

WORKSHOP PAPERS

Wu Lihong, Lake Tai, and the Difficulties of Protecting China's Environment: A Case Study

BY MICHELLE YU*

TABLE OF CONTENTS

Introduction	640
I. Historical Responses to Environmental Problems	641
II. The Environmental Protection System and Its Flaws	643
A. National Efforts.	643
(1) Legislation and Five-Year Plans	643
(2) Agencies: SEPA and EPBs	645
(3) Litigation	648
B. GONGOS versus NGOS	650
C. Censorship, Transparency, and Access to Information	651
D. Whistleblower Protection	654
III. Lake Tai: A Case Study of Environmental Activism	656
A. History and Management	656
B. An Increasingly Polluted Economic Center.	658
C. Specific Management Plans	660
D. A Symptom of a Larger Problem	661
IV. Wu Lihong: Environmental Champion for Lake Tai	663
A. Beginnings of Environmental Work	664
B. Threats, Physical Violence, and Economic Loss	665
C. Arrest, Trial, Denial of Appeal	666
D. Severe Eutrophication of Lake Tai in May 2007	668
E. Future Plans to Clean Up Lake Tai	669
F. What Will Become of Wu Lihong?	670
V. Conclusions and Recommendations	671
A. Governmental Apathy and Corruption	671
B. Worldwide Persecution of Environmental Activists	673
C. Environmentalism as a Lightning Rod	674

* Michelle Q. Yu is a third-year law student at Georgetown University Law Center. She obtained her B.A. at Pomona College in Claremont, California. © 2009, Michelle Yu.

INTRODUCTION

Environmental disasters have plagued China through time immemorial, from earthquakes, floods, and droughts to air and water pollution, desertification, and biodiversity loss. The Yellow River flooded in 1931, killing 1–3.7 million people in the deadliest flood in human remembrance.¹ Natural disasters in China affect more than 200 million people per year,² including the recent 7.9-magnitude earthquake on May 12, 2008, the worst to strike China in three decades.³ While natural disasters happen independently of human actions, the bulk of environmental pollution is caused by human activity. According to the innovative *Green National Accounting Study Report* of 2004, the first “green” gross domestic product (GDP) accounting system in China, environmental pollution caused a whopping 3.05% loss in national GDP in 2004.⁴

China’s environmental problems are not contained within its own soil and waters; they affect the rest of the world. Japan and South Korea suffer from acid rain originating in China, the United States has mercury soil deposits that can be traced to Chinese cement factories, and the Pacific Ocean’s prawn catch has dropped by ninety percent during the past fifteen years from untreated sewage and heavy metals.⁵ Because China is the world’s largest contributor of carbon dioxide, the Earth’s climate suffers tremendously as well.⁶

Although China’s environmental problems are well-recognized and documented, its commitment to correcting them, from national-level regulation to local enforcement, remains weak. Only the presence of local democratic institutions, legal remedies, and local environmental activism can spur local enforcement; limitations on legal remedies (such as intolerance for dissent and lack of judiciary independence) and the lack of local democratic institutions put the burden of environmental awareness on activists.⁷ Environmental activism, however, is in dire jeopardy as China’s desire to control all forms of dissent takes its toll on courageous eco-activists.

1. Epic Disasters, *The World’s Worst Disasters: The World’s Worst Floods by Death Toll*, http://www.epicdisasters.com/index.php/site/comments/the_worlds_worst_floods_by_death_toll (last visited Mar. 20, 2009).

2. Asian Disaster Reduction Center, *Disaster Management in China*, in *TOTAL DISASTER RISK MANAGEMENT: GOOD PRACTICES 2005*, at 72–73 (January 2005), available at http://www.adrc.or.jp/publications/TDRM2005/TDRM_Good_Practices/PDF/PDF-2005e/Chapter3_3.3.3-2.pdf.

3. See, e.g., *Struggle to Reach Quake Trapped*, BBC NEWS, May 14, 2008, <http://news.bbc.co.uk/2/hi/asia-pacific/7399732.stm>.

4. *Green GDP Accounting Study Report 2004 Issued*, GOV.CN, Sept. 11, 2006, http://www.gov.cn/english/2006-09/11/content_384596.htm.

5. Elizabeth C. Economy, *The Great Leap Backward? The Costs of China’s Environmental Crisis*, FOREIGN AFFAIRS, Sept.–Oct. 2007, at 38, 44–45.

6. *Id.* at 45.

7. Shui-Yan Tang, Vandana Prakash & Ching-Ping Tang, *Local Enforcement of Pollution Control in Developing Countries: A Comparison of Guangzhou, Delhi, and Taipei*, J. PUB. POL’Y, Sept.–Dec. 1998, at 265, 265.

This article explores in depth the story of one such activist, Wu Lihong, a well-known Chinese environmental champion. After fighting an increasingly entrenched and personal battle to prevent Lake Tai's degradation by pitting the authority of provincial and national environmental bureaucrats against local industry, Wu was put on trial for corruption and fraud. Having lost his appeal, he is now serving a sentence of three years in an unknown Chinese prison. His future—and the future of the lake—is uncertain.

Part I of this article describes China's historically utilized methods and approaches for dealing with environmental issues. Part II illustrates the flaws with China's current environmental protection system. Part III explains the physical deterioration and economic history of Lake Tai, which is emblematic of a nationwide losing battle with pollution. Part IV explores Wu Lihong's interactions with local and national governmental units and details his trial. Part V presents a list of recommendations for the increased efficacy of environmental management.

I. HISTORICAL RESPONSES TO ENVIRONMENTAL PROBLEMS

In dynastic times, the highest levels of Chinese authority, often managed directly by the sovereign, dealt with environmental catastrophes. One famous example is Yu the Great, a semi-mythical ruler of China who assumed the throne in 2200 B.C.E. and was the founder of the Xia Dynasty.⁸ Yu helped end a thirteen-year flood through then-revolutionary engineering feats, such as increasing riverbed depth and digging channels to expedite the passage of the excess water to the ocean.⁹ In performing these services, he gained enormous public popularity and was made emperor upon the will of the people.¹⁰

This tale illustrates the scale and urgency of China's environment-related problems, though it does not assure their successful resolution. Indeed, what was "frustrating in the later reigns was the environmental decline that was the unforeseen consequence of the earlier engineering successes."¹¹ In conjunction with "poorly conceived river diversion and water management projects," the exploitation of forests and mineral resources and intensive farming formed a pattern of environmental exploitation that contributed significantly to the "wars, famines, and natural disasters that plagued China through the centuries."¹²

The anthropocentric philosophies inherent in Confucianism, which formed a

8. Li Ung Bing, *Outlines of Early China History*, <http://threekingdoms.com/history.htm> (last visited Mar. 20, 2009).

9. *Id.*

10. *Id.*

11. LILLIAN M. LI, *FIGHTING FAMINE IN NORTH CHINA: STATE, MARKET AND ENVIRONMENTAL DECLINE, 1690s–1990s* 40–41 (2007).

12. ELIZABETH C. ECONOMY, *THE RIVER RUNS BLACK: THE ENVIRONMENTAL CHALLENGE TO CHINA'S FUTURE* 17 (2004).

central source of morality in ancient China as well as in Chinese society today, promote the exploitation of natural resources for man's benefit.¹³ Although the Maoist Era sought to erase ancient philosophies such as Confucianism along with every vestige of imperial China, Mao paradoxically continued this anthropocentric view and carried it out to an extreme with the concept that "with the power of will, all difficulties could be overcome."¹⁴ Indeed, Mao's disdain for intellectuals extended to scientists, who were falsely charged and persecuted, and often died from their mistreatment.¹⁵ The lack of scientific dissent led to an unprecedented ecosystem collapse in China, causing widespread famine during the Great Leap Forward, a catastrophe going far beyond the intense deforestation and erosion, wetlands drainage, and habitat destruction that were all too common during the Imperial Era.¹⁶

In contrast to the exalted Yu of antiquity, modern champions of China's environment receive no hero's welcome. Instead, for their outspoken honesty, they receive strong animosity from their communities' powerful economic players and are often soundly punished by the government. Two senior intellectuals of the Maoist Era, Huang Wanli, a hydro-engineer, and Ma Yinchu, an economist and Beijing University president, were "criticized, harshly punished, ostracized, and silenced" in the Anti-Rightist Movement in 1957, the result of Mao's reluctance to listen to differing opinions.¹⁷ As the story of Wu Lihong demonstrates, China's increasingly open economic system masks its essentially unchanging nature in these respects.

What connects these ways of dealing with the environment is that they were never previously mandated by the rule of law but were legitimized under the rule of power. As noted in an article charting the development of water law in China, "early Chinese tradition did not rely on a legal framework per se for water resources management. In the periods of slavery and feudalism, control of water and its distribution occurred largely without creation of individual entitlements."¹⁸ The absence of that legal framework for thousands of years, and the attempt of the current Chinese government to erect an effective one, lies at the heart of the country's current environmental tragedies. While China's history as a cohesive nation stretches back into antiquity, its legal system is only decades old and a lingering sense of legal incoherence persists.

13. *Id.*

14. JUDITH SHAPIRO, *MAO'S WAR AGAINST NATURE: POLITICS AND THE ENVIRONMENT IN REVOLUTIONARY CHINA* 192 (2001).

15. One figure estimates the number of scientists and technicians persecuted to be 53,000. *See* 15 *THE CAMBRIDGE HISTORY OF CHINA, THE PEOPLE'S REPUBLIC PART 2: REVOLUTIONS WITHIN THE CHINESE REVOLUTION, 1966–1982* 211–12 (Roderick MacFarquhar & John King Fairbank eds., 1991).

16. SHAPIRO, *supra* note 14, at 195–96.

17. *Id.* at 21.

18. Patricia Wouters et al., *The New Development of Water Law in China*, 7 *U. DENV. WATER L. REV.* 243, 246 (2004) (citation omitted).

China's legal system today remains opaque, with a lack of trained judges, lawyers, and real enforcement authority in its ample and broad laws. Laws could gain clarity and force through the use of mandatory provisions instead of the often-seen encouragements.¹⁹ The enforcement issue is problematic because as state-owned enterprises have diminished in importance, the central government's ability to control industry has decreased accordingly. In the post-Mao reform era, the role once played by the omnipotent and omnipresent state has diminished not only in the market, but also in "its traditional role as social welfare provider, encouraging private, nonstate actors to fill the gap in areas such as . . . environmental protection."²⁰

II. THE ENVIRONMENTAL PROTECTION SYSTEM AND ITS FLAWS

A. NATIONAL EFFORTS

(1) Legislation and Five-Year Plans

The PRC Constitution, adopted in 1982, provides that all natural resources, including "[m]ineral resources, waters, forests, mountains, grassland, unreclaimed land, [and] beaches" are "owned by the state, that is, the whole people, with the exception of the forests, mountains, grassland, unreclaimed land and beaches that are owned by collectives in accordance with the law."²¹ It goes on to state: "The state ensures the rational use of natural resources and protects rare animals and plants. The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited."²² Environmental protection was declared a "basic national policy" in 1983.²³ The first basic environmental law, The PRC Environmental Protection Law for Trial Implementation, was promulgated in 1979, and the formal Environmental Protection Law of the People's Republic of China came into effect in 1989.²⁴ Other major environmental statutes now in place include the Air Pollution Prevention and Control Law, the Water Pollution Prevention and Control Law, and the Environmental Impact Assessment Law.²⁵

China's Five-Year Plans, adopted from the Five-Year Plans for the Soviet Union, set forth centralized economic development guidelines. Good water

19. Alex Wang, *Environmental Protection in China: The Role of Law*, CHINA DIALOGUE, Feb. 5, 2007, <http://www.chinadialogue.net/article/show/single/en/745-Environmental-protection-in-China-the-role-of-law>.

20. ECONOMY, *supra* note 12, at 16.

21. XIAN FA art. 9 (1982) (P.R.C.).

22. *Id.*

23. Alex Wang, *The Downside of Growth: Law, Policy and China's Environmental Crisis*, PERSPECTIVES, Oct. 31, 2000, http://www.oycf.org/oycfold/httpdocs/Perspectives2/8_103100/downside_of_growth.htm [hereinafter Wang, *Downside of Growth*].

24. ORG. FOR ECON. CO-OPERATION & DEV. [OECD], CHINA IN THE WORLD ECONOMY: THE DOMESTIC POLICY CHALLENGES 599 (2002).

25. Wang, *Downside of Growth*, *supra* note 23.

quality became a national goal as early as the Eighth Five-Year Plan (1991–1995) but was accompanied by no corresponding priority placed upon environmental spending.²⁶ Ten of thirteen critical Tenth Five-Year Plan (2001–2005) targets for air and water pollution control were not met by 2005, including all seven air pollution indicators, six of which actually surpassed the 2000 levels.²⁷

The National Environmental Protection Plan for the Eleventh Five-Year Plan (2006–2010) states that overall investment of environmental protection has already doubled that of the Ninth Five-Year Plan and now exceeds one percent of GDP for the first time.²⁸ The State Council has admitted that the “[e]nvironmental situation is still grave in China though with some positive development”: key river basins and regions known as the “Three Rivers and Lakes,” including Lake Tai, have met only sixty percent of the pollution control targets, and seventy-five percent of lakes are subject to eutrophication.²⁹ The most telling part of this Protection Plan states China’s crucial environmental problems bluntly and succinctly:

There is no breakthrough in some in-depth environmental issues that should have been addressed during the “10th Five-Year Plan” period. There is no fundamental change in the inappropriate industrial structure and extensive economic growth mode. There are also such problems as environmental protection lagging behind economic growth, poor or inflexible mechanism, insufficient input and capacity. The phenomena of no strict observation of laws, little punishment of lawbreakers, poor law enforcement and supervision are still very common The contradiction between socio-economic development and resources and environment constraint becomes increasingly evident.³⁰

This article focuses on water, an inter-jurisdictional issue. The jurisdictional impediments to watershed management are difficult to overcome because the Ministry of Agriculture, the Ministry of Water Conservation, the Ministry of Navigation, the Ministry of Transportation and Communications, and the regional and national Environmental Protection Bureaus (EPBs) all have jurisdiction over water control.³¹ When so many actors are in play, often no one takes

26. Robert M. Ward & Wen Liang, *Shanghai Water Supply and Wastewater Disposal*, GEOGRAPHICAL REV., Apr. 1995, at 141, 141.

27. World Bank & State Env'tl. Prot. Admin., *Cost of Pollution in China: Economic Estimates of Physical Damages*, at 1 (Mar. 2, 2007), available at <http://go.worldbank.org/FFCJVBTP40>. [hereinafter *Cost of Pollution*].

28. STATE COUNCIL, CHINA NATIONAL ENVIRONMENTAL PROTECTION PLAN IN THE ELEVENTH FIVE-YEARS (2006–2010) 1 (2008), available at <http://english.sepa.gov.cn/download/Documents/200803/P020080306440313293094.pdf>

29. *Id.* at 2.

30. *Id.* at 2–3.

31. Abigail R. Jahiel, *The Organization of Environmental Protection in China*, 156 CHINA Q. 757, 780 (1998).

direct responsibility, as evidenced by the 1994 Huai River disaster in which each of four different provinces blamed the others for polluting the river and demanding cleanup costs, while factories ignored central government directives and local officials ignored pleas to shut down enterprises.³² The end result was catastrophic. Even after extensive central government intervention, small enterprises secretly reopened after the hubbub died down and the overall quality of the Huai has not improved in the long run.³³

(2) Agencies: SEPA and EPBs

The Environmental Protection Office was the first version of China's top environmental agency, consisting of only twenty people and set up in 1974 under the State Council; this later became the Environmental Protection Bureau under the Ministry of Construction.³⁴ By 1998, China had upgraded the bureau to the State Environmental Protection Agency (SEPA), which was no longer under the Ministry's control.³⁵ SEPA was the highest environmental agency in China and had direct links to the State Council, like other main ministries.³⁶

While the creation of SEPA was a step forward in recognizing the importance of environmental issues, there were a few flaws. The creation of SEPA led to the dismantling of the State Council's Environmental Protection Commission, which included members from thirty-one ministries and commissions and representatives from large enterprises and media; this elimination made proper coordination of environmental measures more difficult.³⁷ After the March 2008 National People's Congress, SEPA was upgraded to a full Cabinet ministry, or a "super-ministry," called the Ministry of Environmental Protection (MEP) with a bigger budget and staff.³⁸ This increased the staff from 200 to 300–400 officials in total.³⁹ In contrast, the U.S. Environmental Protection Agency has a staff of 17,000.⁴⁰

Although MEP will supposedly have increased authority over local environmental bureaus, it is doubtful that the strong local protectionism of heavily polluting industries will change. MEP is still a ministry under the State Council, which in China gives it the same administrative ranking as large state-owned enterprises such as PetroChina, Sinopec, or the State Grid; thus, it is difficult for

32. *Id.* at 780-81.

33. *Id.* at 781-82, n.73.

34. OECD, *supra* note 24, at 599.

35. *Id.* at 600.

36. *Id.* at 599-600.

37. *Id.* at 600.

38. Rowan Callick, *Beijing Green Super-Ministry*, AUSTRALIAN, Mar. 13, 2008, at 8.

39. Henry Sanderson, *China Environment Agency Gets More Power*, ASSOCIATED PRESS, Feb. 29, 2008, available at <http://ap.google.com/article/ALeqM5icPw8BwDs4EYOrcM2Xe3KOGqPw5gD8V44VN01>.

40. U.S. Env'tl. Prot. Agency, About EPA, <http://www.epa.gov/epahome/aboutepa.htm> (last visited Mar. 23, 2009).

MEP to exert authority over probable polluters such as these companies.⁴¹ Thus, the effectiveness of the new ministry will “largely depend[] on whether other government departments or provinces are willing to cooperate and coordinate,” a dubious hope in the face of “rampant” historical “departmentalism and regionalism” as well as deeply embedded corruption.⁴²

Under SEPA,⁴³ there are EPBs at every successive level of government: provincial, prefectural, municipal, county, and town/village EPBs⁴⁴ correspond to all sub-levels of Chinese governance. The EPBs present a lingering problem. Each EPB is responsible to the administratively higher level EPB as well as to the local government where it is located. While the EPB receives mandates and guidance from the former, it receives annual funding, personnel increases, and resources such as cars, office buildings, and employee housing from the latter.⁴⁵ This automatically creates a structural paradox where the EPBs are at the mercy of the local, rather than national, priorities, because the EPBs’ very existence depends on appeasing the local powers-that-be. While SEPA does occasionally provide funding for EPBs, this happens on a project-specific basis and is not guaranteed. Thus, local funding is the only consistent and sustained lifeblood of the EPB.⁴⁶ Smaller, poorer, and more remote regions often end up with EPBs with a small, untrained, and chronically underfunded staff, whereas more wealthy regions, although able to afford more and better-trained personnel, often have their funding limited by the very sorts of polluting industries over which they ostensibly should have authority.⁴⁷ Another part of the national environmental protection network includes monitoring stations, which are also funded via the local EPBs and produce data varying in quality.⁴⁸

A similar problem of perverse incentives afflicts smaller factories, known as township and village enterprises (TVEs). If one local government strictly enforces pollution controls, the TVE will simply move its operations to a more lenient locality.⁴⁹ Furthermore, the cost-effectiveness of small enterprises is dependent on their minimal pollution control equipment.⁵⁰ Having to install such controls would put them out of business, decreasing revenue for local govern-

41. Wu Zhong, *Green Whirlwind Sweeps China*, ASIA TIMES, Mar. 5, 2008, <http://www.atimes.com/atimes/China/JC05Ad01.html>.

42. *Id.*

43. All subsequent references to SEPA are references to what is currently known as the Ministry of Environmental Protection, as the new ministry name is utilized in few sources.

44. Water Environment Partnership in Asia, *Water Environment Administrative Structure*, <http://www.wepa-db.net/policies/structure/chart/china/centralgov.htm> (last visited May 12, 2009).

45. Jahiel, *supra* note 31, at 759.

46. *Id.*

47. *Id.*

48. *Id.* at 762–63.

49. Charles W. Schmidt, *Economy and Environment: China Seeks a Balance*, ENVTL. HEALTH PERSP., Sept. 2002, at A517, A518.

50. See Jahiel, *supra* note 31, at 762–63.

ments and, in turn, the EPBs. Large and medium-sized factories often have their own environmental protection divisions that are responsible for monitoring factory wastes and developing factory-specific waste treatment procedures, as well as direct guidance of an industrial ministry or bureau; small factories have neither, making monitoring more difficult.⁵¹

Another large source of income for EPBs are so-called discharge fees, which are pollution fines levied upon polluting enterprises that have exceeded pollution discharge standards. By law, local environmental agencies can retain twenty percent of such fees to support their work.⁵² This is another central reason why EPBs allow, or even perversely encourage, pollution to a certain degree. County-level EPBs in particular are the least well-funded and most ill-equipped to deal with the rural industrial sector, which is both one of the most polluting and one of the fastest growing sectors of the Chinese economy, making it the most difficult sector to regulate.⁵³

State-owned enterprises (SOEs), the diametric opposite of TVEs, have different but no less difficult environmental problems. SOEs' financial performance, compared to private enterprises, is extremely poor and they often lose money year after year, but are often bailed out due to continuing governmental protection.⁵⁴ This means that SOEs have few monies to pay polluting fines, and that even if they had adequate funds, the power they derive from the government will prevent them from being beholden to EPBs in any significant way.

Environmental impact analysis (EIA), once thought to be a promising legal source, has only basic legal rights and obligations stipulated in the national law, with local authorities having the responsibility of setting their own implementation procedures.⁵⁵ Although local flexibility is often lauded as a method to escape the overly rigid, one-size-fits-all regulations of an inflexible central government mandate, in Chinese cases, local flexibility often gives local governments and local businesses too much power. In addition, the hierarchy of government power also robs EPBs of their power when senior government officials or other powerful government units approve a project before the EPB can even initiate the EIA process.⁵⁶ Like most environmental processes in China, the EIA process lacks fora and provisions for public participation and consultation.⁵⁷

Because China's central government has neglected to enforce environmental standards at the local level, local activism is most crucial.⁵⁸ Nowhere has this

51. *See id.* at 764.

52. *Id.* at 775.

53. *Id.* at 783.

54. Chong-En Bai et al., *The Multitask Theory of State Enterprise Reform: Empirical Evidence from China*, 96 AM. ECON. REV. 353, 353 (2006).

55. Tang, Prakash & Tang, *supra* note 7, at 269.

56. *Id.* at 271.

57. *Id.*

58. *Id.* at 278.

principle been illustrated more clearly than in the case of Lake Tai, where Wu Lihong was the sole watchful environmental force in the area.

(3) Litigation

China's short environmental litigation history is the product of a judicial system that lacks both trained personnel and independent authority. In 1999, a peasant dumping toxic waste and a factory owner who asked him to get rid of the waste were arrested—it marked the first time Chinese citizens were arrested in an industrial pollution case.⁵⁹ The Chinese government used this high-profile case to draw attention to the burgeoning environmental problem. However, more often the government uses courts as a way to legitimize the persecution of environmental activists. In 2006, a Zhejiang court sentenced an environmental activist to a year and a half in prison for “illegally obtaining state secrets.”⁶⁰ Other human rights issues are often implicated in Chinese prosecutions of activists. For example, Chen Guangcheng, a blind human rights activist and lawyer who had documented allegations of forced abortions in villages around China, was sentenced in 2006 to over four years in prison on charges of “destroying property” and “organizing a mob.”⁶¹ Even more ominously, a *New York Times* researcher named Zhao Yan was cleared of the original charge of revealing state secrets in a dispute involving an article he wrote about the leadership struggle in the Chinese government but was convicted of an additional charge of committing fraud.⁶² This case clearly illustrates that the Chinese government will “find a peg” upon which to “hang a conviction,” any conviction that is handy, if the original charge cannot be made to stick based on the facts of the case.⁶³

EPBs often turn to the courts as a “last resort” to administratively enforce environmental laws on stubborn polluters; rarely, EPBs and others aggrieved by EPB rulings use courts to sue firms for negligence in environmental accidents.⁶⁴ NGOs and individuals have started to utilize the legal system with some success in the environmental arena. Zhang Changjian, a doctor from Fujian Province, successfully sued the Rongping chemical plant, China's largest chlorate manufacturer, with the help of the Beijing NGO Center for Legal Assistance to Pollution Victims.⁶⁵ The company was forced to compensate villagers for health and

59. Jasper Becker, *Cracking Down on the Chemical Waste Outlaws*, STANDARD (H.K.), May 21, 1999, http://www.thestandard.com.hk/archive_news_detail.asp?pp_cat=&art_id=29172&sid=&con_type=1&archive_d_str=19990521.

60. *Wife of Chinese Green Activist Targets Watchdog*, REUTERS, June 5, 2007, <http://uk.reuters.com/article/oddlyEnoughNews/idUKSP28420220070605>.

61. *NewsHour: New York Times Researcher Sentenced in China* (PBS radio broadcast Aug. 25, 2006), available at http://www.pbs.org/newshour/bb/law/july-dec06/court_08-25.html.

62. *Id.*

63. *See id.*

64. Jahiel, *supra* note 31, at 764.

65. Jennifer L. Turner, *New Ripples and Responses to China's Water Woes*, CHINA BRIEF (The Jamestown

environmental damages.⁶⁶

Though there have been some victories, three problems with environmental cases in China exist: evidence may be difficult to amass sufficiently, penalties imposed on polluting parties are often minimal, and penalties are difficult to collect. When Sichuan's Toujiang River became so polluted that nearby Jiangyang City was left without water for thirteen days in March 2004, local inspection agencies conducted a thorough investigation and concluded that the local subsidiary of the Sichuan Chemical Group Holding Company had caused the pollution by dumping large quantities of ammonia-nitrogen wastewater directly into the river.⁶⁷ Although the company had assets of around 1.8 billion RMB and profits of 88 million RMB, it was ordered to pay a fine of only 1 million RMB, a drop in the bucket that gave the company little incentive to keep from repeating its actions.⁶⁸ Indeed, in May 2004, a paper company's illegal dumping caused the river to again become severely polluted.⁶⁹ In Nanhui, where factory owners were held by arbitrators to be seventy percent liable for pollution that inflicted harm on nearby rice paddies, the owners refused to pay compensation, and the local government would not enforce the award.⁷⁰

Under Article 108 of the Civil Procedure Law, standing to sue is restricted to those whose legal rights and interests are directly affected, which significantly limits public participation in environmental protection through citizen action.⁷¹ In addition to this significant litigation hurdle, mediation is traditionally favored in China, further promoting non-litigation dispute resolution methods.⁷² Conciliation, consisting of consultation and negotiation, often happens before more formal administrative or judicial proceedings and is encouraged by the Land Administration Law and the Water Law.⁷³ However it often falls prey to unequal bargaining power.⁷⁴ Mediation is a primary method of resolving disputes, including People's mediation by non-governmental mediators and administrative mediation by governmental bodies such as EPBs.⁷⁵ However, People's mediators lack substantive authority to enforce agreements, and administrative bodies tend to avoid involvement in such dispute resolution processes altogether because of

Foundation, Washington, D.C.), May 9, 2007, available at <http://www.jamestown.org/programs/chinabrief/archivescb/cb2006> (click "Volume 6 Issue 25", then "New Ripples and Responses to China's Water Woes").

66. *Id.*

67. Wang Hsin-hsien, River Pollution, <http://www.tp.org.tw/document/detail.htm?id=20011976> (last visited May 10, 2009).

68. *Id.*

69. *Id.*

70. Adam Briggs, Note, *China's Pollution Victims: Still Seeking a Dependable Remedy*, 18 GEO. INT'L ENVTL. L. REV. 305, 316 (2006).

71. Yuhong Zhao, *Environmental Dispute Resolution in China*, 16 J. ENVTL. L. 157, 176 (2004).

72. *Id.* at 161.

73. *Id.* at 158–59.

74. *Id.* at 160.

75. *Id.* at 162, 164–65.

lack of resources and perceived and/or actual lack of authority.⁷⁶

As the example of Wu Lihong shows, China is not yet ready to back up the environment as a top priority with serious governmental clout because it would mean political reform.⁷⁷ In the greater scheme of things, environmentalists are but “pawns in a ruthless game of power and invested interests” and “activists and reporters have little protection once local authorities move against them.”⁷⁸

B. GONGOS VERSUS NGOS

Unlike in the United States and in most other nations, non-governmental organizations (NGOs) in China face difficulties in registering to operate legally without government sponsors.⁷⁹ All organizations must be registered with the government under the Law on Organizations, promulgated in 1998.⁸⁰ An application for establishment must satisfy six requirements to be considered for approval.⁸¹ The organization must have (1) more than 50 members, (2) a standardized name and corresponding organization structure, (3) possession of a fixed domicile, (4) a full-time staff, (5) assets and sources of funding (national organizations should have funding exceeding 100,000 RMB, local organizations should exceed 30,000 RMB), and (6) the “possession of the ability to bear civil liabilities independently.”⁸² Each requirement may either be a hardship upon the social organization in question, a clause calculated to give the administrative agency broad discretion in rejecting applications or both. There is no limit on the amount of time that may pass before the government either accepts or rejects an application.⁸³ And an NGO cannot have legal status or open bank accounts without registering,⁸⁴ creating a Catch-22 that allows government to sustain a severe chilling effect.

Liang Congjie's experience attempting to register his environmental NGO, Friends of Nature, illustrates these frustrations, as the NEPA (the predecessor to SEPA) failed to give him any response for a year, driving him instead to the solution of persuading an association of university professors to create a branch organization called the Green Culture Sub-Academy, which became the official

76. *Id.* at 164, 169-70.

77. Alex Lo, *Environmental Pawns in a Game of Power*, S. CHINA MORNING POST, Nov. 8, 2007, at 14.

78. *Id.*

79. Paul Mooney, *How to Deal with NGOs—Part I, China*, YALEGLOBAL, Aug. 1, 2006, available at <http://yaleglobal.yale.edu/display.article?id=7902>.

80. U.S. Embassy Beijing Environment, Science, Technology and Health Section, *Chinese Environmentalist Liang Congjie on NGO Life*, ESTH REPORT, Feb. 2000, available at <http://beijing.usembassy-china.org.cn/report0300ngo1.html> [hereinafter *Liang Congjie*].

81. Ge Yunsong, *On the Establishment of Social Organization Under Chinese Law*, INT'L J. NOT-FOR-PROFIT L., Mar. 2000, http://www.icnl.org/knowledge/ijnl/vol2iss3/art_2.htm.

82. *Id.*

83. *Id.*

84. Bill Savadove, *Grime and Punishment*, S. CHINA MORNING POST, Aug. 25, 2007, at 12.

Chinese name of Friends of Nature.⁸⁵ Liang then went to the Ministry of Culture, arguing that China needs “Green Culture,” and was finally able to register with the Ministry of Civil Affairs in March of 1994.⁸⁶ Currently, NGOs often have sidestepped the formal rules by registering as private companies.⁸⁷ At least 2000 environmental NGOs had been formed in China as of 2005, although they are fragmented and lack funding,⁸⁸ and not all of them are registered. Liang has been lucky to escape persecution so far; Zhejiang-based activist Tan Kai was sent to jail in 2006 after he opened a personal bank account for his environmental group Green Watch in preparation for fundraising.⁸⁹ The group had monitored environmental pollution at a local chemical plant and was thereafter designated an “illegal organization.”⁹⁰

Liang Congjie states that many organizations that masquerade as Chinese NGOs are actually government-operated non-governmental organizations, or GONGOS.⁹¹ The All-China Environmental Federation (ACEF), which was created by SEPA in April 2005, has the distinction of including government officials not only from SEPA, but from other relevant agencies such as the Ministries of Water Conservation, Agriculture, Construction, Forestry, and Mineral Resources and the Western Development Office, and may, in the future, “serve as an umbrella group and official sponsoring agency for independent, ‘grassroots’ environmental NGOs.”⁹²

While GONGOS such as ACEF seem to be a step in the right direction towards more governmental involvement, the presence of GONGOS by themselves does not seem to guarantee any facilitation of independent viewpoints. The central government’s intolerance of strong NGOs can be seen in its relentless persecution of Falun Gong, suggesting that environmental NGOs whose work conflicts with SEPA or other ministries may find their work less protected. Thus, the number of true NGOs remains low.

C. CENSORSHIP, TRANSPARENCY, AND ACCESS TO INFORMATION

China is infamous for its tight Internet censorship, accomplished through physical monitoring of all Internet traffic into and out of the country and large

85. *Liang Congjie*, *supra* note 80.

86. *Id.*

87. *Id.*

88. Jianguo Liu & Jared Diamond, *China’s Environment in a Globalizing World*, 435 NATURE 1179, 1186 (2005).

89. CHINA—Sentencing/Arbitrary Detention, NEWSLETTER (The Observatory), Aug.–Oct. 2006, <http://www.protectionline.org/The-Observatory-Newsletter-no40.html>; *Liang Congjie*, *supra* note 80.

90. COMMITTEE OF CONCERNED SCIENTISTS, INC., ANNUAL REPORT 2006, CHINA (2007), *available at* <http://www.libertynet.org/ccs/annual2006.pdf>.

91. *Liang Congjie*, *supra* note 80.

92. *New GONGO Makes Splash with Environmental Survey*, CHINA DEV. BRIEF, Aug. 15, 2005, <http://www.chinadevelopmentbrief.com/node/33>.

teams of paid government censors.⁹³ Wu Lihong's case did not escape these censors; when an open letter from twelve environmental organizations calling for a fair trial for Wu Lihong was circulated on June 5, 2007, coinciding with World Environment Day, Chinese authorities from the Internet Monitoring Department of the Beijing Municipal Government Public Security Bureau ordered websites to remove the letter.⁹⁴

The letter also urged the court to examine all evidence carefully, to reach an independent verdict, and called for the trial to be open to the public and the press, arguing that otherwise, "the public will be led to conclude that the judicial process is being used to take revenge to a higher level."⁹⁵ In complete opposition to the letter's recommendations, the court took actions to decrease transparency: Plainclothes police officers closely monitored reporters trying to cover the case, and access to the courthouse was restricted to the extent that Wu's wife and family members only gained entry after a brief confrontation with court officials.⁹⁶ Some members of the media were allowed in, but personnel from the Hong Kong-based *South China Morning Post* and *The New York Times* were turned away.⁹⁷

Although this specific incident of censorship can be rationalized on the plausible basis of pending judgment, other cases around the same time experienced no such censorship. The recent infamous brick kiln slavery scandal,⁹⁸ occurring around the same time as the Wu Lihong trial, was extensively blogged and discussed in online article comments, many calling for the execution of the kiln owners and severe punishment of local officials.⁹⁹ No such censorship was meted out to the websites featuring the brick kiln issue, leading to the conclusion that "some parts of the Chinese establishment remain distinctly conservative on free speech issues," especially considering that "the opinions expressed in the [Wu Lihong] letter, although by no means confrontational, came from Chinese

93. See generally James Fallows, "The Connection Has Been Reset", THE ATLANTIC, Mar. 2008, at 64.

94. *Move to Prevent Green Protest Shows Uneven Distribution of Free Speech*, CHINA DEV. BRIEF, June 23, 2007, <http://www.chinadevelopmentbrief.com/node/1157/print>. [hereinafter *Move to Prevent Green Protest*]. The open letter was endorsed by Friends of Nature, Global Village of Beijing, Green Earth Volunteers, Brooks Environmental Education Centre, Green Watershed, Xinjiang Conservation Fund, Hebei Green Friends Association, Wild China, Civil Society Watch, Institute for Public and Environmental Affairs, Huai River Defenders, and Pingnan Green Association.

95. *Id.*

96. *Chinese Environmental Activist Sentenced to Three Years*, AGENCE FRANCE PRESSE, Aug. 10, 2007, available at <http://www.hkhkhk.com/engpro/messages/2279.html>.

97. Bill Savadove, *Done in a Day: An Independent Voice is Silenced*, S. CHINA MORNING POST, Aug. 25, 2007, at 12.

98. More than 400 slave workers, including children as young as 14, were rescued from illegal brick kilns where they had been taken by human traffickers and beaten, starved, and forced to work long hours. The case rocked Chinese society and the highest levels of government, leading to a massive police hunt. See, e.g., Zhu Zhe, *More Than 460 Rescued from Brick Kiln Slavery*, CHINA DAILY, June 15, 2007, at 1, available at http://www.chinadaily.com.cn/china/2007-06/15/content_894802.htm.

99. *Move to Prevent Green Protest*, *supra* note 94.

civil society organisations speaking with a unity that might prefigure concerted action.”¹⁰⁰ These two contrasting cases show that calls for increased transparency and fairness from the court system are met with more resistance than calls for increased punishment.

Although censorship seems to be somewhat mitigated by the anonymizing abilities of the internet, government secrecy has remained mostly impenetrable. The section on China of a March 2008 United Nations report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment stated:

According to non-governmental sources, although none of the recommendations made by the Special Rapporteur specifically address the need to enhance transparency and declassify information related to torture and abuse in detention facilities, this is the primary challenge to addressing torture in China, where secrecy is the norm [V]irtually all necessary baseline information is classified under the state secrets system, effectively preventing any action on torture in detention facilities in China [T]he state secrets system also provides for retroactive classification of information when there is a perceived harm. As a result, potentially sensitive information remains shrouded in secrecy, either because it is already classified, or because the limits of classification are unclear Information on torture and abuse in prison is therefore not easily accessible, allowing abuses to go unchecked, and preventing effective implementation of reforms.¹⁰¹

The lack of transparency belies any effort to obtain accurate documentation of environmental problems, as at any point such “potentially sensitive” information could become classified or be designated as already classified, putting the people who obtain such documents in danger of being charged with criminal offenses. China lacks a comprehensive statute that specifically addresses public access to government information, as the language of current laws and regulations lacks explicit provisions regarding citizens’ ability to redress violations of information access.¹⁰²

Further exacerbating the problem is the widespread censorship and alterations of scientific data at the local and national levels. The national Chinese Academy of Sciences (CAS) is plagued with problems relating to transparency and autonomy. The Ministry of Science and Technology both disburses funding and oversees research at the CAS.¹⁰³ Critics say that “[s]uccessful funding applica-

100. *Id.*

101. U.N. Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak; Addendum, ¶ 88, U.N. Doc. A/HRC/7/3/Add.2 (Feb. 18, 2008), available at http://www2.ohchr.org/english/bodies/chr/special/sp_reports/shrc_7th.htm.

102. Wu Changhua, *Improving the Legal and Policy Foundation for Public Access to Environmental Information in China*, 24 TEMP. J. SCI. TECH. & ENVTL. L. 291, 303-04 (2005).

103. Zi Xun, *China to Tackle Misuse of Science Funding*, SCI. & DEV. NETWORK, July 12, 2006,

tions often depend on a scientist's influence among funding officials and only a small percentage of awards are allocated on the basis of Western-style peer-review."¹⁰⁴ One popular website has listed more than 400 cases of academic misconduct, ranging from plagiarism to fabricating data in China.¹⁰⁵ Many agree that "[f]raudulent activity is . . . unlikely to disappear until deep-seated processes—ranging from the reward structure to monitoring mechanisms—have been appropriately modified."¹⁰⁶

Some heartening trends in increased transparency exist, such as the Institute of Public and Environmental Affairs (a Beijing-based NGO directed by long-time activist Ma Jun) launching China's first online public database of water pollution, which enables users to survey water quality and monitor pollution discharges on a digital water pollution map.¹⁰⁷ This map has begun to draw attention to pollution issues, attracting state-owned media Chinese Central Television (CCTV) to report on abnormally high village cancer rates that are most likely caused by the extensive pollution that has forced local governments to find cleaner water supplies.¹⁰⁸ Environmental groups, such as Green Camel Bell from the western city of Lanzhou, e-mail GPS data collected on the ground (such as the location of a polluting mill) to Beijing, where it is uploaded to such a map.¹⁰⁹ Such mechanisms could one day illustrate to the government the positive power of free information flow.

D. WHISTLEBLOWER PROTECTION

Another extremely effective way for conscientious citizens to expose wrongdoing is through whistleblowing. Article 41 of the Constitution of the People's Republic of China (PRC) is the whistleblower provision:

Citizens . . . have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited. In case

<http://www.scidev.net/en/news/china-to-tackle-misuse-of-science-funding.html>.

104. Hao Xin, *Cleaning up Chinese Science*, SCI. & DEV. NETWORK, June 12, 2006, <http://www.scidev.net/en/features/cleaning-up-chinese-science.html>.

105. Robert Marquand, *Research Fraud Rampant in China*, CHRISTIAN SCI. MONITOR, May 16, 2006, at World 1.

106. David Dickson & Jia Hepeng, Editorial, *China Must Address the Roots of Scientific Fraud*, SCI. & DEV. NETWORK, May 31, 2006, <http://www.scidev.net/en/health/editorials/china-must-address-the-roots-of-scientific-fraud.html>.

107. Turner, *supra* note 65.

108. *Id.*

109. Brook Larmer, *Bitter Waters: Can China save the Yellow—its Mother River?*, NAT'L. GEOGRAPHIC MAG., May 2008, at 146 (2008), available at <http://ngm.nationalgeographic.com/2008/05/china/yellow-river/larmer-text/1>.

of complaints, charges or exposures made by citizens, the state organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them. Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation¹¹⁰

Despite the lofty praise that “China is the only country in the world at this time to have enshrined whistleblower protection as a constitutional right for all citizens,”¹¹¹ this article is unrealistic because any whistleblowing that implicates the government itself in a bad light is not tolerated by the Chinese Communist Party (CCP). In 2002, President Hu Jintao told a party committee that a citizen reporting system would strengthen the party, saying, “The masses should play a role in supervising party officials.”¹¹² The CCP’s Tentative Regulation on Internal Supervision, as promulgated and made effective on February 18, 2004, stated in an unprecedented step that all party members were encouraged to “report their corrupt coworkers or leaders through signed letters, guaranteeing that the identities of these whistleblowers will remain confidential.”¹¹³ But the reality of such hollow promises is illustrated by cases such as when a local Communist party official was given a life sentence in 2005 when he “went public with complaints that senior government officials were blocking his efforts to fight corruption.”¹¹⁴ Likewise, Wu Lihong went from being honored as one of China’s top ten environmentalists by the government in 2005 to being arrested, charged, and speedily jailed only two years later, despite assurances by the vice-head of SEPA that “environmental protection departments always regard environment advocates as allies.”¹¹⁵

There is a very serious disconnect between not only central government regulation and practice, but also central government and local governmental exercises of power. Wu himself said in a 2006 interview: “The government and industry are connected to each other like a chain, they are inseparable The central government is good but it can’t see what’s happening here with the local government colluding with the factories.”¹¹⁶ Article 41’s admonition that “No

110. XIAN FA art. 41 (1982) (P.R.C.).

111. *International Whistleblower Legislation*, INTL. BUS. ETHICS REV., Fall 2004, at 7.

112. Simon Montlake, *Whistle-Blower in China Faces Prison*, CHRISTIAN SCI. MONITOR, Aug. 14, 2007, at World 1.

113. Veron Mei-Ying Hung, *China’s WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform*, 52 AM. J. COMP. L. 77, 122 (2004).

114. Stephen E. Blythe, *China’s New Electronic Signature Law and Certification Authority Regulations: A Catalyst for Dramatic Future Growth of E-Commerce*, 7 CHI.-KENT J. INTELL. PROP. 1, 21, n.225 (2007) (quoting Philip P. Pan, *Chinese Whistle-Blower is Given a Life Sentence*, ASIAN WALL ST. J., Nov. 11–13, 2005).

115. “Eco-Warrior” Wu Lihong Charged for Blackmail, XINHUA, June 6, 2007, available at http://english.peopledaily.com.cn/200706/06/eng20070606_381520.html (quoting Zhang Lijun) [hereinafter “Eco-Warrior”].

116. *Chinese Environmental Activist Sentenced to Three Years*, *supra* note 96.

one may suppress such complaints, charges and exposures, or retaliate against the citizens making them” has been lost on local government and industry, as Wu has been detained and threatened, beaten so severely that he was hospitalized, and ostracized by the townspeople following his complaint to the local EPB.¹¹⁷

Clearly, China’s current state of environmental protection is a mess. As the Lake Tai case illustrates, even when an environmental disaster strikes, the response is neither immediate nor effective.

III. LAKE TAI: A CASE STUDY OF ENVIRONMENTAL ACTIVISM

Lake Tai is the third-largest freshwater lake in China¹¹⁸ and has been the subject of human development for thousands of years.¹¹⁹ Wu Lihong and Lake Tai are an appropriate microcosm in which to explore the problems associated with environmental protection in China, due to the commonality between Wu Lihong and many other environmental activists who have received similar treatment at the hands of the government. I was struck by the tragedy of Wu Lihong’s story, especially by the tireless and thankless effort he put into environmental activism without any incentives to do so; in fact, most of the difficulties he has faced (loss of job, threats, beatings, and now imprisonment) have occurred solely because he would not give in to the pressures around him that simultaneously urged and threatened him to conform to the environmentally unaware status quo. The fact that major foreign newspapers such as *The New York Times* have covered Wu Lihong’s plight also makes this case a suitable one for a bilingual author such as myself to collect both English and Chinese sources in a single work. This case can also serve as a rubric for legal students and practitioners interested in Chinese environmental activism and litigation to better understand how relevant regulations and local politics play out in instances of systemic pollution that has been called “pollution with Chinese characteristics.”¹²⁰

A. HISTORY AND MANAGEMENT

Lake Tai, also known as Taihu Lake (*hu* is Chinese for “lake”), was once a bright pearl on the Yangtze River Delta, known for its famous fecundity

117. Cao Yunwu, *Huanbao nongmin wulihong: buyuanzuo wenshuizhongde qingwa*. [Eco-Farmer Wu Lihong: Unwilling to be the Frog in Warm Water], NANFANG ZHOUMO [S. WEEKEND ED.], Oct. 13, 2005, available at <http://www.southcn.com/weekend/top/200510130013.htm>.

118. Joseph Kahn, *In China, a Lake’s Champion Imperils Himself*, N.Y. TIMES, Oct. 14, 2007, at A1.

119. Taihu [Lake Tai], Suzhou Kepu [SUZHOU POPULAR SCI.], <http://www.szkp.org.cn/suzhoudili/szdl/200606/06634333.htm> (last visited Apr. 3, 2009).

120. Jiang Fuzhen, *The Fate of Wu Lihong and Pollution with Chinese Characteristics*, CHINA RIGHTS FORUM, Mar. 24, 2008, at 43, 44, available at http://www.hrichina.org/public/PDFs/CRF.1.2008/CRF-2008-1_Lihong.pdf.

nationwide as “the land of fish and rice.”¹²¹ Lake Tai is a naturally formed reservoir and has broad, shallow waters ideal for fish to spawn and flourish.¹²² About thirty species of fish and shrimp from Lake Tai comprise ten percent of China’s annual freshwater catch.¹²³

Lake Tai is the largest lake and the regulation center of water resources within the Taihu Basin, which occupies an area of 36,900 square kilometers (about 14,247 square miles).¹²⁴ The Taihu Basin lies in three main districts: Jiangsu Province, Zhejiang Province, and Shanghai Municipality; Lake Tai lies on the border between Jiangsu and Zhejiang provinces.¹²⁵ All three districts draw upon Taihu Basin and have the authority to build in the basin; a special task force established in 1996 attempted to prevent each from building new polluting factories and plants in the Taihu area.¹²⁶ The high levels of productivity of these districts can be attributed to the superior aquatic resources available in the Taihu Basin. The region is home to approximately 36 million people, responsible for 14% of the GNP, and is “probably the most active area of economic and social development in China.”¹²⁷ The Lake Tai plain is a principal silkworm-rearing area in China with a long history of sericulture.¹²⁸ A wide variety of agricultural products such as grains, oil-bearing crops, and fruit are responsible for sixty percent of land cultivation in Jiangsu.¹²⁹ However, Jiangsu and other coastal provinces have experienced a large decline in cultivated land due to the increased use of land for nonagricultural purposes.¹³⁰ Urbanization, industrialization, and road construction are the main causes behind these increases in nonagricultural land use according to available evidence.¹³¹ Much of this land near large cities and in the countryside was enclosed for “industrial” or “development” zones established to attract new investment.¹³² Many development zones exist to

121. WWF China, Living Yangtze, http://www.wwfchina.org/english/sub_loca.php?loca=11&sub=94 (last visited Mar. 27, 2009).

122. Taihu, *supra* note 119.

123. *Id.*

124. Ye Shouren et al., Taihu Basin Authority of the Ministry of Water Resources, *Water Management Practice of Taihu Lake Basin*, at 1 (2002) available at http://www.riob.org/divers/cioc_nov2002/THEME%203%20-%20Management%20Instruments%20for%20River%20Basin%20Organisations/SESSION%20IX%20-%20Free%20Communications/C10%20-%20Free%20Communication%20-%20Y%20Shouren.doc.

125. *Id.*

126. *Taskforce Tackles Pollution Problem*, S. CHINA MORNING POST, Apr. 15, 1996, at 8.

127. Zunxuan Chen, *Tackling China’s Water Pollution Problem: A Legal and Institutional Perspective from Taihu Lake Water Pollution Control*, 24 TEMP. ENVTL. L. TECH. J. 325, 329-30 (2005).

128. Encyclopedia Britannica, Zhejiang, Economy: Agriculture, Forestry, and Fishing, <http://www.britannica.com/EBchecked/topic/108412/Zhejiang/71218/Economy#ref=ref591179> (last visited Apr. 21, 2009).

129. COLIN MACKERRAS, THE NEW CAMBRIDGE HANDBOOK OF CONTEMPORARY CHINA 237 (2001).

130. Samuel P.S. Ho & George C.S. Lin, *Converting Land to Nonagricultural Use in China’s Coastal Provinces: Evidence from Jiangsu*, 30 MOD. CHINA 81, 83 (2004).

131. *Id.* at 86.

132. *Id.* at 92.

support local industries, with the growth of rural enterprises creating jobs and income for the local population.¹³³

Because it is such an important resource, the Taihu Basin has been an object of focus by the Chinese government for hundreds of years, beginning with the Taihu Tongzhi Bureau established in 1731.¹³⁴ More recently, the Taihu Basin Authority (TBA) was established in 1984 by the Ministry of Water Resources (the highest water authority in China) to help coordinate comprehensive regulation planning of the basin, resulting in a “Master Plan for Comprehensive Flood Control and Mitigation of the Taihu Basin” two years later.¹³⁵ When a major flood in 1991¹³⁶ killed 1700 people and destroyed 650,000 homes,¹³⁷ and another “super flood” of the Yangtze River area and its tributaries hit in 1999,¹³⁸ the TBA was able to analyze rainfall, construction conditions, and other relevant data to reduce the devastation wrought by the 1999 flood but was unable to prevent the displacement of 5.5 million people and destruction of 11.3 million hectares of harvestable crops.¹³⁹

B. AN INCREASINGLY POLLUTED ECONOMIC CENTER

Lake Tai's natural advantages inexorably helped to create the circumstances surrounding its degradation. Its clean waters proved irresistible to small chemical factories, 2800 of which were established around the northern arc of the lake,¹⁴⁰ part of the eventual 20,000 in the entire Lake Tai valley.¹⁴¹ The major industries eventually established in the area—dyeing, chemical, paper-making, steel-making, plate-making and food manufacturing—are responsible for the bulk of the lake's pollution.¹⁴² A large population increase and with rapid industrial and

133. *Id.* at 98.

134. Ye et al., *supra* note 124, at 2.

135. *Id.* at 3-4. The TBA is responsible for the management of the following items:

- (1) Operation of the key water conservancy works in the Taihu Basin;
- (2) Construction of the projects within Taipu River, Wangyu River, Taihu Lake, and river courses in the provincial cross-border area;
- (3) Providing water licenses for users who are above the limiting quota in Taihu Basin;
- (4) Monitoring water quality and quantity of Taipu River, Wangyu River, river courses, and lakes around Taihu Lake and provincial border; issuing annual water resources official journals and periodically issuing of water resources quality official journals; and
- (5) Mediating water-related conflicts between provinces.

136. Taihu, *supra* note 119.

137. Zhang Dan, *Averting Disaster*, IDRC REPORTS, Jan. 1993, at 8, *available at* <http://idinfo.idrc.ca/Archive/ReportsINTRA/pdfs/v20n4e/109024.pdf>.

138. Ye et al., *supra* note 124, at 4.

139. Dartmouth Flood Observatory, Yangtze River in Central and Eastern China, <http://www.dartmouth.edu/floods/99043.html> (last visited May 10, 2009).

140. Kahn, *supra* note 118.

141. Christopher Bordeen, *China's Premier Orders Lake Algae Probe*, ASSOCIATED PRESS, June 12, 2007.

142. China Radio International, *Jiangsu Utters Tougher Pollution Control Moves*, July 21, 2007, <http://>

agricultural development have increased the discharge of pollutants from sources such as industrial and domestic sewage, farmland fertilizers, and pesticide runoff.¹⁴³ By 1998, seventy-seven percent of the lake was polluted.¹⁴⁴ The effects of this pollution are further magnified by the 30 million people in Jiangsu, Zhejiang, and Shanghai who rely on the lake's basin for drinking water.¹⁴⁵ The natural shallowness of Lake Tai's waters only serves to exacerbate its pollution problems. Having less volume due to its lack of depth, it is unable to dilute the nutrients as deeper lakes might and maintains a higher concentration; the sedimentation rate of phosphorous is slower, and the nutrient resuspension rate from the bottom is higher, as increased wind disturbances help to reintroduce pollutants from the lakebed.¹⁴⁶

Growing alarmed at the state of degradation in Lake Tai as well as other freshwater bodies, the State Council (China's chief administrative authority) launched a "Three Lakes, Three Rivers" campaign in 1997, aiming to clean up Lake Tai, Lake Chao, Lake Dian, and the Huai, Hai, and Liao rivers by 2010.¹⁴⁷ Unfortunately, this campaign was stymied by problems resulting from the "who pollutes, who governs" approach previously promulgated by the State Council in 1982, which called for each local government to draw up master plans for dealing with pollution within their individual jurisdictions rather than utilizing a more consistent, centralized regulatory plan.¹⁴⁸ This approach enables local governments to favor economic growth over expensive environmental monitoring and controls.

When the national government in 1998 began another campaign to clean up Lake Tai and the Huai River, dubbed the "Zero Hour Movement," 5000 factories were shut down and water quality was greatly improved.¹⁴⁹ However, after this short period of intense scrutiny had ended, a random inspection of operational firms in 1999 uncovered that fully thirty percent were emitting water that was more polluted than permitted under promulgated standards.¹⁵⁰ Neither campaign was effective in the long run or even in the shorter run; by April of 2000, eighty-nine percent of the lake had become polluted.¹⁵¹

The TBA was responsible for the diversion of 220 million cubic meters of

www.crinordic.com/2946/2007/07/31/65@255706.htm (last visited May 12, 2009).

143. Chen, *supra* note 127, at 330.

144. *Id.* at 333.

145. See *Pollution in Taihu Lake to be Rooted out in 10 Years*, XINHUA, Mar. 17, 2008, http://news.xinhuanet.com/english/2008-03/17/content_7806823.htm (last visited May 12, 2009).

146. Vic Ramey, *Trophic States of Florida Lakes*, Center for Aquatic and Invasive Plants, University of Florida (2003), <http://aquat1.ifas.ufl.edu/guide/trophstate.html> (last visited May 8, 2009).

147. Matthew Miller, *Watery Wasteland*, S. CHINA MORNING POST, May 30, 2000, at 16.

148. *Id.*

149. *Pollution Rebounding*, SHANGHAI ENV'T ONLINE, Sept. 8, 1999, <http://www.envir.online.sh.cn/Eng/news/99-9-g.htm> (last visited May 12, 2009).

150. *Id.*

151. Miller, *supra* note 147.

water from the Yangtze River to Lake Tai in July 2000, when dry weather and a lack of rainfall contributed to a severe blue algae outbreak.¹⁵² Another 670 million cubic meters of water was diverted to Lake Tai from the Yangtze in 2002, improving the water quality dramatically and lowering the total phosphorous concentration to its lowest level in five years.¹⁵³ However, these and other extensive efforts at both the central and regional government levels led to no improvement by 2003, as compared to 1998 levels.¹⁵⁴

The quality of Lake Tai's waters continue to deteriorate. Untreated human sewage forms 1.4 billion tons of the 4 billion tons of untreated water released into the lake each year, with even affluent cities like Wuxi treating only one-third of its 600,000 tons of wastewater produced daily.¹⁵⁵ The duration and severity of algal blooms has increased, as has their frequency, going from once a year during summer to two or three times annually.¹⁵⁶ In late May of 2006, 2 million people in Wuxi were left without drinking water due to the severe pollution of Lake Tai,¹⁵⁷ the city's primary water source. The lack of oxygen caused by excessive pollution could damage and ultimately destroy the ecology of the lake altogether.¹⁵⁸

C. SPECIFIC MANAGEMENT PLANS

In addition to marginally successful larger scale regional efforts, many smaller-scale environmental plans were put into place for the protection of Lake Tai. The People's Government of Jiangsu Province enacted the "Taihu Lake Water Pollution Prevention and Control in Jiangsu" in 1996, which is still in force and is considered a major legal document. It covers a wide range of measures, including setting up monitoring and management mechanisms by delegating responsibilities to the Center for Water Monitoring of Jiangsu and the EPB to enact discharge standards for Taihu water pollutants and setting forth legal penalties and closures for entities that violate the law.¹⁵⁹

The Ninth Five-Year Plan to Control Lake Tai Water Pollution was "compiled based on three principles[:] . . . phosphorus in dealing with eutrophication, adopting comprehensive pollution control measures, and restoring the lake's ecosystem," with the "immediate goal" of making "industrial pollutant dis-

152. Ye et al., *supra* note 124, at 4.

153. *Id.*

154. Chen, *supra* note 127, at 333.

155. Miller, *supra* note 147.

156. *Id.*

157. "Eco-Warrior", *supra* note 115.

158. Andreas Landwehr, *Attempt to Save Polluted Chinese Lake Leads to Arrest*, MONSTERS & CRITICS, Apr. 17, 2007, http://www.monstersandcritics.com/news/asiapacific/features/article_1292793.php/Attempt_to_save_polluted_Chinese_lake_leads_to_arrest (last visited May 12, 2009).

159. Chen, *supra* note 127, at 334.

charges meet national, minimum standards by the end of 1998.”¹⁶⁰ Another plan, the “Long-Term Program on Water Pollution Prevention and Control for Year 2010 for Taihu Lake Basin,” put forth the goal of “solving” the eutrophication problem of Lake Tai by 2010.¹⁶¹ The State Council approved both plans in 1997, stating that the three provincial governments of Jiangsu, Zhejiang, and Shanghai were all responsible for the plan and that a leading group for water pollution control should be responsible for solving the key problems of water resource conservation and water pollution control, as well as strengthening supervision and management.¹⁶²

The Ninth Five-Year Plan for Taihu Lake Basin was never updated with summary reports or any other benchmarks; in the meantime, the Tenth Five-Year Plan for Taihu Lake Basin was approved by the State Council in 2002 and did not include substantial changes to the Ninth Five-Year Plan or other annual goals.¹⁶³ SEPA’s State of the Environment Report for 2000 and a 2003 water monitoring system report both showed worsening water quality in Lake Tai with total phosphorus and total nitrogen emissions increasing during the duration of the Ninth Five-Year Plan (1997–2002),¹⁶⁴ inconsistent with the Jiangsu EPB’s report that all factories not shut down had complied with emissions standards.

In 1998, the Jiangsu Environmental Protection Bureau reported that it had punished 51 enterprises in Lake Tai Basin for “serious pollution,” twenty-six of which were “forced to stop production until they . . . complied with national pollution emissions standards”; the number of closed enterprises later swelled to 143, while all factories that had failed to meet standards were “shut down.”¹⁶⁵ Although these numbers seem promising, it is important to remember that self-reporting in the Chinese context is strictly predicated on maintaining honor, with transparency a distinctly secondary priority. On the ground, reports indicate that the common phenomenon of short-term campaigning led to industries cleaning up their act when the “spotlight” was on the region, only to “return to their polluting ways” as soon as attention was diverted, with ten percent of small factories completely ignoring the ban on discharging untreated wastewater into the lake altogether.¹⁶⁶

D. A SYMPTOM OF A LARGER PROBLEM

Lake Tai is but one symptom of a nation’s ailing water system. Locally, Jiangsu is no stranger to pollution problems and is home to the unenviable twin specters

160. *Id.* at 330-31.

161. *Id.* at 331.

162. *Id.* at 332.

163. *Id.*

164. *Id.* at 333.

165. *Id.*

166. *Id.* at 333-34.

of air and water pollution.¹⁶⁷ A study in Qidong county of Jiangsu linked liver cancer morbidity closely to drinking water contamination in the 1980s.¹⁶⁸ Jiangsu has the highest supply of polluted water volume (9.5 billion cubic meters) in the country.¹⁶⁹

Lake Dian in Yunnan province was also part of the “Three Lakes, Three Rivers” campaign and resembles Lake Tai in that it also saw no improvement despite the campaign’s efforts. Local officials utilized methods such as pouring chemicals into Dianchi to stem algae blooms and claimed to have cut pollution by eighty-five percent.¹⁷⁰ In reality, after the World Bank, Japan, Australia, Sweden, and other countries contributed \$2 billion in loans and grants to fund a wastewater treatment plant, the plant produced undrinkable water, and the lake could still be smelled before it could be seen.¹⁷¹ Lake Chao, in Anhui province, was hit by algal blooms at the same time as Lake Tai in 2007, with less devastating effects due only to rainfall and the transfer of fresh water from the Yangtze River.¹⁷²

Nationally, the picture is just as bleak. Half of the Chinese population is without water supplies meeting minimum quality standards, and eighty percent of Chinese rivers are completely devoid of fish.¹⁷³ Every year, another 45 billion tons of industrial waste and raw sewage are dumped into freshwater systems.¹⁷⁴ A 2005 survey of 509 cities revealed that only twenty-three percent of factories properly treated sewage before disposal, while another report states that one-third of all industrial wastewater and two-thirds of household sewage in China is untreated when released.¹⁷⁵ One hundred and ninety million Chinese people are ill from drinking contaminated water, and afflictions such as cancer, tumors, leukemia, and stunted growth are skyrocketing along the banks of China’s major rivers.¹⁷⁶ More than 300 million Chinese do not have access to clean water,¹⁷⁷ even though China has the fourth-largest freshwater resources in the world.¹⁷⁸ For two-thirds of China’s 660 cities, water demand exceeds water supply, while one-fifth of cities have severe water shortages.¹⁷⁹ Chinese industries use ten

167. *Cost of Pollution*, *supra* note 27, at xii.

168. *Id.* at 50.

169. *Id.* at 86.

170. Jasper Becker, *Putrid Lake Proof Environmental Policies Have Failed to Hold Water*, S. CHINA MORNING POST, Oct. 15, 2001, at 8.

171. *See id.*

172. Shi Jiangtao, *Bloom of Algae Poised to Choke Chao Lake*, S. CHINA MORNING POST, July 10, 2007, at 4.

173. Briggs, *supra* note 70, at 306; *see also* Eric W. Orts, *Environmental Law with Chinese Characteristics*, 11 WM. & MARY BILL RTS. J. 545, 555 (2003).

174. John Boudreau, *Shadow over China's Boom: Economic Progress Comes with a Price*, SAN JOSE MERCURY NEWS, June 17, 2007, at A1.

175. Economy, *supra* note 5, at 43.

176. *Id.* at 47.

177. U.S.-China Relations: Hearing Before the Subcommittee on Asia, the Pacific, and the Global Environment of the H. Comm. on Foreign Affairs, 110th Cong. 8 (2007).

178. Economy, *supra* note 5, at 42.

179. *Id.*

percent to twenty percent more water than their counterparts in developed countries, and urban areas waste twenty percent of the water they consume due to leaky pipes.¹⁸⁰

The cost of environmental pollution to China has been catastrophic, both in terms of economic productivity as well as the impact on generations of Chinese people—especially those who do not have the means to leave their polluted villages. The Green GDP for 2004 stated that water pollution was the largest single source of environmental costs, accounting for nearly 56% of the total GDP loss of 3.05% in 2004.¹⁸¹ Unfortunately, this is only a fraction of the real cost, as the GDP calculation does not take into account groundwater and soil contamination, among other key indicators. The same report for 2005 attributed an even larger percentage of GDP losses to environmental costs and was never made public due to fear of social backlash and negative feedback from local governments,¹⁸² exemplifying how China's desire for political stability and an untarnished image exceeds its desire to transparently document its pollution problem. That same month, the Chinese government censored a World Bank study showing that approximately 750,000 people in China die from pollution every year, 60,000 of them from water pollution-related causes such as diarrhea and cancer.¹⁸³ A disturbing phenomenon of "cancer villages" has sprung up in rural China; for example, in Zhejiang Province, three percent of the total populations of two villages have died of cancer.¹⁸⁴ Local officials turn a blind eye, and doctors are pressured into staying silent, while villagers who cannot afford to move elsewhere must continue to suffer the consequences of drinking tainted water and breathing polluted air, consequences that include bone, lung, liver, and breast cancers as well as childhood leukemia.¹⁸⁵ The central government is rightfully wary of the revolt that such appallingly commonplace atrocities and communities pushed to the limit may breed, but in doing little about the problem, it only pushes figures like Wu Lihong to prominence.

IV. WU LIHONG: ENVIRONMENTAL CHAMPION FOR LAKE TAI

Wu Lihong has been active in pollution issues around Lake Tai for over ten

180. *Id.*

181. Antoaneta Bezlova, *Jittery Officials Thwart Green GDP Report*, INTER PRESS SERVICE NEWS, July 27, 2007, <http://ipsnews.net/news.asp?idnews=38687> (last visited May 12, 2009); *GDP Takes on a Green Hue in New Figures*, CHINA DAILY, Sept. 8, 2006, http://english.peopledaily.com.cn/200609/08/eng20060908_300803.html (last visited May 12, 2009).

182. *Id.*

183. Richard Spencer, *Pollution Kills 750,000 in China Every Year, Say Scientists*, TELEGRAPH (London), July 4, 2007, at 16.

184. Wang Hsin-hsien, *supra* note 67.

185. *China's "Cancer Villages" Pay Heavy Price for Economic Progress*, S. CHINA MORNING POST, May 9, 2006, available at <http://www.commondreams.org/headlines06/0509-02.htm>.

years.¹⁸⁶ He has lived his entire life in Zhoutie Town, located on the northwest corner of the lake, where many small feeder streams converge.¹⁸⁷ Zhoutie is in Yixing City of the Wuxi Prefecture of Jiangsu Province, one of the most prosperous Chinese provinces. Zhoutie is home to 300 chemical plants, making products such as food additives, solvents, and adhesives.¹⁸⁸ In the mid-1990s, taxes on chemical industry profits accounted for four-fifths of local government revenue.¹⁸⁹ Wu was hired as a salesman for a soundproofing materials factory, and his wife Xu Jiehua worked in the dyemaking industry.¹⁹⁰

A. BEGINNINGS OF ENVIRONMENTAL WORK

Wu himself says he is unsure of the source of his passion for the environment.¹⁹¹ He remembers playing in local streams as a child and that the fish were so plentiful in the clear waters that they would tickle his legs.¹⁹² By the early 1990s, the streams had become black and there were no more fish; Wu began taking photographs of factory workers dumping untreated waste into canals, which he then mailed (anonymously at first, and then signed when there was no reply) to the local environmental protection agencies.¹⁹³ Receiving no reply for some time, he went to the provincial inspectors instead; after he showed them concealed factory pipes running directly into a stream, the inspectors fined the factory.¹⁹⁴ This was the beginning of Wu's personal campaign to out corruption and environmental pollution in and around his hometown.¹⁹⁵ However, it was also the beginning of his persecution by local police and factory owners who did not want his actions to expose their environmental violations.

In 1998, when the national government began its "Zero Hour Movement" to clean up Lake Tai, factories in Zhoutie stopped polluting for two to three months in adherence to the campaign before brazenly starting once again to release polluted water into local streams, destroying thousands of *mu*¹⁹⁶ of local crops.¹⁹⁷ Together with local farmers, Wu collected evidence of illegal polluting from hundreds of local factories and headed towards Beijing to the State Environmental Protection Agency.¹⁹⁸ Before leaving, he received word that someone had

186. Cao, *supra* note 117.

187. *Id.*

188. Kahn, *supra* note 118.

189. *Id.*

190. *Id.*

191. Cao, *supra* note 117.

192. *Id.*

193. Kahn, *supra* note 118.

194. *Id.*

195. *Id.*

196. 1 *mu* = 0.16466 acres or 0.066 hectares.

197. Cao, *supra* note 117.

198. *Id.*

hired thugs to lie in wait for him; the farmers formed an armed escort and saw him safely to the train station.¹⁹⁹

In 2003, Wu invited a soil scientist from the Nanjing academy to conduct tests on the rice paddies of Zhoutie's neighboring towns, which turned up more than 120 different carcinogens, the result of longstanding irrigation with toxic water.²⁰⁰ In total, more than 10,000 *mu* of newly-seeded rice paddies in Zhoutie have been severely polluted.²⁰¹

In 2005, Wu was named an "Environmental Warrior" by the National People's Congress, the highest state body and the sole legislative house of China.²⁰² He was honored as one of China's top ten environmentalists at a 2006 ceremony held at the Great Hall of the People in Beijing.²⁰³ Wu reported 200 instances of regulatory violations and pollution incidents to the Jiangsu Province EPB.²⁰⁴ Officials denied his request to register an environmental NGO, saying that an existing one in Wuxi was "enough"; however, Wu persisted and spent the family savings on further data collection and press lobbying.²⁰⁵

B. THREATS, PHYSICAL VIOLENCE, AND ECONOMIC LOSS

Interested parties both proffered carrots and waived sticks at Wu in significant quantity. Polluters attempted to bribe him with large sums of money and a house in an unspoilt location.²⁰⁶ Factory owners hired thugs to break into his house, people threatened to cut off his hands and feet,²⁰⁷ and he was beaten so severely that he required hospitalization.²⁰⁸ An unknown person offered 200,000 RMB for Wu's head, he was fired from his sales manager position (severely limiting his income), and his wife was also fired after his hospitalization.²⁰⁹ Local police repeatedly harassed him; in 2002 he was formally arrested and detained for two weeks,²¹⁰ allegedly for inciting peasants, who blocked a road in protest over pollution in their fields.²¹¹ Wu gave interviews to German and other foreign media about his campaign, following in the steps of farmer Fu Xiancai, who went

199. *Id.*

200. *Id.*

201. *Id.*

202. Kahn, *supra* note 118.

203. Minnie Chan, *Battle to Restore Lake's Lost Beauty*, S. CHINA MORNING POST, May 29, 2006, at 8.

204. Kahn, *supra* note 118.

205. *A Lot to be Angry About*, ECONOMIST, May 3, 2008, at 49–50.

206. *No Justice for Wu Lihong*, DEUTSCHE WELLE, http://dwelle.de/southasia/East_Asia/1.230732.1.html (last visited May 12, 2009).

207. *Id.*

208. Zhang Heng, *Jielu taihu wuran rehou, Wu Lihong zaowu xiayu* [Wu Lihong Falsely Accused and Imprisoned After Exposing Taihu Pollution Disaster] 206 *HUAXIA DIANZI BAO* [HUAXIA ELECTRONIC NEWS], Aug. 23, 2007, <http://huaxiabao.org/article.asp?IssueID=206&ArtNb=3> (last visited May 12, 2009).

209. *Id.*

210. Kahn, *supra* note 118.

211. *Id.*

public, claiming compensation after being resettled from the Three Gorges Dam.²¹² Police warned Fu Xiancai that such interviews would have “no good consequences”; soon thereafter Fu was struck from behind by unknown assailants, and has been paraplegic ever since.²¹³ After both Wu and his wife lost their jobs, Wu badly needed money and accepted a pollution cleanup contract from party officials, despite warnings from a friend telling him to turn it down.²¹⁴ This would prove to be Wu’s undoing.

C. ARREST, TRIAL, AND DENIAL OF APPEAL

Wu was arrested on April 13, 2007²¹⁵ and charged for blackmail by Yixing city prosecutors who alleged that he had extorted 45,000 RMB (about \$5,821 USD as of April 2007²¹⁶) from different enterprises by threatening to expose their pollution misdeeds.²¹⁷ Police came in the window through a ladder and took him away, ransacking his house and seizing his computer and personal documents.²¹⁸ At the time, Wu was preparing to travel to Beijing to lobby authorities and report local governments’ omissions and failures,²¹⁹ purposely timing his visit with the upcoming Earth Day.²²⁰

Prosecutors stated that Wu had a diary that listed factories and enterprises involved in pollution as blackmail targets as well as the amount of money that he had planned to extort from them.²²¹ Police investigations allege that between October 2003 and December 2004, Wu threatened to use his close relationships with the township and provincial environmental protection bureaus to report a factory for environmental crimes; fearing that Wu would make trouble, the factory manager Mr. Dai made two payments of 15,000 RMB to him.²²² Between March 2006 and January 2007, Wu then allegedly utilized the same tactic to extort more than 40,000 RMB from another enterprise.²²³ In his defense, Wu argued that this money was rightfully his commission for referring business to the factory; the contract stipulated a twelve percent commission, but the factory only

212. Landwehr, *supra* note 158.

213. *Id.*

214. Kahn, *supra* note 118.

215. *Id.*

216. Former exchange rates calculated from a table at the International Monetary Fund’s “Representative Exchange Rates for Selected Currencies for April 2007,” available at http://www.imf.org/external/np/fin/data/rms_mth.aspx?SelectDate=2007-04-30&reportType=REP.

217. Heng, *supra* note 208.

218. Kahn, *supra* note 118.

219. Montlake, *supra* note 112.

220. Landwehr, *supra* note 158.

221. “Eco-Warrior”, *supra* note 115.

222. “Minjian huanbao weishi” Wu Lihong yin shexian qiaozha lesuo bei gongsu [“Folk Eco-Warrior” Wu Lihong Prosecuted for Extortion and Blackmail], XINHUANET, June 5, 2007, http://news.xinhuanet.com/legal/2007-06/05/content_6201924.htm (last visited May 12, 2009).

223. *Id.*

gave him eight percent.²²⁴

Wu told the court that he was deprived of sleep and food for five straight days and had scars on his hands from cigarette burns sustained while being interrogated by police.²²⁵ His lawyer, Zhu Xiaoyan, stated that Wu had been whipped in custody, and that she had not been allowed to see him at all until more than six weeks after his arrest.²²⁶ She submitted an application for a medical examination to the court to demand a check-up.²²⁷ In June 2007, it was reported that the Yixing People's Court had "indefinitely" postponed Wu's trial that was set for June 12 to investigate accusations that he had been tortured to extract a confession.²²⁸ However, the postponement only lasted two months, and on August 10, the Yixing People's Court of Jiangsu sentenced Wu to three years in prison for blackmail and fraud²²⁹ after a trial that lasted seven hours.²³⁰ He was also fined 4000 RMB and ordered to return illegal gains of 45,000 RMB.²³¹ Wu's wife Xu Jiehua said that no witnesses were called to testify, police statements went unchallenged, and the court refused to hear evidence proving that the factory owner had paid Wu a commission for the sale of a wastewater treatment system.²³² SEPA denied that Wu was arrested for anti-pollution activism, saying that he was "arrested for involvement in criminal charges."²³³

In a move worthy of ridicule, the day after Wu was sentenced, the Jiangsu Communist Party of China Provincial Committee Secretary (colloquially referred to as the "Jiangsu CPC Party Chief"), Li Yuanchao, made a special visit to the districts around Lake Tai and emphasized the rehabilitation of the Lake Tai environment.²³⁴ Shortly thereafter, Li Yuanchao became the head of the Organization Department of the Communist Party of China.²³⁵ The timing of this promotion leaves open the question of whether Li was being rewarded for the way he handled the Wu Lihong situation.

224. Heng, *supra* note 208.

225. *Id.*

226. Minnie Chan, *Activist Tortured by Police, Claims Wife*, S. CHINA MORNING POST, June 1, 2007, at 5.

227. *Id.*

228. Benjamin Kang Lim, *China Activist Trial "Put Off" Amid Torture Claim*, REUTERS, June 8, 2007, <http://www.reuters.com/article/latestCrisis/idUSPEK156971> (last visited May 12, 2009).

229. Montlake, *supra* note 112.

230. Christopher Bodeen, *Chinese Environmental Activist Sentenced to 3 Years in Prison on Extortion Charges*, ASSOCIATED PRESS, Aug. 10, 2007, available at <http://www.signonsandiego.com/news/world/20070810-1010-china-environmentalistsentenced.html>.

231. *Id.*

232. Montlake, *supra* note 112.

233. Minnie Chan, *Tai Lake Activist Broke the Law, Says Official*, S. CHINA MORNING POST, June 6, 2007, at 5.

234. Heng, *supra* note 208.

235. *Li Yuanchao Named Head of Party Organization Department*, CHINA DAILY, Oct. 26, 2007, available at http://www.chinadaily.com.cn/china/2007-10/26/content_6209702.htm. The Party Organization Department has enormous authority within the Chinese Communist Party because it is responsible for deciding all staffing positions, and the position of Party Organization Department Head is both coveted and highly ranked.

Wu's lawyer appealed his case.²³⁶ Although the Wuxi Intermediate People's Court (one step up from the Yixing court) was supposed to decide whether to hear the appeal within forty-five days, the Wuxi court did not make a ruling until November 2, 2007 because of the "politically sensitive" timing of the Seventeenth National People's Congress in October.²³⁷ The court denied Wu's appeal for lack of new evidence or other material in a one-day, closed-door ruling.²³⁸ Xu's hope to appeal to a higher court has not materialized, as Article 12 of the Organic Law of the People's Courts of the PRC allows only one appeal: "In the administration of justice, the people's courts adopt the system whereby the second instance is the last instance."²³⁹ Wu is being held in prison, and Xu is under constant surveillance by the police and not allowed to visit her husband.²⁴⁰

Yixing was cited as an "environmentally friendly model city" in 2007 to the puzzlement of environmental activists.²⁴¹ Adding insult to injury, an award organizer for the Green China People of the Year award stated that Wu would be taken out of the running for the award and only eligible for the "environmental villain" category for 2007, notwithstanding his status as the year's "most prominent and controversial of the mainland's environmental activists" and despite the award's water resources protection theme.²⁴² The chief secretary of the organizing committee for the award said that this decision was based on information from the local government.²⁴³

D. SEVERE EUTROPHICATION OF LAKE TAI IN MAY 2007

Severe eutrophication occurred only shortly after Wu Lihong was arrested in April.²⁴⁴ Chemical factories transformed the once potable streams full of small fish and shrimp into foul-smelling, blackened water that as of 2006 was classified as "Below Class V," the lowest water quality category in Chinese classification.²⁴⁵ Lake Tai became a fetid, fluorescent green pool that emitted a "stench of

236. *No Justice for Wu Lihong*, *supra* note 206.

237. Bill Savadove, *Famed Activist's Appeal Rejected*, S. CHINA MORNING POST, Nov. 6, 2007, at 7.

238. *Id.*

239. Zhonghua Renming Gongheguo Renmin Fayuan Zuzhifa, [Organic Law of the People's Courts of the People's Republic of China] (Second Mtg. of Sixth Nat'l. People's Conf., Sept. 2, 1983) art. 12 (P.R.C.), translated at http://www.novexcn.com/organic_law.html (last visited Mar. 21, 2009).

240. *No Justice for Wu Lihong*, *supra* note 206.

241. Minnie Chan, *Chemical Plant Blast Kills Jiangsu Worker*, S. CHINA MORNING POST, Dec. 26, 2007, at 4.

242. Vivian Wu, *No Green Award for Whistle-Blower*, S. CHINA MORNING POST, Sept. 4, 2007, at 4.

243. *Id.*

244. *No Justice for Wu Lihong*, *supra* note 206.

245. Hong-Ying Hu & Yu-Dong Song, Water Environmental Situation and Pollution Control in China 1, 3 (Jap. Fed'n Eng'rs & World Fed'n Eng'g Org., Joint Int'l. Symposium on River Restorat'n, Sept. 13, 2007), available at www.wfeo.org/documents/download/Water%20Environmental%20Situation_China.pdf. Water classification in China, according to the regulation *Environmental Quality Standards for Surface Water* (GB 3838-2002) is divided into the decreasing quality Classes I through V with the additional category of "below Class V," the lowest classification. Class I is for headwaters and natural reserves, Class II for first-class drinking

decay” sure to choke anyone within a mile of the vicinity.²⁴⁶ Six days went by while Wuxi officials scrambled to improve the situation, and local residents relied solely on bottled water for cooking and drinking.²⁴⁷ Officials blamed the lake’s condition on higher-than-normal temperatures, a lack of rain and wind, and low water levels—in essence, everything but the glaring pollution problem.²⁴⁸ The government added potassium permanganate to the water, telling citizens that the tap water was now safe to drink.²⁴⁹ However, potassium permanganate, although able to remove odors, tastes, and certain elements such as iron and manganese from water, is a poor disinfectant and is toxic and irritating to skin and mucous membranes.²⁵⁰

Attempts to pass the event off as a natural disaster were met with media images of direct dumping by factories;²⁵¹ CCTV showed footage of Yixing businesses releasing untreated wastewater into the lake a few days after the crisis.²⁵² Premier Wen Jiabao ordered a formal probe into Lake Tai in June and cited pollution as the main cause of the algae outbreak.²⁵³ Five Yixing officials, all either leaders of Zhoutie Township or responsible for environmental protection, were fired or disciplined for allowing further contamination of the lake.²⁵⁴

E. FUTURE PLANS TO CLEAN UP LAKE TAI

In October 2007, Beijing budgeted approximately 257 billion RMB to cut emissions of major pollutants by ten percent by 2010 in eleven polluted bodies of water, including Lake Tai.²⁵⁵ However, a chief engineer with SEPA criticized this figure as being too low, citing an estimate of 450 billion RMB as more realistic

water sources and habitats of rare aquatic organisms, Class III for second-class drinking water sources, aquaculture, and human contact, Class IV for industrial water usage and recreation areas for indirect human contact, and Class V for agricultural and landscaping uses. These classifications plainly show that Lake Tai water is unfit for agriculture, much less for drinking purposes. *Id.* at 2.1. Only two decades ago, the water was Class II, the national standard. Li Jing, *Water Blues*, CHINA DAILY, Apr. 21, 2008, at 5.

246. Kahn, *supra* note 118.

247. Wang Xiangwei, Editorial, *Release the Man Who First Raised the Alarm About Tai Lake’s Pollution*, S. CHINA MORNING POST, June 4, 2007, at 5.

248. *Id.*

249. Chua Chin Hon, *Wuxi Counts Cost of Algae Crisis*, STRAITS TIMES, June 11, 2007, at 10.

250. U.S. ENVTL. PROT. AGENCY, PUB. NO. EPA 815-R-99-014, ALTERNATIVE DISINFECTANTS AND OXIDANTS GUIDANCE MANUAL 5-11 (Apr. 1, 1999), available at http://www.epa.gov/OGWDW/mdbp/pdf/alter/chapt_5.pdf.

251. Jim Yardley, *China Vows to Clean Up Polluted Lake*, N.Y. TIMES, Oct. 27, 2007, at A5.

252. Alice Yan, *Officials Sacked over Damage Done to Tai Lake*, S. CHINA MORNING POST, June 12, 2007, at 5.

253. Christopher Bodeen, *China’s Premier Orders Lake Algae Probe*, WASH. POST, June 12, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/11/AR>.

254. Kahn, *supra* note 118.

255. Shi Jiangtao, *256b Yuan Budgeted for Water Cleanup Plan*, S. CHINA MORNING POST, Oct. 10, 2007, at 5.

for such a difficult task.²⁵⁶ A high-ranking official stated at the March 2008 National People's Congress that pollution in Lake Tai is to be eradicated in ten years, with five years being spent on eutrophication and another five to eight years "resolving the lake pollution in a fundamental way."²⁵⁷ The Minister of Environmental Protection, Zhou Shengxian, announced the establishment of a "round-the-clock monitoring system" to supervise seven "heavily-polluted" major lakes and reservoirs, including Lake Tai, sometime in 2008; implementation would be guaranteed by investment, credit and fiscal policies.²⁵⁸ However, by September 2008 China had spent only 51 billion—a fraction of the amount originally promised—on water treatment projects intended to reduce the level of chemical oxygen demand (COD), a key indicator of water quality.²⁵⁹ Pollution in Lake Tai remains serious, with almost forty percent of the water still below Grade V.²⁶⁰ As of March 2009, tens of millions of algae-eating fish have been released into Lake Tai in an attempt to curb the growth of blue-green algae, indicating that the lake still contains high levels of pollutants.²⁶¹

F. WHAT WILL BECOME OF WU LIHONG?

Just as Lake Tai became the subject of intensive cleanup efforts after its severe eutrophication, the outlook for Wu and his wife may yet improve. Wu has attracted international media attention and even become the subject of a United Nations report. Human Rights in China (HRIC) launched the Incorporating Responsibility 2008 Campaign to assess and encourage Beijing's progress on promises it had made in the Beijing Olympic Action Plan in 2002.²⁶² Rebutting Beijing's promise of "building the capital into an ecological city that features green hills, clear water, grass-covered ground, and blue sky" by 2008, HRIC called Beijing's efforts "superficial" and China's environment "deteriorating,"²⁶³ and showcased Wu Lihong as one of two prominent environmental "Activists at Risk," the other being Sun Xiaodi, who won acclaim for his campaign to stop illegal mining and clean up radioactive contamination from a uranium mine in Tibet.²⁶⁴

256. *Id.*

257. *Pollution in Taihu Lake to be Rooted out in 10 Years*, *supra* note 145.

258. *China to Beef up Environmental Protection in Seven Lakes and Reservoirs*, XINHUA, Mar. 24, 2008.

259. *Official Says Water, Air Pollution in China Still Serious*, XINHUA, Feb. 24, 2009, http://news.xinhuanet.com/english/2009-02/24/content_10885975.htm (last visited May 12, 2009).

260. *Id.*

261. *China Puts More Algae-Eating Fish into Polluted Lake*, XINHUA, Mar. 6, 2009, available at http://www.china.org.cn/environment/news/2009-03/07/content_17394300.htm.

262. Charlie McAteer, Carol Wang & Elisabeth Wickeri, Human Rights in China, *Take Action: 2008 and Beyond*, CHINA RTS. F., Sept. 21, 2007, at 110–21, available at http://hrichina.org/public/PDFs/CRF.3.2007/CRF-2007-3_Action.pdf.

263. *Id.* at 110–11.

264. *Id.* at 112.

The Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights and the Special Representative of the Secretary General on the Situation of Human Rights Defenders, two experts with specific mandates from the UN Human Rights Council, sent an urgent appeal regarding Wu Lihong to the Chinese government on August 23, 2007.²⁶⁵ The appeal expressed concern that Wu Lihong's sentence "may be related to his peaceful and legitimate activities in the defence of human rights, in particular his work on reporting environmental violations in the form of illegal dumping of industrial waste. Further concern is expressed for the physical and psychological integrity of Mr. Wu Lihong while imprisoned."²⁶⁶ The Chinese government has not deigned to send any reply regarding this issue.²⁶⁷ As of February 2009, Wu Lihong remains imprisoned to the best knowledge of human rights advocates.²⁶⁸

While Wu remains imprisoned, China has attempted to address pollution in a top-down fashion without tolerating dissent. But until the corrupt bureaucratic system stops suppressing the attempts of citizens to protect themselves and their rights, manifestations such as Wu Lihong's incarceration will continue.²⁶⁹

V. CONCLUSIONS AND RECOMMENDATIONS

China must undergo a transformation: Instead of employing primarily administrative methods for protecting the environment, it must move to comprehensive application of legal, economic, technical, and necessary administrative methods to address environmental problems.²⁷⁰ But how is this to be accomplished?

A. GOVERNMENTAL APATHY AND CORRUPTION

It is clear from comprehensive governmental plans that there is insufficient genuine emphasis on improving the environment. The reality is that economic growth is undoubtedly the first and most important goal of the Chinese government. Sometimes an economically beneficial project with the best of intentions can lead to environmental disaster: Lake Poyang, the largest freshwater lake in China, once characterized lovingly as "the last basin of clean water" along the Yangtze, suffers from pollution that can be traced to the effects of the Three Gorges Dam.²⁷¹ Fines for environmental offenses are so paltry that it is much

265. U.N. Human Rights Council, *Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights*, ¶ 12, delivered to the General Assembly, U.N. Doc. A/HRC/7/21/Add.1 (Mar. 4, 2008).

266. *Id.* ¶ 13.

267. *Id.* ¶ 14.

268. See Editorial, *Hillary Clinton's Climate-Saving Voyage*, CHRISTIAN SCI. MONITOR, Feb. 13, 2009, at 8.

269. See Fuzhen, *supra* note 120, at 44.

270. STATE COUNCIL, *supra* note 28, at 5.

271. Raymond Li, *Dam Blamed for Decline in Lake's Water Quality*, S. CHINA MORNING POST, Aug. 11,

cheaper for factory owners to risk paying them rather than installing and using pollution controls. These harsh truths are reflected in the National Environmental Protection Plan for the Eleventh Five-Year Plan, which emphasizes the “transformation from focusing on economic growth [and] ignoring environmental protection [to putting equal emphasis on [them] both.”²⁷² If the government really wanted to make large improvements, it would increase fines and change policies to tip the scales in favor of the environment.

One concern is that while environmental policies have been widely touted, very little is being done about the longstanding pervasive corruption that stymies central government regulations from being robustly enforced at regional levels.²⁷³ Some critics even allege that local officials, corporations, and triads (Chinese criminal organizations) have all joined forces to ensure approval for environmentally destructive projects, such as an illegal rare earth mine in the southern Chinese province of Guangdong.²⁷⁴ Others tell of large-scale, coordinated operations to prevent petitioners from traveling to the capital, beatings by police, and deaths in police custody—all despite a 2005 update to the Regulation on Petitioners Law (known colloquially in Chinese as “letters and visits”) that seeks to “protect the lawful rights” of petitioners.²⁷⁵

The economic reforms in China and decentralization have created more opportunities for local officials to use newfound authority to exact bribes; lack of separation between state and enterprises creates an incentive for those officials to direct resources towards the enterprises in which they hold an interest.²⁷⁶ The private economy is the source of wealth, and businesses find that bribery is an efficient alternative to a usually laborious and slow approval process.²⁷⁷ Lying near the root of this crisis may be the disintegration of traditional Confucian and Buddhist morality with the rise of Communism, the subsequent loss of faith in socialism followed by the events of the Cultural Revolution, and the current depiction of the Communist Party as a wholly corrupt vehicle for personal enrichment.²⁷⁸ The only god left to worship for the Chinese is money in the form

2007, at 4.

272. STATE COUNCIL, *supra* note 28, at 4.

273. See, e.g., Michael Lelyveld, *China Polluters Still Get Loans*, RADIO FREE ASIA, Feb. 27, 2008, http://www.rfa.org/english/features/lelyveld/china_lelyveld-20080227.html (last visited May 12, 2009) (providing an example of local government corruption in support of uranium mining facilitating environmental damage).

274. Lee Yong-tim, *South China Villagers Slam Pollution from Rare Earth Mine*, RADIO FREE ASIA, Feb. 22, 2008, http://www.rfa.org/english/news/china_pollution-20080222.html (last visited May 12, 2009).

275. See Bai Fan, *New Rules Do Little to Help China's Petitioners*, RADIO FREE ASIA, May 16, 2005, http://www.rfa.org/english/news/in_depth/china_petitioners-20050516.html (last visited May 12, 2009).

276. Randall Peerenboom, *Globalization, Path Dependency and the Limits of Law: Administrative Law Reform and Rule of Law in the People's Republic of China*, 19 BERKELEY J. INT'L L. 161, 225-26 (2001).

277. *Id.* at 226.

278. *Id.*

of a “hard-edged capitalist materialism.”²⁷⁹

B. WORLDWIDE PERSECUTION OF ENVIRONMENTAL ACTIVISTS

Suppression of activism is pervasive in China and is symptomatic of a broader international problem. At least twenty-three environmental activists in the Philippines have been killed since 2001, and four activists faced trial on Earth Day 2008 for what have been termed SLAPP cases (strategic lawsuits against public participation) filed by mining and paper interests.²⁸⁰ Activist Grigory Pasko was convicted on charges of treason and espionage after exposing the Russian navy’s illegal dumping of nuclear waste in 1997 even though the court determined that prosecutors presented falsified evidence.²⁸¹ This conviction took place in spite of the fact that it is a violation of the Russian Constitution as well as a crime under the Russian Criminal Code to “withhold information on the condition of the environment or on incidents or catastrophes that endanger human life.”²⁸² Russian President Vladimir Putin abolished the independent governmental environmental inspection committee in 2000 after characterizing the Russian environmental movement as “a Trojan horse for espionage by foreign powers.”²⁸³ Iceland, a country not usually reviled as scoring low on human rights,²⁸⁴ imprisoned environmental scientist Miriam Rose for eight days for her involvement in opposing heavy industry projects on the grounds that she was “a serious threat to the fundamental values of society,” put other activists under surveillance, and “drew up a ‘blacklist’ of foreign activists that police were to hunt down and deport.”²⁸⁵

What can be learned from this persecution? In an effort to control dissent, these governments have earned the ire of environmentalists and human rights supporters. Although governments on the receiving end of environmental activism may see this dissent as threatening government stability, environmental activism can complement governmental environmental mechanisms. China may not have to become a capitalist or democratic country for its environmental policies to

279. *Id.*

280. Clemente Bautista, Jr., Editorial, *Speak out: Irony*, SUN STAR (Cebu), April 22, 2008, <http://www.sunstar.com.ph/static/ceb/2008/04/22/oped/clemente.bautista.jr.kalikasan.pne.html> (last visited May 12, 2009).

281. Amnesty International, *Russian Federation: Environmental Activist Grigory Pasko Faces New Imprisonment Risk—Background Briefing on the Grigory Pasko Case*, Nov. 20, 2000, <http://asiapacific.amnesty.org/library/Index/ENGEUR460462000?open&of=ENG-315> (last visited May 12, 2009).

282. *Id.*

283. *Id.*

284. See, e.g., U.S. DEPT. OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, ICELAND: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (Feb. 28, 2005), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41686.htm> (“The Government generally respected the human rights of its citizens, and the law and judiciary provide effective means of addressing individual instances of abuse.”).

285. Vilhelm Vilhemsson, Founder of Saving Iceland Accused by Icelandic Police, *Saving Iceland*, Apr. 21, 2008, <http://savingiceland.puscii.nl/?p=1607&language=en> (last visited Apr. 15, 2009).

become more effective, as “elements often *associated with* democracies—such as intellectual freedom, political participation, government accountability and transparency, and local self-governance—are more important to sound environmental behavior than the form of government *per se*.”²⁸⁶ Singapore is one example of a government that tolerates little dissent but has sound environmental policies.²⁸⁷ However, currently China is almost as far from achieving the mentioned elements as from democracy itself.

C. ENVIRONMENTALISM AS A LIGHTNING ROD

Notwithstanding the government’s resistance to tackling environmental problems, environmental disputes are on the rise, showing that Chinese citizens are not content to sit on their hands. There were more than 2.53 million letters and 430,000 visits by some 597,000 petitioners to Chinese environmental authorities from 2001 to 2005, with 51,000 disputes over environmental pollution in 2005 alone.²⁸⁸ Environmental hotlines have experienced strong citizen participation, increasing pressure on local leaders to take action on long-standing environmental problems.²⁸⁹ However, these tactics often fail to penetrate to the roots of the issue because they are reactionary rather than precautionary; citizens cannot ensure that correct pollution control measures are installed when a factory is built, but can only voice their concerns when they have had enough.

Despite the existence of the Great Chinese Firewall, censorship may not be as much of an impediment to environmental information dissemination as one might think.²⁹⁰ In June 2007, thousands of citizens—skillfully coordinated through a months-long text message campaign in Xiamen—gathered to protest about a chemical plant being built on a nearby island.²⁹¹ Despite efforts by Public Security Bureau officials to block the campaign, journalists were able to send text messages and cell phone photographs to bloggers in other cities who posted real-time reports online. While security monitors were able to censor some websites, by the time this had been accomplished, the contents had been reproduced elsewhere.²⁹² The protests successfully delayed the project and

286. SHAPIRO, *supra* note 14, at 18.

287. See Quality of Life in Singapore, Guide Me Singapore, <http://www.guidemesingapore.com/singapore-introduction/c624-quality-life-singapore.htm> (last visited May 12, 2009).

288. Wang, *supra* note 19.

289. Jahiel, *supra* note 31, at 771.

290. It is well known that Chinese internet is heavily censored by the government, as all internet traffic into and out of China passes through government censorship checkpoints, which checks for offending words like “Tibet” or “Taiwan.” This censorship has extended to web logs, chat rooms, and text messages. See, e.g., Ben Elgin & Bruce Einhorn, *The Great Firewall of China*, BUSINESS WEEK, Jan. 12, 2006, http://www.businessweek.com/technology/content/jan2006/tc20060112_434051.htm (last visited May 12, 2009).

291. Edward Cody, *Text Messages Giving Voice to Chinese: Opponents of Chemical Factory Found Way Around Censors*, WASH. POST, June 28, 2007, at A1.

292. *Id.*

eventually the decision to build the plant was deferred to the central government.²⁹³ However, Xiamen's one officially-registered environmental NGO was careful to keep itself "nervously aloof" from the campaign altogether, leaving China's online civil society to lead the charge.²⁹⁴

In short, China is afraid of the power of environmental ire and of its potential to become a lightning rod for dissent. For example, in Taiwan, an extremely well-publicized series of environment protests against the Fourth Nuclear Power Plant on the eastern coast of Taipei lasted over a decade and fostered numerous environmental activists. Taiwan, somewhat devoid of environmental spirit in the 1970s, had "discovered nature" in the 1980s, with newspapers of the period filled with reports of environmental demonstrations.²⁹⁵ Many cities had large ongoing movements against factory construction, the most famous being the titanium dioxide plant that Dupont planned to build in Lugang in 1986.²⁹⁶ Dupont was forced to call off the Lugang project and moved it to another area.²⁹⁷ The country passed environmental laws and formed an Environmental Protection Agency in 1987, and national parks, nature tourism, and a strong environmental consciousness among the people followed.²⁹⁸

In Japan, the "four big" pollution incidents that wreaked manmade environmental harm came about in the 1960s and transformed the way environmental issues were regulated and considered. One of these, the Kumamoto Minamata Disease case, involved methyl mercury poisoning caused by effluent water from Chisso Corporation, a chemical company.²⁹⁹ Chisso gained control of the negotiations and thrust a consolation contract stipulating that the victims would make no further claims upon the plaintiffs.³⁰⁰ The Kumamoto District Court found in 1973 that Chisso actively suppressed information regarding the disease and voided the consolation contract as violating public policy.³⁰¹ The media's extensive coverage of the "big four" trials effectively transmitted the plaintiff's concerns to the entire country, awakening the public and leading to judicial, administrative, social, and political changes, and spurring the legislature to reenact a basic anti-pollution act.³⁰²

293. *Id.*

294. *Protest in China Mobilised by Mobile*, *ECONOMIST*, June 23, 2007, at 9.

295. ROBERT WELLER, *DISCOVERING NATURE: GLOBALIZATION AND ENVIRONMENTAL CULTURE IN CHINA AND TAIWAN* 2 (2006).

296. *Id.*

297. Mei-Chun Lin, *The Best Investment Partner, Dupont Taiwan Ltd.: Known for Research, Safety, and HR Development*, *TAIWANESE BUSINESS TOPICS*, Nov. 2006, <http://www.amcham.com.tw/content/view/924/330> (last visited May 12, 2009).

298. WELLER, *supra* note 295, at 2.

299. Shiro Kawashima, *A Survey of Environmental Law and Policy in Japan*, 20 N.C.J. INT'L L. & COM. REG. 231, 240 (1995).

300. *Id.* at 241.

301. *Id.*

302. *Id.* at 242.

In both Russia and Hungary, environmental movements paralleled political changes, with many activists of this period catapulted to political fame.³⁰³ Hungarian environmental movements have been fairly successful, representing an emergent environmental consciousness, and exercising political influence at the local level.³⁰⁴ In contrast, Russian environmental movements never fully took off and are extremely unsuccessful due to the lack of resource availability and media support, as well as a much less open government and the more serious consequences of activism.³⁰⁵ However, in both countries the environmental movements vanguard social movements, combining opposition political forces with those whose major concern was environmentalism.³⁰⁶

By imprisoning Wu Lihong under opaque and possibly coerced circumstances, China is, to use a geographically appropriate saying, “picking up a rock only to smash one’s own foot,” and not only choosing Russia’s path over Hungary’s, but preventing local environmental movements from gaining momentum in the fear that broader social movements would follow. Though many of the horrors of the Maoist Era have passed, China’s environmental problems are still linked to numerous problems of that period, including authoritarianism. If the central government continues to alienate NGOs and environmentalists, China will lose an important ally in the fight against increasing environmental degradation. The government will be unable to assuage the fears of an increasingly angry and frustrated public, which will explode into chaos when the tipping point is reached. In the aftermath of the 2008 Sichuan earthquake, there has been widespread media defiance of the government ban placed on firsthand coverage, and a massive unofficial mobilization of ordinary citizens, which, although not aimed explicitly against the government, is still “a piece of the same defiance.”³⁰⁷ Even China’s younger urban generation has been shocked by the deplorable conditions reported through television and newspapers, with the Chinese media now describing graphic details and stories.³⁰⁸

With the current spotlight on environmental issues, there may be a glimmer of hope for China. For the first time in December 2008, representatives from Chinese environmental groups were invited to participate in the environmental impact assessment for a major hydropower project.³⁰⁹ The MEP has put a water

303. Katy Pickvance, *Social Movements in Hungary and Russia: The Case of Environmental Movements*, 13 EUR. SOC. REV. 35, 40 (1997).

304. *Id.* at 45.

305. *Id.* at 45–46.

306. *Id.* at 40.

307. Jim Yardley & David Barboza, *Many Hands, Not Held by China, Aid in Quake*, N.Y. TIMES, May 20, 2008, at A1.

308. *Id.*

309. Alex Wang, *One Small Step for Chinese Environmental Public Participation? Civil Society Participates for the First Time in Hydropower Project Technical EIA*, GREENLAW, Jan. 16, 2009, <http://www.greenlaw.org.cn/enblog/?p=365> (last visited May 12, 2009).

quality reporting section on its website, which includes data on Lake Tai.³¹⁰ Perhaps most notably, the Guangzhou maritime court in December 2008 resolved the first environmental public interest litigation case with a civil plaintiff in favor of the prosecution.³¹¹ Such moves are perhaps indicative of a sea change that the Chinese government, though still distrustful of activists, are accepting the fact that the magnitude of the problem requires collaboration to be dealt with effectively. On the citizenry side, even formerly disaffected ordinary citizens may be sensing the outrage at the government's actions. Charter 08, a manifesto signed by more than 300 intellectuals and activists calling for freedom of expression and free elections, was published on December 10, 2008, the sixtieth anniversary of the Universal Declaration of Human Rights.³¹² More than 8000 Chinese people from all walks of life have signed Charter 08.³¹³ Governmental and non-governmental forces seem to be moving closer together towards institutional reform. If such a trend continues, Wu Lihong's efforts will not have been in vain. Unfortunately, the daunting task of overhauling China's environmental legal system is time-critical to prevent more lakes from going the way of Lake Tai. The constant environmental fear is that when action is finally taken, it may be too late.

310. Alex Wang, *The New Ministry of Environmental Protection Data Center*, GREENLAW, Jan. 28, 2009, <http://www.greenlaw.org.cn/enblog/?p=463> (last visited May 12, 2009).

311. Gao Jie, *Environmental Public Interest Litigation—Maritime Courts “Changing the Game”*, GREENLAW, Jan. 29, 2008, <http://www.greenlaw.org.cn/enblog/?p=469> (last visited May 12, 2009).

312. Richard Spencer, *Chinese Dissidents Emulate Anti-Soviet Heroes with Charter 08*, DAILY TELEGRAPH, Dec. 9, 2008, available at <http://www.telegraph.co.uk/news/worldnews/asia/china/3690568/Chinese-dissidents-emulate-anti-Soviet-heroes-with-Charter-08.html>.

313. Editorial, *Virtual Groundswell: Why China's Leadership Should Talk to the Charter 08 Movement*, WASH. POST, Jan. 30, 2009, at A18.