



**WSP ENVIRONMENT & ENERGY CHINA:
REGULATORY UPDATE SERVICE**

Soil Contamination Regulations and Tort Law Development

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EMERGING SOIL CONTAMINATION REGULATIONS AND TORT LAW

Recent news in China has drawn greater attention than in the past to domestic concerns and regulatory enforcement actions in the area of environmental protection. While most news reports have focused on air and water pollution issues which are visible and serious public health threats, China has also now implemented the beginnings of legal infrastructure necessary for protection of soil and groundwater, and enforcement of soil and groundwater standards on private parties.

Due to the widespread disregard of soil and groundwater quality in China over the last several decades, soil and groundwater quality in many areas of China, whether urban, suburban, industrial or agricultural, does not meet Chinese and/or international quality standards. The adoption of laws in China which assign responsibility for existing contamination therefore has significant implications for investors or others doing business in China where real estate is involved.

The following paragraphs provide highlights of unofficial translations of four recent regulatory developments in China and links to the source documents (Chinese only) from which these highlights are derived.

Following these, WSP provides some general recommendations for any company involved in buy, selling or leasing property in China, for any purpose.

1. Summary of “Opinion on Strengthening the Prevention and Treatment of Soil Pollution” and the “Polluter Pays” principle issued by the Chinese Ministry of Environmental Protection on June 6, 2008.

This opinion states that contaminated soil or groundwater should be remediated by the polluting party or individuals. If the party that caused the pollution has changed due to restructuring, mergers or separation, the liability for remediation falls on the party that inherited the creditor’s right and debt in accordance with the law. If there is an agreement in place, the agreement should be followed. If the party has the right to transfer the land-use right, the transferee is responsible for land remediation. However, the liability of the party cannot be exempted even if the responsible party or individuals has been terminated or cannot be identified due to historical and other reasons. If the responsible party is not found or no longer exists, contaminated soil and groundwater should be remediated by the local municipal government.

Link to source document: http://www.gov.cn/gzdt/2008-06/15/content_1016959.htm

2. Tort Law- Chapter VIII: Liability for Environmental Pollution (issued on July 1, 2010)

Article 65: When any harm is caused by environmental pollution, the polluter shall assume tort liability.

Article 66: When any dispute arises over environmental pollution, the polluter shall assume the burden of proof of liability or that its liability could be mitigated under certain circumstances as provided for by law. Or, the polluter shall prove that there is no causation between its conduct and the pollution disputed.

Article 67: When the environmental pollution is caused by two or more polluters, the degree of liability of each polluter shall be determined according to the type of pollutant, volume of emission and other factors.

Article 68: When any harm is caused by environmental pollution due to a third party, the victim may require compensation from either the polluter or the third party. After making the compensation, the polluter shall be entitled to reimbursement from the third party.

Link to source document: http://www.gov.cn/jlfq/2009-12/26/content_1497435.htm

3. Draft Soil Pollution Control Law (issued in 2010)

The “Soil Pollution Control Law” is the first Chinese law addressing soil pollution and is anticipated to be issued in next few years. During this period, a transitional regulation “Interim Measures on Soil Environment Management of Contaminated Sites” will be issued. It is recommended that liability for historical site contamination issues be clearly identified and isolated before finalization of an acquisition of a property by a new owner. A draft of this regulation is available and several key articles are summarized below:

Article 2 (applicable scope): this measure is applicable for the supervision of environmental site assessment, remediation and other relevant activities when the land use or land owner of the contaminated site changes in China.

Article 4 (land use change): land use change mentioned in this measure refers to the contaminated site being developed for residential, commercial, school, park, green space, playground, agricultural land development or other sensitive purposes.

Article 7 (definition of responsible party of the contaminated site): responsible party of contaminated site refers to the party that contaminates the soil at the site or the party that has the right to use the contaminated site.

Article 8 (Liability of responsible party of the contaminated site): responsible party of the contaminated site shall bear relevant liability, including carrying out environmental site assessment, remediation and pay relevant costs.

If the contaminated site owner or land use rights changes because of acquisition, merging or divestiture, the liability for carrying out environmental site assessment and remediation of the contaminated site shall be transferred to the party that inherits the

claims and liabilities. If there is any agreement in place, relevant liability should be based on this agreement. However, the liability of the inheriting party on carrying out environmental site assessment and remediation cannot be exempted.

If the responsible person of the contaminated site cannot be identified because of historical reasons, the local government is responsible for carrying out environmental site assessment, remediation and bearing associated costs.

Link to source document:

http://www.mep.gov.cn/pv_obj_cache/pv_obj_id_103ED38827A3B3E3453C38D4092B45441E7C0300/filename/W020091223431801518384.pdf

4. Soil Reclamation Regulations (issued on February 22, 2011)

According to this regulation, soil damaged during industrial activities shall be reclaimed by the company or individual that is responsible for the industrial activities.

Link to source document:

http://www.china.com.cn/policy/txt/2011-03/12/content_22115723.htm

Actions recommended:

Any company involved in buy, selling or leasing property in China, for any purpose, is generally recommended to:

1. Ensure you or your company have a clear understanding of any potential or known soil or groundwater contamination which may be associated with land which you acquire or use in China. The most reliable basis for a determination normally involves retaining a qualified firm to develop a sampling plan, collect samples of soil and groundwater, and have the samples analysed at a reliable and Government-certified laboratory in China.
2. Ensure that contracts entered in to for purchase or lease of land in China clearly assign responsibility and accountability for soil and groundwater pollution; avoid inadvertently taking responsibility for pre-existing contamination.
3. Ensure that operations conducted under your control or management strictly comply with applicable Chinese environmental guidelines and standards in order to minimize the potential that such operations create a contamination liability for which you or your company may later be held financially, legally and/or criminally accountable.

NOTE: The advice and guidance contained in this document is not intended as legal advice. WSP is a management and technical consultancy, and as such is not licensed to provide, nor is it in the business of providing, legal advice. If legal advice is required, a qualified law firm should be consulted.

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WSP ENVIRONMENT & ENERGY

ABOUT US

WSP Environment & Energy has 3 offices in China, with specialists providing advice on all aspects of environmental, energy, sustainability, climate change, and business risk issues.

Part of WSP Group, a 10,000 strong global consultancy, few offer WSP Environment & Energy's breadth of expertise. It ranges from remediation of contaminated land to devising corporate climate change adaptation strategies and from geotechnical solutions to city masterplanning and renewable energy strategies. It is a broad list and we draw on best practices from across the world to deliver world-class solutions to Greater China.

We have 300 employees in the region, with strong representation in Shanghai, Beijing, Shenzhen, Singapore, Manila and Hanoi, in addition to Hong Kong.

WSP Asia's experts and engineers have been responsible for a large number of landmark infrastructure, manufacturing and building projects throughout Asia. Success is based on our comprehensive regional presence, our understanding of local cultures and our knowledge, supplemented by world class resources from across our global business.

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- Industrial Hygiene Surveys (IAQ, Lead and ACMs)

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