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China Environmental Legislation Outlook: 2008 and Beyond

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Overview

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What Is Special in 2008?

- Environmental issues have reached a new “profile plateau” in China.
 - Since the Songhua River benzene spill accident, environmental protection in China have become a more political issue from a primarily technical issue.
 - This signals the end of over 20 years of a technocracy at the national environmental agency and the emergence of or surge in the politicization of environmental protection.

What Is Special in 2008?

- Environmental rule-making and enforcement has reached a level that has never been seen in the history of China.
- Regulatory community has observed much more frequent and intense environmental rule-making efforts.
- Such rule-making efforts often involve multiple agencies and multiple levels of governments.
- At least in some jurisdictions of China, the situation of “weak enforcement” is being changed in at least some areas of environmental laws.

What Is Special in 2008?

- The national-local government relationship in the environmental area has also become somehow sensitive.
 - The Songhua River benzene spill triggered serious concerns of senior government decision-makers on issues involving the national-local relationship.
 - Officials at the local level face pressures involving increasing intervention by national government inspectors.
 - Officials at the national level is still facing the not-yet-eased local protectionism.

What Is Special in 2008?

- Government reform in the horizon will likely bring significant changes in the area of environmental protection.
 - The March National People's Congress will re-structure China's environmental institution system.
 - The Ministry of Environment and the Ministry of Energy will likely be established with stronger regulatory capacity.
 - Provincial and local governments will likely follow the national institutional changes.

What Is Special in 2008?

- Public concern and media coverage on environmental issues have also reached new levels of intensity.
- “Environmental protection” is widely recognized as an issue drawing widespread public concern in China.
 - An increasing number of Chinese citizens appear to reflect this concern, despite the fact that they are not necessarily “victims” of environmental contamination.
- Chinese media organizations are given greater freedoms in the environmental arena, in particular, to explore environmental degradation and non-compliance with environmental law.

What Is Special in 2008?

- International influences will continue to play a important role in China environmental law and policy.
 - With the Beijing Olympics fast approaching, the international community is paying increased attention to Beijing and China.
 - International initiatives, in particular those of the European Union, will continue, at least partially, to influence and shape China's legislative and rulemaking agendas.

What Is Special in 2008?

- Electronic industry will continue to be a top target of regulatory efforts.
 - Electronic industry is perhaps the industry that have been experiencing fastest development in China.
 - Many officials believe, from economic affordability point, electronic industry is able to “go first”.
 - Chinese government sensitivity over e-waste issues has been fueled in recent years by widespread press reporting of “failures of the Chinese government to enforce illegal dumping requirements.

Key Initiatives Affecting the Electronics Industry

- Restriction of Hazardous Substances (“RoHS”)
- Take Back and Recycling of Electrical and Electronic Equipment (“WEEE”)
- Energy Efficiency and Government Procurement
- Development of Pollution Control Standards
- Circular Economy Promotion Law
- Other Initiatives

China RoHS

- Mr. Huang has provided more details on China RoHS issues.
- Industry have been taking great efforts to comply with the “phase I” requirements of China RoHS (labeling and information disclosure).
- Industry is also eager to involve the “Phase II” rule-making efforts of China RoHS:
 - Catalogue and EIP list revision
 - Certification
 - Further standard development

China WEEE

- Regulation on the Recycling and Treatment of Waste Household Electrical and Electronic Appliances (often referred to as “CHINA WEEE”) is a draft rulemaking, prepared by the National Development and Reform Commission (NDRC), that will result in a framework regulation promulgated by China’s State Council.
- NDRC hopes to complete the final draft China WEEE regulation within the next few months.

China WEEE

- Draft China WEEE applies to recycling and treatment of activities involving WEEE listed in a “Product Catalogue for Waste Electrical and Electronic Appliances Subject to Mandatory Recycling and Treatment” (the “Catalogue”), and associated items defined as WEEE.
- The first “batch” for China WEEE, per recent NDRC proposals, will be conveniently appended to the China WEEE regulation.

China WEEE

- The draft China WEEE appendix proposes to cover:
 - Televisions (black and white, color, overhead projection, plasma, LCD, and similar-use products);
 - Refrigerators (as well as freezers, household-use, with capacities under 500L, closed-type, electrical or non-electrical, and similar-use products);
 - Washing machines (as well as wringing-machines, household-use, with rated capacities under or equal to 13kg, electrical or non-electrical, and similar-use products);

China WEEE

- The draft China WEEE appendix proposes to cover:
 - Air conditioners (air or water-cooled condensers, for room-use, with totally enclosed engine compressors, with a capacity of under 14000w, and similar-use products);
 - Computers (constituting items such as microcomputers, desktop personal computers, certain process controllers, service processors, portable microcomputers (such as laptops and palm personal computers, and similar-use products).

China WEEE

- China WEEE focuses on regulation of “recycling” and “treatment,” as well as related activities. According to NDRC, “recycling” carries the sense of WEEE “take-back” or “collection” and “treatment” the meaning of WEEE “disassembly, re-use and disposal” and related management.
- Significant WEEE recycling and treatment burdens fall on manufacturers and other entities that handle used electrical and electronic equipment.

China WEEE

- “Manufacturers” would refer to enterprises that manufacture electrical and electronic appliances under the enterprise’s own brand name, and brand providers providing their brands for use by others.
 - Responsibilities for such entities would include:
 - Adopting recycling and reuse-favorable product designs and using non- or minimally hazardous materials in product designs.
 - Meeting (yet undefined) “recoverability ratios” for their WEEE.

China WEEE

- Responsibilities for such entities would include:
 - Disclosing on the product, or in product instruction books/manuals, product composition information as well as recycling and treatment instructions associated with the product materials.
 - Recycling WEEE via qualified sale and post-sale service entities and delivery of WEEE to qualified treatment enterprises.
 - Maintaining WEEE management “accounting systems” (records), retaining such records for at least three years, to submit to designated local authorities.

Energy Efficiency

–Energy Efficiency – General

- The most important energy efficiency programs in China currently include energy efficiency labeling, certification, and energy efficiency standards.
- Chinese government law and policymakers have indicated that resource conservation, in which energy efficiency plays a prominent role, should be a national priority in 2008 and beyond.
- A comprehensive energy statute, the Energy Law, has been put on the legislative agenda of the National People's Congress and the first draft has been completed and circulated for public comment.

Energy Efficiency

– Energy Efficiency – Standards

- China has developed about several dozen of energy efficiency standards for certain products such as air conditioners, washing machines, and some lighting products.
- Manufacturers and importers must meet these mandatory standards for their products.
- New energy efficiency standard development activities are underway which will cover other products, including IT products.

Energy Efficiency

– Energy Efficiency – Labeling

- The energy efficiency labeling program initially covers air conditioners, refrigerators and washing machines.
- It is likely the next batch of covered products will include other household appliance and lighting equipment.
- Manufacturers and importers are required to label their products with specified energy efficiency levels, which are differentiated by color and to make self-determinations of their products' energy efficiency levels.

Pollution Control Standards

- The State Environmental Protection Administration (SEPA) is undertaking extensive efforts to develop pollution control standards for the electronics industry.
- Given the highly technical nature of this standard drafting work, SEPA commissioned Chinese research institutes to assist with the drafting, including crafting the first drafts of the standards.
- Multinational companies were invited to participate in the standard development efforts, including contribution of technical expertise and financial resources for drafting workshops, etc.

Pollution Control Standards

- Current pollution control standards in the pipeline for the industry separately address:
 - Semiconductor manufacturing;
 - Component manufacturing (other than ICs);
 - Vacuum tube manufacturing (essentially, relevant CRTs/displays);
 - Electronic framework and component products (i.e., boards); and
 - Electronic end-product assembly.
- SEPA is also working on, in conjunction with these standards, Technical Provisions on Disposing of and Discarding Waste, Used and Defective Electronic Products.

Pollution Control Standards

- These standards set forth the maximum discharge concentrations for major water and air pollutants, as well as testing methods for determination of these pollutants.
- The drafts of most of the 6 standards included in the project have been completed. Currently, SEPA officials are reviewing these draft standards and will decide next steps of standard making processes.

Circular Economy Promotion Law

- The National People's Congress (NPC), China's highest-level legislative authority, added the "Circular Economy Promotion Law" to the NPC legislative agenda for 2007.
- This is an example of legislative developments influenced by, among other issues, China's resource depletion concerns.
- The NPC Environmental Protection and Resource Conservation Committee is the lead for drafting of this statute.

Circular Economy Promotion Law

- The NPC congresspersons and staff involved in the drafting process opine that additional recycling, reuse and resource conservation/energy efficiency programs in China may be legitimized under such a statutory regime, potentially affecting a wide range of electronic and electrical products and related commercial operations.
- The NPC Standing Committee has reviewed the law in August 2007 for the first reading and hope to conduct the second reading in February 2008.

Other Initiatives

- Chemicals Management, including new chemical registration, import/export control and possible adoption of GHS and REACH.
- Government procurement programs that link with energy efficiency and environmental labels.
- Control of Used/Waste EEE as hazardous waste
- Electromagnetic field exposure
- Emergency planning and response
- Professional training for employees

Future Trend and General Observations

- Over the last years, it seems various Chinese agencies have been offering more opportunities to stakeholders to involve their rule-making process.
- From time to time, complains from multinational and foreign companies on Chinese laws have somehow resulted positive changes of laws.
- Chinese authorities understand in electronic industry, multinational and foreign companies have substantive market share in China therefore they may give significant weight to the voices from stakeholders.

Future Trend and General Observations

- Key compliance challenges on China's electronic industry may not be eased overnight. However, with the expanding market potentials and generally right direction of change, it is important to:
 - Keep looking forward;
 - Work hard on advocacy; and
 - Be patient

Thank You

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