Legislation of air pollution control in China

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Abstract. Air pollution bulks large in environmental protection initiatives in China in these years. The increasing emissions of VOCs, fume, ash, sulfides, nitrifying materials, sulfur dioxide, PM2.5 and PM10 are damaging the atmospheric ecology and affecting people’s life and social development. The root cause is that under the government-dominated governance of pollution control, a relevant legal system is absent and legislation in this aspect seems reaching nowhere. In this regard, the central government of China has established the foundation of the legislation directions, objectives, principles and basic policies, and to establish an elaborate legal system for air pollution control is the key to control air pollution in a scientific manner.

1. Introduction
Air pollution control is a major part of China’s environment and ecological improvement initiatives in these years. Laws and regulations for air pollution control are constantly being modified and improved, which reflects the government’s emphasis on air pollution. In 1982, China released the first set of air quality standards – “Air Quality Standards (GB3095—82)”, providing benchmarks for definitions of air pollutants and leveled management. In 1987, the “Air Pollution Control Act” pointed out that soot and ash pollution took priority in air pollution control. In 1991, the release and enforcement of the “Implementation regulations of air pollution control act” have promoted the formation of a research system for air pollution control. In 1998, emission control over pollutants including the sulfur dioxide was strengthened and the comprehensive air pollution control mode was maturing. In 2000, air pollution in China entered a new age: emergence of regional pollution control and elaborate pollution control shifted the regional government-dominated control mode to the collaborative control mode. As of 2002, the sustainable development strategy had been introduced to air pollution control endeavors. In 2011, the 12th Five-Year Plan for National Economy and Social Development analyzed the types, ways and discharging channels of air pollutants, employed incentive and authoritative policies at the same time, calling on the whole nation to pilot air pollution control and improving relevant regulations. In November 2011 the “Opinions for environmental protection by the State Council” was released, which for the first time set total emissions of pollutants as the metrics for environmental evaluation in formal documents. Before release of acts, regional Innovations in air pollution control are made effective policies for the whole nation. In 2012, the first comprehensive air pollution control policy “the 12th Five-Year Planning of Air Pollution Control in Key Regions” was aborted, and the national council released the “Air Pollution Control Initiative Plan”, which established the guiding principle of “regional collaboration and regional management” for the specific policies of air pollution control. In 2014, the Ministry of Environment of China passed the “Modified Draft of Air Pollution Control Act” and proposed a new path of regional collaboration in air pollution control. In January 1st, 2015, the Environmental Protection Act formally established the mechanism of regional collaboration in pollution control. In August 2015, the 6th session of the 13th standing Committee of the National People's
Congress passed the “Air Pollution Act (Amendment)”, providing the theoretical foundation for air pollution control initiatives. The “joint control mechanism of air pollution control in key regions” was established and this marked that integrated regional air pollution control in China was introduced into the legislation field.

This paper is structured as follows. The first section explores the impact of legislation of air pollution acts; the second section discusses that the absence of a legal system for air pollution control is the root cause why the control initiatives have gone nearly nowhere so far; Section 3 proposes that to formulate a legal system for air pollution control, we should improve the involvement mechanism, identify the responsibilities of parties involved and enhance collaboration among regions.

2. Challenges for legislation of air pollution control
In 2013, under the guidance of “Air Pollution Control Plan”, China’s air quality improves, but the air quality still remains high, especially the PM2.5 pollution. Thus, air pollution control still has a long way to go. In 2015, 63 new clauses were introduced into the amended “Air Pollution Control Act”, which identified the objectives of legislation – “protect and improve the environment, prevent air pollution, ensure public health and promote ecological improvement endeavors”, and pinpointed the countermeasures for air pollution, joint control and administration. In 2018, to recover a “blue sky”, the amended “air pollution control act” pointed out that limit, prohibition, control and planning were the major measures, and established a framework for key region delineation, joint control and public involvement, providing a solid foundation for air pollution control. Currently, the upper legal system for air pollution control is improving, and the objectives and ways for air pollution control are become clear. In light of the Environmental Protection Act issued in 2015 and the new Air Pollution Control Act, a joint accountability mechanism is established, laying a solid legal foundation for air pollution control. However, the implementation of these laws faced a lot of obstacles, such as absence of structured pollution and regional pollution management, lack of public involvement, accountability mechanism and regional collaboration. It is urgent to improve the legal system for air pollution control.

2.1 Public involvement and defective mechanism
Guided by the Environmental Protection Act, Air Pollution Control Act and the central government, enterprises and the public should all participate in the work of air pollution control. Due to inadequate public involvement into air pollution control and lack of NGOs in this regard, the content, channels and procedures for public involvement in air pollution control initiatives are not clear, and the mechanism for public involvement is not established. Also, there is no clear regulations regarding the enterprises’ rights in air pollution control.

2.2 Unclear accountability mechanism
In traditional sense, the sources of air pollution are closely connected to the economic gains of enterprises, and the governmental monitoring and control can limit the enterprises’ nonfeasance. Yet, the core department for air pollution control has no clear regulations or accountability mechanism. The accountability metrics, ways and effects are yet to be improved.

2.3 Inefficient regional collaboration
In the “Air Pollution Control Act of China” issued in January 1st, 2016, a key-region pollution control joint mechanism was defined, key contents including joint conferencing, joint law enforcement, cross-regional enforcement and cross law enforcement are identified, which initiated the mode of territorial control and regional collaboration. Air pollution control could be recognized as public goods, and without coercive arrangement, the mass would suffer tragedies. In practice, however, as regional laws are established according to regional conditions, so separate management leads to unbalanced air pollution control among regions. The diagram of sulfur dioxide emissions of different regions in China in 2019 shows that the emissions in central China increased more quickly than in the eastern and western regions; the collaboration among regions were not stable and the pollution control structure
needed adjustment.

Table1: Sulphur Dioxide (10000 tons)

| Region          | Sulphur Dioxide (10000 tons) |
|-----------------|------------------------------|
| The Eastern Region | 58.67                        |
| The Central Region | 65.49                        |
| The Western Region | 57.50                        |

3. Legislation paths of air pollution control

3.1 Improving the control involvement mechanism
It is necessary to establish a control system that is dominated by the government and assisted by enterprises and the public. In pollution control, the government should not only serve as the administrator, but should coordinate the interests of different parties and identify their responsibilities, provide an interest coordination mechanism for parties involved, encourage enterprises to promote technical innovation, reduce emission of pollutants, motivate the public to participate, to monitor and implement low-carbon life.

3.2 Identifying the accountability mechanism
It is necessary to establish a comprehensive accountability mechanism and identify the responsibilities of the government and the administrative departments. First, the central government should establish accountability systems for guidance, guarantee and monitoring of collaborative pollution control among regions. The responsibilities and joint liabilities of regional governments for air pollution control should be determined and the subjective role of the regional government should be highlighted. Secondly, the legal liabilities should be identified in laws. The responsibilities of air pollution control organizations and local governments should be determined. The liabilities of organizations for violations against air pollution control laws should be identified, their rights and liabilities as well as responsibilities for behavioral changes should be determined. The legal responsibilities for leaders and persons in direct charge as well as criminal liabilities should be determined. In particular, the joint control liabilities of
Local governments should be identified. The violations against control requirement, tasks, and behavioral regulations of the upper regulation institutes should be specified. Organizations that violate regional collaboration agreements should make remedies and compensate the losses; the government officials and corresponding persons in charge should undergo administrative penalties or undertake criminal liabilities. A regional collaborative dispute protocol should be established to resolve disputes through negotiations, conciliation, administrative arbitration and lawsuits.

3.3 Improving a regional collaboration mechanism
China is a vast country with distinct air pollution types, modes and quantities in different regions. The pollution control has regional quantitative metrics and techniques, and there is no cure-for-all. In China, a regional collaboration mechanism for air pollution control is still to be explored, and global experience should be drawn. For instance, the US Environmental Protection Agency (EPA) proposed changing the air pollutants control mode in the “US Air Quality Control” report in 2004 to realize effective and comprehensive planning of air quality control. The “Multiple Pollutants Modelling Platform” it built later can also be learnt by China. National and regional laws should be formulated to coordinate regional collaboration, establish regional laws and make regional control and national governance complementary. According to legislation planning, there should be a consistent system for legislative objectives, standards, legal practice and legal liabilities. Meanwhile, on the basis of legislation-based consistency, regional effects of air pollution should be considered to coordinate interests of different parties.

4. Conclusions
To achieve sustainable development and prevent air pollution, China still has a long way to go in legislation of air pollution control. In the field of law, public policies can at least play a role in serving the “background regulations” of laws. In light of the “cost-profit-risk” model, public policies can facilitate air pollution control, therefore, the legislative system for air pollution control should be established.

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