notice provision allows the polluter to cease the violation and/or to enable the state or federal authorities to bring their own enforcement action. If the government brings its own enforcement action before the citizen plaintiffs file their suit, the citizen suit may be barred but citizen plaintiffs can usually join the action by intervention as a matter of right. If the citizen plaintiffs ultimately prevail, they may usually recover their cost of litigation, including reasonable attorney fees.

The number of citizen suits brought each year, by one estimate, numbers between 400 and 700. According to a 2006 Environmental Council of States (ECOS) study, that number compares to at least 70,000 written notices of violation issued by state environmental authorities, about 13,000 final administrative orders, and close to 1800 referrals for state judicial enforcement actions in 2003, resulting in over $100 million in administrative, civil, criminal penalties and supplemental environmental projects.

Yet, there can be no question that citizen suits make important contributions to environmental enforcement, recovering hundreds of thousands of dollars in civil penalties each

121 See the Clean Water Act citizen suit provision as a representative example, 33 U.S.C. 1365.
122 When a polluter is the target of a suit, such notice must be provided to the polluter, the state within which the violation occurred, and the EPA. In an agency action-forcing suit, only the EPA must be notified.
123 Unlike qui tam suits, however, citizen plaintiffs are not entitled to receive any of the penalty proceeds or obtain a private gain.
124 See James May, Now More Than Ever, supra note ___, at 10709, table 2.
125 See ECOS, State Environmental Agency Contributions to Enforcement and Compliance: 2000-2003, Table 3-2, at p. 3-5 (2006). See also May, supra note ___, at 10718-10720 and tables. However, it should be noted that the ECOS report provides an incomplete picture of state enforcement activity, including information of at most 2/3 of all states. Furthermore, of the states participating in the survey, not all programs provided information. Id. table 3-1, at p. 3-4.
year and resulting in Supplemental Environmental Projects worth in the millions. While they are not a substitute for government enforcement, citizen suits are widely recognized as making a unique contribution by *supplementing* the criminal, civil, and administrative enforcement activities of EPA and state authorities. Citizen enforcement authority provides an additional deterrent against noncompliance and allows for the effective assertion of the public’s interest, as recognized by Congress, in effective enforcement of federal environmental laws. Civil society is thus provided with a tool to hold both polluters and federal agencies accountable for fulfilling Congressional mandates and thus promoting good governance and the rule of law with respect to the environment.

Many of the functions associated with citizen suits find parallels in the environmental complaint mechanism. Petitions filed under the environmental complaint system can assist the government with compliance monitoring and information gathering, bringing pollution issues and regulatory violations to the attention of environmental officials, just as the 60-day notice of citizen suits does. Both mechanisms also allow for an active enforcement role either through the direct litigation authority granted under the American system or through the ability under China’s environmental complaint system to seek review by higher level government officials, in essence to appeal decisions by lower level officials, including decisions not to act on a complaint. In this respect, the environmental complaint mechanism’s review process exhibits parallels to a judicial appeal process.

Both also create avenues to hold government accountable for faithful implementation of the law. While the American system explicitly designates agency action as an appropriate target for action-forcing law suits, such a function has been inherent to the environmental complaint system. Traditional usage of the Xinfang process has been as a tool for private individuals to bring misconduct by lower-level officials to the attention of their superiors. As accountability and information-sharing devices, both mechanisms serve as tools to vindicate grievances and obtain remedies against polluters or government agencies. And finally, both create opportunities for civil society engagement with government decision-makers on public policy issues.

Apart from multiple functional parallels, they also share an important characteristic vis-à-vis their overall role in environmental governance. Both were designed as adjunct mechanisms to complex administrative regulatory systems which were intended to be the primary overseer of environmental quality. Like American environmental citizen suits, China’s environmental complaint system operates as a supplement to a multi-component system of environmental regulation that includes tort law, formal administrative regulatory and oversight processes over polluters, and administrative and judicial mechanisms by which private entities and individuals can seek review of environmental agency decision.

However, the structural-institutional underpinnings of the environmental complaint and the citizen suit mechanisms differ greatly. The former resides within the executive/administrative branch of government, while the latter is located within the judiciary. To most American lawyers, this difference could not be greater. However, an exploration of the

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126 See May, supra note ___, table 7 & 8, at p. 10713.
127 See May, supra note ___, at 10705.
128 See Minzner, supra note ___, at 129-130.
role and power of China’s judiciary suggests that this difference is less significant than it might appear.

In China’s legal system, courts and judges generally hold little of the power and prestige that American courts and judges possess. Instead, they function much more like the civil service where their legal work is the subject of review by higher ranking judges in much the same way bureaucratic processes are. The judiciary is also strictly monitored and controlled by the communist party hierarchy, with appointed party officials present in every department and component of the courts. Judges are expected to ensure not only that they follow the law but also that their decisions conform to party doctrine and policy, with party policy usually prevailing in conflicts. Conversely, the courts’ ability to restrain or command the party-controlled bureaucratic apparatus, not to even mention organs of coercive state power such as the public security bureaus or the military, is very limited or even non-existent in sensitive areas of government policy.

As an additional challenge, China’s environmental laws are almost exclusively enforced through administrative processes rather than judicial ones. Chinese courts can become involved in the enforcement of administrative orders issued by EPBs. However, there are at present none of the extensive civil judicial enforcement processes seen in the United States. Criminal prosecutions for environmental violations focus primarily on crimes associated with natural resources, such as wildlife and forestry laws. Prosecutions for serious pollution violations are rare.129

Thus, low levels of involvement by the judiciary and other legal institutions in environmental enforcement suggest that a mechanism for engaging the public in enforcement might not be effective if deposited in judicial processes. Likewise, it would seem inappropriate to entrust a government accountability mechanisms to the judiciary when that institution has little power over the bureaucrats whom it would be expected to take to task. Instead, given the reality of China’s political and legal system, such a citizen participation mechanism would, by necessity, look to opportunities to engage with the executive authorities and government bureaucracy instead. In other words, while the American system relies on the judiciary as the appropriate means to supervise bureaucratic and administrative processes because of the robustness of the rule of law in its system, the fragility of the rule of law in China arguably makes that option unattractive. Instead, a system that enables citizens to appeal to higher-level, more powerful decision-makers within the bureaucracy and the executive branch would likely be favored.130

It is the gap between law-on-the-books and law-in-action in China as well as the different roles of legal institutions and the rule of law within the larger governmental system that make all the difference. Even though one mechanism operates in the administrative-bureaucratic branch of government while the other one in the judiciary, both are positioned in similar relationships to sources of effective power and oversight. In fact, locating them in different structures of the government can arguably be seen as critical adaptations to the particular political and legal

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129 McElwee, supra note ___, at ___.
130 It should be noted that even in the American system, the Administrative Procedure Act provides a petitioning mechanism for citizens to prompt regulatory actions by agencies. See ______.
context within which they are embedded. Their overriding functions, as mechanisms to be invoked when ordinary bureaucratic processes have failed to address environmental problems and violations, remain the same. Thus, one might describe the environmental complaint system as a form of public participation in the compliance and enforcement process with “Chinese characteristic.”

Of course, one must be careful not to overstate the similarities. But functional parallelism opens up opportunities for valuable comparative evaluation. It allows us to examine at least three issues in greater depth that any mechanism of environmental public participation must contend with: 1) efficacy of protecting the environment and public health; 2) efficacy as a device for engaging the citizenry in environmental governance; and 3) efficacy in promoting a system of good governance and the rule of law with respect to the environment.

5.2. Efficacy of Strengthening Enforcement and Protecting the Environment and Public Health

There can be little doubt about the positive impact of the American environmental citizen suit system in protecting the U.S. environment. By one study, citizen suits resulted in at least $1.19 million in civil penalties for Clean Air Act and Clean Water Act violations for the 1996 to 2001 time period and approximately $9.45 million worth of supplemental environmental projects for the 1999-2001 time period.\textsuperscript{131} In fact, as Jim May has noted in his version of a widely-held view among environmentalists, “environmental citizen suits have left an indelible imprint on modern federal jurisprudence,” helping to shape the course of America’s modern environmental legal system.\textsuperscript{132} In other words, citizen suits have had overwhelmingly positive impact in shaping the U.S. environmental regulatory system for protection of the environment and public health.

Official accounts of China’s environmental complaint system suggest that it has been successful as well. Officials report a surprisingly high level of successful resolution of complaints lodged, over 90% as a national average and in some jurisdiction even over 95%.\textsuperscript{133} It has reportedly enhanced government legitimacy. And some officials have noted that the creation of the formal complaint process has increased citizen participation, generated information that has allowed for more timely responses to pollution and environmental emergencies, improved enforcement efficiency, and enhanced the scientific basis of environmental decisions.\textsuperscript{134}

On the other hand, some of the English language research studies have provided less positive assessments, indicating that the environmental complaints were not a reliable source of

\textsuperscript{131} See May, supra note \textsuperscript{___}, at table 7 & 8, at p. 10713.

\textsuperscript{132} He notes, for example, that over the first 30 years of the modern US environmental law system, federal courts have “cited just five environmental citizen suits more than 10,000 times.” See May, supra note \textsuperscript{___}, at 10706 (2,728 for Sierra Club v. Morton, 1,882 for Tennessee Valley Authority v. Hill, 809 for Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc., 3,916 for Lujan v. Defenders of Wildlife, and 603 for Laidlaw).

\textsuperscript{133} See table 1 and discussion in section 4. However, it is not clear what resolution means or how reliable those numbers are, given prevailing concerns about the validity of statistical information in China.

\textsuperscript{134} See discussion supra, section 4.
information with respect to environmental problems and pointing to the system’s significant opportunity costs. Even the Chinese language studies identified significant dissatisfaction with substantive environmental resolution of complaints as the underlying reasons for leapfrog, repeat, and collective complaints.  

As noted previously, some of the substantive failings of the environmental complaint system have been attributed to flawed EPB responses – helping to obtain compensation for the pollution victims or imposing monetary penalties on the polluter but failing to substantively abate the pollution emissions or otherwise remediating the underlying environmental problem or public health threat. Suggested solutions include enhancing the responsiveness of EPB officials to environmental complaints, for example by establishing a “leader reception day” where EPB leaders would take turns to receive and handle complaints in person or implementing a leader responsibility system that would hold EPB leaders personally responsible for the satisfactory resolution of major complaint cases and of ones transferred from a higher-tier authority. 

Such issues, however, also point to potential limitations inherent to the citizen complaint process. First, consistent with the historical origins in the Xinfang practice, the complaint mechanism is seen primarily as a grievance resolution process, intended to respond to the particular complainant’s concern, usually for compensation or remediation of some other personal wrong. As a result, EPB responses focus on personal harm concerns of the particular complainant or the wrongfulness of the polluter’s actions. The broader public interest in addressing public health risks or abating pollution is almost of secondary importance. In contrast, in the American citizen suit process, it is the public interest environmental protection that is of foremost concern.

Second, because the mechanism relies on citizen reporting to identify environmental problems, it is also limited by the capabilities of ordinary human senses, such as sight, smell, taste, or their bodies’ physical reactions to determine environmental problems. Accordingly, environmental issues that are directly perceivable dominate the complaint statistics. As discussed previously, nuisance noise problems such as noisy air conditioning motors on apartment buildings constitute one of the two largest categories of environmental complaints. Similarly significant in number are air pollution complaints, though the type of pollution raised most frequently was smoke and odor associated with food and entertainment establishments. 

Yet, many EPBs have adopted a public goal of responding to all citizen complaints as rapidly as possible. As Mara Warwick observed, EPB officials are “obligated to investigate these complaints simply because they have been made, not because they represent important

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135 See discussion in section 4.
136 See discussion in section 4.
137 At least one leader would be available each week and the detailed schedule of the leader reception days including the name, title, location, and timing of individual leaders would be made available to the public and local media outlets. Lin el at, 2003; Feng, 2009; Niu et al, 2004; Cui, 2008; Zhang, 2003.
139 See discussion in section 3.2 and table 1.
140 See, e.g., Tang, supra note ___, at slide 8 (indicating that cases normally processed within 8 hours and conducting investigations within 5 days).
environmental issues.”\textsuperscript{141} “Resolution of [complaints] may improve the quality of life of individual complainants without having a notable effect on the environment.”\textsuperscript{142} While such rapid response objectives may constitute good customer service, the tremendous increase in the utilization of the environmental complaint mechanism can also be viewed as contributing to a misallocation of resources, diverting already-constrained EPB inspection and enforcement staff and time away from the critical task of collecting information and conducting enforcement of regulations affecting serious public health issues, focusing them instead on nuisance matters.\textsuperscript{143}

By comparison, in the American system, the great majority of noise and smoke/odor complaints associated with restaurant and entertainment establishments would ordinarily be treated as nuisances, subject to common law nuisance or tort actions. They would not ordinarily be the subject of federal and associated state pollution regulation, such as under the Clean Air Act, and therefore would not usually be the subject of citizen suits or enforcement actions by EPA or state environmental agencies. The contrast with respect to noise issues is especially telling. While EPA was initially involved in the implementation of the Noise Control Act of 1972, its Office of Noise Abatement and Control was closed down in 1981 and “primary responsibility of addressing noise issues was transferred to State and local governments.”\textsuperscript{144}

These observations are not intended to belittle the human impacts of noise and smoke or odors. Such effects can be non-trivial and be associated with serious health consequences in some circumstances.\textsuperscript{145} Nevertheless, it seems appropriate to question whether the scientific and technical resources of an expert agency with the mission to protect public health and environment are best utilized in this fashion, especially when some of the most serious public health hazards posed by pollution or toxic chemicals cannot be perceived by ordinary human senses.

5.3. **Efficacy in Engaging Civil Society**

Another common expectation of public participation systems is that they advance citizen engagement in environmental governance. When they are effective, they promote environmental values and empower communities to take responsibility for the quality of their own environment. As a less constructive, though still valuable use, it can also serve as a non-violent outlet for venting citizen frustration with pollution.

In the American system, citizen suits have empowered environmentalist and given the public interest environmental movement not only the means to force agency action but also a

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\textsuperscript{141} Warwick and Ortolano 2007.
\textsuperscript{142} Warwick and Ortolano, supra note ____, at 250.
\textsuperscript{143} Warwick and Ortolano 2007; Dasgupta and Wheeler 1996.
\textsuperscript{144} See Noise Pollution, US EPA, available at http://www.epa.gov/air/noise.html. “However, EPA retains authority to investigate and study noise and its effect, disseminate information to the public regarding noise pollution and its adverse health effects, respond to inquiries on matters related to noise, and evaluate the effectiveness of existing regulations for protecting the public health and welfare.” Id.
\textsuperscript{145} As a recent World Health Organization report indicates, noise pollution has the potential for adverse health consequences. See BURDEN OF DISEASE FROM ENVIRONMENTAL NOISE: QUANTIFICATION OF HEALTHY LIFE YEARS LOST IN EUROPE, WORLD HEALTH ORGANIZATION (2011), available at http://www.euro.who.int/__data/assets/pdf_file/0008/136466/e94888.pdf.
strategic tool to shape agency regulatory agendas and priorities. Professor May has even gone as far as saying that “citizen suit litigators have inspired, and help support, public interest advocacy worldwide.”

Assessment of China’s environmental complaint mechanism with respect to civil society engagement is more difficult. The city of Chongqing’s EPB has indicated that at least its environmental complaints telephone hotline has reportedly “enhanced enthusiasm for citizen participation” and increased “awareness [of] environmental laws and regulations.” Furthermore, the almost seven-fold increase in environmental complaints since the 1990s, from 105,309 in 1992 to 738,304 in 2009, in itself suggests success in making the population aware of the mechanism and creating a sufficient level of trust for the public to utilize it. In addition, the ability to seek further review, in essence appeal, in the event of an unsatisfactory EPB response allows for environmental activism in ways similar to that promoted by citizen suits. Regardless of the outcome, the complaint system remains also an important means by which the public can vent its grievances to government officials. In essence, it can provide complainants with what one might analogize to the American idea of giving everybody their “day in court,” an important end in itself irrespective of whether the plaintiff wins or loses.

There is, however, a flip-side. The Chinese studies’ explanation of repeat, leapfrog, and collective complaints indicate that the substantive grievances of the complainants are not resolved by government intervention. Yet, Chinese citizens keep filing petitions, sometimes for years or even decades. The implication is that the complaint system, just as the Xinfang system more generally, can foster over-reliance on government and a false sense that the government can take care of all problems as long as the complainant can only get to the right official or get them to take their concerns seriously. Rather than empowering citizens to be active and engaged in resolving environmental problems, over-reliance on the mechanism can lead to disappointment and breed cynicism and resentment in the long-term, undermining trust in the government. The significance of this risk is more difficult to assess in the absence of more information.

The nationwide data compiled on the utilization of the environmental complaint system and the research studies delving into it are in many respects a treasure trove of information about the current state of China’s environmental governance system. There is one other conclusion drawn from the data that stands out. The past two decades’ tremendous rise in the utilization of the mechanism represents one quantification of the rise in the Chinese polity’s concern about environmental issues. That trend suggests that Chinese citizens are not willing to simply trade environmental quality for economic development and jobs. In other words, even if economic development is important, China’s people are expressing through the complaint mechanism that the environment also matters to them.

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146 See May, supra note ___, at 10706.
147 Tang, supra note ___, at slide 11.
148 In fact, the ubiquity and persistence of some petitioner, even depicted in the movie “The Story of Qiu Ju,” seems to confirm that assessment.
149 See discussion in section 4.
5.4. Efficacy in Promoting the Rule of Law and Good Governance

A third consideration relates to the complaint mechanism’s contribution to strengthening the rule of law and good governance generally. Citizen engagement can achieve such goals by encouraging interactions with legal institutions and channeling activism through legal processes. By demonstrating how the rule of law can vindicate the interests of activists, even holding government officials accountable, confidence and trust in the rule of law and legal institutions is built. Such positive interactions also reinforce rule of law values, the legitimacy of the system, and the broader sense of obligation to obey the law. Within the American system, that dynamic has led to the courts playing an important role in shaping the development of the environmental regulatory system and ongoing agency priorities.

China’s system is different. Its legal institutions and rule of law are far less robust than in the U.S., with the judiciary possessing only limited practical authority over the party-controlled bureaucratic apparatus. As explained above, resort to the Xinfang system generally, and the environmental complaint process specifically, to seek the assistance of higher level and influential communist party officials, seems a natural consequence, though anecdotal evidence suggests that environmental litigation is on the rise.150

Increasing utilization of the complaint mechanism suggests at least some level of trust in the system and in government officials. Unfortunately, the very nature of the Xinfang process is to seek the discretionary exercise of authority and power, a request for the personal intervention of higher level officials that is usually associated with the “rule of men” rather than the rule of law. Such a broad and regularized channel for the exercise of discretionary relief is inconsistent or at a minimum in serious tension with the rule of law.

Unfortunately, the primary rationale of the Xinfang system has always been to facilitate and enhance central government control over Chinese society. The rights and interest of individuals and local communities as well as the fostering of citizen activism, good governance and the rule of law have not been part of its designated functions. Even if the system were to be made to function more effectively, it may not necessarily advance the rule of law or other good governance values more generally.

Of course, the Xinfang system’s historical roots in the centuries-old imperial petitioning system predate the emergence of the modern rule of law and its introduction in China. In its current manifestation, the Xinfang system is used as an all-purpose governance tool to maintain social harmony and stability. Carl Minzner has specifically suggested that it serves as a “tripwire” mechanism to alert elites in the party and government about serious and widespread discontent that could potentially destabilize the country.151

From a “tripwire” perspective, the deficiencies of China’s environmental regulatory system revealed by the nature and types of environmental complaints are instructive – the difficulties faced by pollution victims to obtain remedial relief, including pollution abatement and compensation for harm, and the problem of local protectionism that contributes to

150 Moser and Yang, supra note __, at 1.
151 See Minzner, supra note ___, at 157.
widespread lack of implementation and enforcement of nationally applicable legal and regulatory requirements. Moreover, the nature of the complaints suggests that legislative reform is not enough, and that institutional reform is vitally necessary.

Simply fixing these institutional problems could make a tremendous difference for the effectiveness of China’s environmental regulatory system. The possibilities that such a perspective could bring to environmental governance reform is tantalizing. Unfortunately, this understanding of China’s environmental governance challenge has yet to be fully incorporated into reform efforts.

6. Enhancing the Effectiveness of Public Participation in Environmental Enforcement

What kinds of lessons can one draw for civil society engagement in environmental enforcement and governance from the operation of China’s environmental complaint mechanism? How can such lessons be used to reform the mechanism? We will take up these questions in this final section.

6.1. Implications for Public Participation in Environmental Governance Processes

China’s environmental complaint system may be unique in its way of engaging the public in enforcement and other environmental governance issues. Nevertheless, its accomplishments and failures hold lessons for engaging civil society elsewhere.

The most obvious positive lesson of China’s system derives from its high utilization rate. It demonstrates that mechanisms of public participation in environmental enforcement need not be channeled through judicial processes, such as the environmental citizen suit system in the US. The American model is thus not the only credible institutional arrangement for engaging civil society in environmental governance processes. Other implications are more challenging to evaluate, however.

6.1.1 Public Participation Processes Embedded in Broader Framework of Governance

Comparative assessment of the Chinese and the U.S. systems reveals how deeply public participation is embedded in and connected to larger systems of environmental governance and the rule of Law. While public participation has intrinsic value, its instrumental role and effectiveness depends critically on its relationship to other processes and institutions. Change the broader institutional context, and public participation is likely to have very different effects and functional roles. In the U.S., civil society has been an important factor in advancing good governance and the rule of law. In China’s environmental complaint system so far, that has arguably not been the case.

Regardless of the institutional context, the complaint statistics unequivocally demonstrate that there is significant interest in environmental issues and concern about pollution problems -- in essence, that there is widespread demand for environmental protection. Even if that does not avoid the tough trade-offs that countries such as China must make with respect to economic
development and environmental degradation, there is no questions that China’s citizens are concerned about the state of their environment.

6.1.2. Channeling Public Participation in Environmental Enforcement and Governance

Comparative assessment also shows that citizen activism can be far more effective if it is appropriately channeled. As the foregoing discussion has demonstrated, high utilization rates of the complaint system have had some troubling resource allocation consequences, potentially driving environmental officials to spend significant amounts of time and resources on issues that are primarily of a nuisance nature. The lodged concerns may be genuine. But it seems that an organizational set-up without the technical and scientific specialization of EPBs would be sufficient to sort and address many of the complaints, with only those involving substantial environmental issues forwarded on to the EPB.

Within the American system, the problem of ordinary citizens understanding the scientific and technical complexity of environmental problems is alleviated in part through the vibrancy of civil society and the multitude of environmental or public health NGOs that have developed technical and scientific expertise in these areas. In essence, these parts of civil society channel citizen activism by helping to articulate problems in a way that technically untrained individuals can understand and by giving voice or acting as advocates for them. In other words, such parts of civil society can help advance the broader public interest that might not always emerge from ordinary government processes.

Environmental and public health NGOs and other parts of civil society can thus help channel and make citizen activism more effective, especially when the issues are technically or scientifically complex. Unfortunately, civil society organizations with sufficient technical or scientific expertise, such as Ma Jun’s Institute of Public and Environmental Affairs, are rare in China.

Government could also supply the public with relevant environmental and public health information in a form that is accessible and understandable to the untrained. It could also provide financial or other support for the creation and operation of technically-scientifically expert NGOs. But as China’s system of government-sponsored NGOs (“GoNGOs”) suggests, the possibility of a close relationship with the government can impede the ability of civil society to play a stronger advocacy roles that could give voice to interests and perspectives critical of the government or otherwise hold government officials accountable.

Finally, the American system suggests one more possibility regarding “channeling.” By providing civil society with a fairly specific tool, the citizen suit, and specific claims that can be asserted under the environmental statutes, the environmental statutes themselves channel citizen enforcement activism in particular ways.

6.1.3. Diversion of Scarce Agency Resources

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152 Simple compliance/violation information about polluters, including frequency of violation, could for example be one category of information that can be easily understood by the public.
Finally, China’s environmental complaint system reveals that “unchanneled” public participation can have unintended effects. Since ordinary human senses are limited in their ability to detect many of the pollutants or chemicals that pose the most serious public health hazards, the mechanism may not necessarily spur government enforcement in ways that optimally advances environmental and public health objectives. In fact, to the extent that complaints focus on nuisance issues, they can actually impede government strategies to address the most serious pollution, creating risks that scarce government resources are misallocated.

The risk of diversion of scarce government resources from government-set priorities to priorities advanced by civil society organizations is arguably inherent to providing civil society with tools to influence government processes. In the nature of non-governmental organizations and the value of preserving their autonomous role in environmental governance lies the possibility of disagreement with government policies. However, various experiences suggest possibilities for reform, and we will discuss such options in the next section.

6.2. China’s Environmental Complaint System

Our research and other studies make clear that China’s environmental complaint system has only limited impact on enhancing the effectiveness of China’s environmental governance system. Nevertheless, by serving as a pathway for civil society and individual citizens to access government officials and raise environmental concerns, it has become a valuable governance mechanism. Its ubiquity and widespread use in China also suggest that public concern about environmental issues is great and that there is still potential for civil society to contribute more significantly to improving environmental quality in China.

To be sure, much of the complaint mechanism’s limited effectiveness in enhancing environmental protection efforts is ultimately due to deficiencies elsewhere. As a supplementary governance mechanism, it is designed primarily to work within the existing system and thus is limited by the effectiveness of the remainder of the system. If EPBs do not have the necessary regulatory or enforcement tools or if the broader system of rule of law and legal institutions is not sufficiently robust, the environmental complaint mechanism is unlikely to overcome those impediments on its own. However, civil society engagement can spur EPBs and other government agencies to use the tools that they do have at their disposal more effectively and to perform better. Below, we describe three separate options that approach the effectiveness question from that perspective.

6.2.1. Enhancing the Effectiveness of Reporting and Follow-up

One set of challenges for the complaint mechanism arises out of the overwhelming number of complaints raising nuisance-type concerns — issues that may be of low significance in terms of danger to human health and harm to the ecological system. One response option might be to provide EPBs with greater discretion on how to address and follow-up with particular complaints, including timing and prioritization. It would enable EPB officials to implement a more coherent enforcement agenda. The greatest challenge of such an approach, however, would be devising a mechanism by which EPB officials would remain accountable for the exercise of their discretion and to narrow discretion so that it would not be unfettered.
A more promising approach may be to change how citizens make use of the complaint system in the first place, so that staff responses and time are focused on areas deemed most important in terms of public health and environmental risks. One innovative model has been the use of financial incentives to reward individuals who report the violations subsequently verified by the EPB investigation to be valid.153 This innovative approach first emerged in Fuyang, a county-level city in Hangzhou city of Zhejiang Province, which successfully utilized an environmental cash reward informant program to channel complaints into more constructive areas.154 Fuyang’s cash reward system encouraged complaints and information that substantively advances the EPB’s environment and public health mission, and conversely discourage (but still allow) complaints that lack merit.

Under the Fuyang program, if a citizen’s report is valid and results in an administrative punishment including a penalty for the pollution source, the government will grant a monetary reward to the citizen who first notified the EPB. The types of violations that qualify for cash rewards are those which have a large impact on local environmental quality and are often difficult for local EPBs to detect. Noise pollution complaints, which make up a majority of reports through the “letters and visits” program, are not eligible for financial rewards.155 Specifically, reports involving the following violations were eligible for cash rewards:

- Violating “Three Synchronizations” requirements
- Not operating at [all] or not regularly operating pollution control facilities.
- Resuming production without EPB’s approval. This often applies to “The Fifteen Small” enterprises that were ordered by the city government to close down or to stop production.
- Not meeting abatement deadlines but nonetheless continuing production. This often applies to enterprises that were given abatement deadlines by the city government.156

By the end of 2003, three and half years since [2000,] the start of the program, the Fuyang EPB had received 3,074 reports. The EPB deemed that 1,103 of the reports were valid and qualified for rewards. As a result, the EPB collected roughly 8.5 million Yuan ($1 million in 2004) in penalties and granted the informants 1.9 million Yuan ($237,000) in rewards. As of 2007, a total of approximately 3 million Yuan of rewards had been issued.157

155 Xuehua Zhang, supra note ___, at 135, 138, 139.
156 Xuehua Zhang, supra note ___, at 144.
157 Xuehua Zhang, supra note ___, at 135, 138, 139.
Cash rewards were primarily awarded for information on “illegal discharges of wastewater.”

Overall, the Fuyang EPB’s program appears to have been successful so far, leading to higher levels of compliance and rising levels of environmental quality. Publicity and news reports surrounding the Fuyang program have led a number of other provincial EPBs to adopt similar cash reward programs. Interestingly, the Fuyang program has also given rise to professional environmental informants, a group of individuals who have made a substantial living providing information on violations.

6.2.2. Enhancing Transparency in China’s Environmental Governance System

There are also broader, institutional steps that could be taken to enhance the complaint system’s effectiveness. One is a broadening of efforts to enhance transparency of the environmental governance system, especially pollution release and environmental compliance information.

For some time now, the Ministry of Environmental Protection has made some pollution information available on its website, including air quality data. In 2009, MEP issued regulations that enhanced citizen access to environmental information. Some accounts have indicated that these efforts have been successful in strengthening environmental information disclosure, though implementation appears to vary depending on the jurisdiction. Expansion of such efforts, especially through systematic and affirmative disclosure of pollution and compliance data, similar to the U.S. Toxic Release Inventory, would enable the public to obtain a more sophisticated understanding of the actual state of environmental quality as well as the compliance behavior of the regulated industry. Ultimately, it would educate the public as well as foster greater citizen engagement.

6.2.3. Strengthening the Courts and Rule of Law

Finally, steps strengthening legal institutions, especially the courts, and the rule of law could have a profound effect on enhancing the effectiveness of citizen participation. Promoting

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158 Id.

159 Id. at 146-147. In addition to the cash reward itself, there were also certain enabling conditions present, including solid local government support, guaranteed funding for rewards and the program operation, sufficient implementing resources, publicity, transparency, and confidentiality that were important factors contributing to the perceived success of the program. In fact, key to the program’s success was, arguably, the local Party Secretary who helped shepherd the program’s development so it was sustainable, transparent, and sufficiently staffed and funded. Id. at 151. In other words, replication of this effective cash reward informant program by another local EPB would ultimately need to secure strong support from the local government leadership and to consider these critical factors in program design and implementation.

160 Id. at 139.

161 Id. at 147.

162 Measures on Open Environmental Information (For Trial Implementation (adopted by Ministry of Environmental Protection of China, effective May 1, 2009).

greater utilization of the courts, whether through traditional environmental tort litigation or by formally permitting and encouraging public interest litigation, would give civil society a wider range of tools to advance the public interest.

A number of relevant efforts have been initiated, though it is unclear how broadly they are supported within the government at large. For example, there seems to be growing interest in cases described as forms of “public interest litigation,” because they have purported to stop pollution not only to obtain compensation for its victims but also to protect the environment more generally. However, legal grounding of such cases and their status remains unclear. The Supreme People’s Court appears to be engaged in considering regulations that would govern such public interest litigation, which would provide further legal support for them.

A further positive development in this regard has been the creation of specialized environmental courts by various provinces. These specialized courts have been designed to enhance court expertise on environmental matters, creating judicial specialists in environmental issues and thus enabling them to render higher quality decisions in environmental cases. They also constitute governmental recognition of the importance of environmental problems. While the number of environmental courts is growing, the central government has yet to formally lend its support to these efforts.

Most critical, however, is arguably the need for greater access to trained environmental lawyers, especially increasing the number and impact of public interest environmental advocacy organizations such as the Center for Legal Assistance to Pollution Victims, which would allow civil society to engage the government and the legal system more effectively. An environmental bar, consisting of individuals trained in the operation of environmental law who can effectively advocate civil society interests or hold public officials accountable, has largely been non-existent or is only in the very early stages of development. Training of environmental lawyers by law schools, the bar, and environmental organizations such as the Center for Legal Assistance to Pollution Victims, is ongoing, but such efforts could clearly benefit from greater government support.

Ultimately, broad efforts to strengthen the role of the courts in environmental adjudication and enforcement actions, the availability of environmental lawyers to assist the public in asserting their claims, and clarification of the legal authority of private citizens to act as private attorneys general to assert the broader public’s interest in environmental quality and environmental law compliance is likely to enhance the ability of civil society to be engaged in environmental enforcement and governance.

7. Conclusion

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164 See Jie Gao, supra note ___.
165 However, the Supreme People’s Court recently recognized the need for such tribunals in the lower level courts and the authority to do so. See 关于为加快经济发展方式转变提供司法保障和服务的若干意见, #13, Jun. 29, 2010, http://news.xinhuanet.com/legal/2010-07/02/c_12288361.htm.
China’s environmental complaint mechanism is a uniquely structured public participation mechanism embedded in a legal and political structure that differs significantly from what American environmental lawyers are familiar with. These differences, however, are necessitated by the significant gap in China between law-on-the-books and law-in-action and the different role of legal institutions and the rule of law within the governmental system. In effect, both the U.S. citizen suit mechanism and China’s environmental complaint mechanism, each in their own way, have been positioned in similar relationships to sources of effective power and oversight so that civil society can utilize them to participate in environmental governance processes. From this vantage point, a comparative analysis yields useful insights.

For example, a careful review suggests a non-trivial argument that China’s environmental complaint mechanism has actually made it more difficult for officials to protect public health and the environment and that its effectiveness in strengthening environmental enforcement and compliance as well as in promoting the rule of law and good governance is questionable. However, there is also little doubt that the mechanism has enjoyed great success as a tool for the public to voice its concerns and frustrations with the environment, promoted environmental awareness, and engaged civil society in environmental protection activities.

Gaining a better understanding of the structure and operational characteristics of governance tools such as China’s environmental complaint mechanism provides important insights into governance processes. In the process, we learn not only about China’s system but also our own. By forcing us to look beyond our own governance system and question legal structures and premises underlying them, including our governance system’s uniquely heavy reliance on the judiciary and the rule of law, we expand our imagination of public policy and the universe of possibilities. In the end, China’s environmental complaint system is just one version of public participation in environmental governance processes, albeit with Chinese characteristics.