

ARTICLE

THE LAWS, POLICIES, AND POLITICS OF REGULATING LEAD POLLUTION IN CHINA

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This article examines the politics, laws and policies related to regulating lead pollution from lead-acid battery related manufacturing facilities in China. Particularly, this paper examines how China’s Ministry of Environmental Protection (MEP) was able to force the temporary closure of nearly 90 percent of lead-battery manufacturing facilities within a period of months in 2011, after years of enforcement failures. The authors analyze the extent to which the Government’s response to address lead pollution was based on laws and policies that can be systematically and consistently deployed by MEP as needed, or whether such measures are reliant on political will from outside MEP. Additionally, the authors are concerned with the extent to which China’s governance response to lead pollution primarily addresses environmental and public health issues; or rather it primarily addresses political and economic development issues, and whether this difference is significant. The article makes suggestions for how China can improve its environmental enforcement, and in so doing, contributes to a growing field of scholarship that examines environmental governance issues in the context of developing countries.

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INTRODUCTION

In the years and months leading up to May 2011, news of the latest mass lead poisoning incidents seemed to appear weekly in China's domestic media. Villages and schools were discovering that they were being poisoned by nearby factories. In some cases, this led to violent confrontations between victims and polluters. The culprits were primarily battery factories, lead processors and smelters, which expanded rapidly and haphazardly over the past decade.¹ Regulating thousands of small lead-battery factories, some of which avoided official registration, and or were under the protection of local governments would be an enforcement challenge for any regulator. This is especially the case in China, where environmental rule of law is weak and enforcement duties are primarily carried out by local-level bureaus that lack incentive, independence, and in some cases capacity.

The central government's initial regulatory response to these mass incidents of environmental poisoning was enhanced rhetoric and calls for increased inspections of lead and heavy metal processing facilities.² Unfortunately, the government's pleas to industry and local leaders for the increased attention to the lead pollution had little discernible effect until May 2011.

On May 18, 2011, MEP released a notice that threatened to withhold the Ministry's technically requisite approval for all environmental impact assessments (EIAs) for all future construction projects in those regions where lead related industries were endangering public health or in noncompliance with laws and policies.³ On May 20, MEP released another notice that applied this restriction on EIA approvals to all new construction projects in Huzhou City, Zhejiang Province, where a high-profile lead poisoning incident occurred.⁴ What followed was an unprecedented "environmental

¹ From 2004 to 2010, lead battery production increased 133% in China. Health and Environmental Impacts of Lead Battery Manufacturing and Recycling in China, 2011, at 5–6, at <http://www.ipe.org.cn/Upload/Report-Battery-II-EN.pdf> (last visited Oct. 3, 2013).

² See *Guidance Notice of the State Council Forwarded to the Ministry of Environmental Protection and other Departments on Strengthening the Heavy Metal Pollution Prevention*, No. 61, [2009], General Office of the State Council; *Notice on Launching Special Inspections of Heavy Metal Polluting Enterprises*, No.112, [2009], General Office of MEP, Sep. 29, 2009, at http://www.zhb.gov.cn/gkml/hbb/bgt/200910/t20091022_174813.htm (last visited Oct. 3, 2013).

³ *Notice on Strengthening the Pollution Prevention and Control of the Lead-Acid Batteries and the Secondary Lead Industry*, No. 56, [2011], General Office of MEP, May 18, 2011, at http://www.mep.gov.cn/gkml/hbb/bwj/201105/t20110519_210865.htm (last visited Oct. 5, 2013).

⁴ *Notice to Stop Environmental Impact Assessment Approval of Huzhou City*, No. 584, [2011], General Office of MEP, May 20, 2011, at http://www.zhb.gov.cn/gkml/hbb/bgth/201105/t20110524_211053.htm (last visited Oct. 4, 2013).