Protecting the Public’s Environmental Right-to-Know: Developments and Challenges in China’s Legislative System for EEID, 2007-2015

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ABSTRACT

Over the course of the past 39 years’ reforms, China has made great strides in economic and social development. However, as a result of this rapid development, China now faces severe environmental problems that have created enormous domestic and international pressures. To confront this crisis, China’s government has enthusiastically promoted the development of an ecological civilisation and the rule of law to address the conflict between economic development and environmental protection. The enterprise environmental information disclosure (EEID) system has consequently become an important link in China’s national environmental governance. Nevertheless, the current system exhibits a range of shortcomings, and recent incidents such as the August 2015 explosion in Tianjin have brought such issues clearly into the public’s focus. This article examines the legislative development of China’s EEID system, the effectiveness of its implementation and the causes of key legislative problems. It argues that a robust system for implementing EEID and bottom-up environmental enforcement mechanisms will help curb China’s environmental degradation.

KEYWORDS: enterprise environmental information, information disclosure, public right to know, environmental legislation in China, ecological civilisation

1. INTRODUCTION

On 20 May 2016, China’s Ministry of Environmental Protection (MEP) issued its 2015 China Environmental Bulletin (‘the Bulletin’), which asserted that China’s environmental situation, including environmental pollution, resource scarcity and ecological damage, remains serious.1 The severity of China’s environmental problems calls for a new model of environmental governance and related measures, including...
an Enterprise\textsuperscript{2} Environmental Information\textsuperscript{3} Disclosure (EEID)\textsuperscript{4} system, which is a set of laws, regulations and policies stipulating the responsibilities of enterprises to disclose environmental information and the corresponding liabilities related to disclosure. A robust system for EEID not only forces enterprises to pay more attention to environmental issues, but also empowers the government as well as the public to fight pollution as a result of increased transparency.

China introduced the concept of an ‘EEID system’ ten years ago in the Measures on Environmental Information Disclosure (the ‘Measures’) issued by its State Environmental Protection Agency (EPA).\textsuperscript{5} The Measures for the first time imposed mandatory environmental information disclosure requests on enterprises that meet certain pollution thresholds, signalling the government’s ambitions to fight pollution.

Numerous subsequent pieces of legislation and policies have been enacted to buttress China’s EEID system. New amendments to China’s Environmental Protection Law in 2014 (the ‘new EPL’)\textsuperscript{6} endow citizens, legal persons and other organisations with the environmental right-to-know, participate and supervise. In December 2014, the MEP developed and implemented the Measures for the Disclosure of Environmental Information by Enterprises and Public Institutions (‘the EIDEPI Measures’) (MEP orders 31),\textsuperscript{7} which more clearly delineate the implementation of China’s EEID system. The promotion of the rule of law and the construction of an ecological civilisation\textsuperscript{8} by the Communist Party of China Central Committee (CPCCC), as well as increased Chinese governmental transparency, will help standardise information disclosure from both government and enterprises.

Furthermore, the formulation and revision of additional environmental laws and the drafting of local environmental regulations will strengthen environmental governance by clarifying in law details relating to areas such as the disclosure of registries for toxic and hazardous wastes, the responsibilities of subjects required to disclose

\begin{itemize}
\item['Enterprises' refer to both state-owned and non-state-owned enterprises.]
\item['Environmental Information' refers to the one that is recorded and kept in a certain form and is related to the environmental effects arising from the business activities of enterprises and the environmental acts of enterprises, including key entities’ basic information, discharge data, performance of discharge facilities, environmental impact assessments on construction projects and other information concerning environmental administrative licenses, enterprises’ emergency plans for emergency environmental incidents and other information related to enterprises’ impacts on the environment. See, the Measures on Open Environmental Information (for Trial Implementation) (‘the Measures’) (adopted by SEPA on 11 April 2007 and became effective on 1 May 2008), arts 2, 11, 19 and 20.
\item['EEID' means that enterprise shall disclose its environmental information that is recorded and kept according to law, in order to maintain the public right-to-know and promote national environmental governance. See the Measures, ibid, arts 2, 4, 19–23 and 28.
\item SEPA (The State Environmental Protection Agency) is the predecessor to China’s current MEP. SEPA became the current MEP in 2008.
\item The EPL was originally adopted by the 7th NPC Standing Committee at its 11th Meeting on 26 May 1989 and amended by the 12th NPC Standing Committee at its 8th Meeting on 24 April 2014.
\item It was adopted by MEP 15 December 2014, effective on 1 January 2015.
\item At the 18th National Congress of the Communist Party of China (CPC) in 2012, ‘ecological civilization construction’ was written into the Party’s constitution for the first time. The idea of ecological civilisation is spoken of as a responsibility of the Chinese government to future generations and to the natural world. See Wang Zhih, He Huili and Fan Meijun, ‘The Ecological Civilization Debate in China’ (2015) 66(6) Monthly Review <http://monthlyreview.org/2014/11/01/the-ecological-civilization-debate-in-china/> accessed 17 January 2017.
\end{itemize}
environmental information, and the relationship between enterprises and environmental credit systems.9

This article unfolds along a ‘problem - analysis – solution’ line of logic. First, the article points out the problems with China’s current EEID legislation and its implementation, following a chronological order (2007–15) and using two key events (the adoption of the Measures and the implementation of the new EPL) as the respective starting and end points. It then analyses the causes of these problems by considering not only the characteristics of the Chinese legal system, but also the local traditions, culture and history. It also draws on lessons from the experiences of the European Union (EU) and the USA. Finally, the article provides some measures and suggestions for improving EEID legislation and implementation in China based on the rule of law and safeguarding the public’s environmental right-to-know.

2. THE LEGISLATIVE FRAMEWORK OF CHINA’S EEID SYSTEM

This section introduces two milestones in the history of China’s EEID system and analyses their positive impacts and drawbacks. It then explains two basic concepts of the current EEID system in order to lay a foundation for exploring shortcomings and potential solutions in the following sections.

2.1 Two Revolutions in the Legislative History of China’s EEID System

2.1.1 2007–2014: The First Revolution—the establishment and implementation of a system for disclosing environmental information

In 2007, China’s SEPA issued the Measures on Open Environmental Information, which went into effect the following year and require agencies and enterprises to proactively disclose a range of environmental information. This was the first time that China formally established a mandated environmental reporting system based on legal norms. However, the Measures’ weak and unclear reporting system hampered their effectiveness.

2.1.1.1 Positive impacts of the measures

With the implementation of the Measures in 2008, EEID entered into a period of systematisation, whereby subsequent legislation and policymaking relating to environmental information disclosure built upon the foundation for disclosure stipulated in the Measures.

Based upon the Measures and the preceding 2007 Regulations on Government Information Disclosure, China’s legislative bureau issued concrete terms for the inclusion of environmental information disclosure and public participation in other laws and regulations. In 2008, the Shanghai Stock Exchange published Guidelines on Environmental Information Disclosure of Listed Companies, demonstrating regulators’ new focus on the importance of EEID. Furthermore, in 2012, amendments to the Cleaner Production Promotion Law by the 11th National People’s Congress (NPC) Standing Committee at its 21st Meeting on 29 February 2012 (‘the amended

9 For example, the Guidance on Strengthening the Construction of Enterprise Environmental Credit System 2015 (adopted by MEP and National Development and Reform Commission (NDRC) (2015) 161).
2012 CPPL') clearly stipulated that certain enterprises must conduct mandatory cleaner production audits and submit audit results to environmental protection departments and the departments responsible for the comprehensive coordination of cleaner production, and publish this information in local media outlets to facilitate public supervision.10

Recently, the MEP formulated and implemented two new regulations, the Measures on Supervisory Monitoring and Information Disclosure of Pollution Sources from Key State-Monitored Enterprises (for Trial Implementation) and the Measures on Self-Monitoring and Information Disclosure of Pollution Sources from Key State-Monitored Enterprises (for Trial Implementation) that took effect on 1 January 2014. These measures require, for the first time, that key state-monitored enterprises release real-time data on hourly air emissions and bi-hourly waste water emissions, which must be publicly disclosed on online platforms of local provincial-level environmental protection bureaus (EPBs). The implementation of these measures has drastically improved the public's access to environmental information from enterprises across multiple heavily polluting industries.

The subsequent amendment and formulation of environmental legal regulations at different government levels has also increasingly focused on incorporating channels for public participation and public disclosure of enterprises' environmental information. The growing role of the public in the formulation of environmental legislation can be gleaned from statistics in Table 1.11 In particular, it illustrates the number of participants and pieces of advice submitted to the NPC for draft amendments of various environmental laws.

Moreover, several major policy initiatives have strengthened the importance of enterprise compliance with EEID regulations. On 12 November 2013, the Third Plenary Session of the 18th CPC Central Committee passed the Decision of the CPCCC on Some Major Issues Concerning Comprehensively Deepening Reform (‘the Decision’). Since environmental governance constitutes a key area for deepening reform, China’s construction of a system for environmental governance was included in the contents of the Decision. The rapid development of information technology has improved traditional modes of environmental management and become a new and innovative mode for environmental governance, especially with regard to information disclosure.12 The degree of transmission, exchange and sharing

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10 See the CPPL, arts 17 and 27(2).
11 Table 1 is based on data provided by the PRC’s National People’s Congress (NPC) Network <http://www.npc.gov.cn/npc/flcazqyj/node_8195.htm> accessed 28 March 2017.
12 Mol elucidates the reforms and framework of environmental governance in the information age and raises recommendations for China. See Arthur Mol, ‘Environmental Governance in the Information Age: The Emergence of Informational Governance’ (2006) 24 Environment and Planning C: Government and Policy 497; Arthur Mol, ‘Environmental Governance Through Information: China and Vietnam’ (2009) 30 Singapore Journal of Tropical Geography 114. Arthur Mol, Environmental Reform in the Information Age: The Contours of Informational Governance (CUP 2009). In addition, research on online civil movements and risk management of environmental and human health also provides China’s environmental governance with new ideas for consideration. See Yang Guobin, ‘Online Civil Movement within Multiple Interaction’ (2013) 2 Journalism Evolution 4; He Guizhen and Lu Yonglong, ‘International-Based Development of Risk Management Framework for Environmental and Human Health Risks’ (2010) 5 Asian Journal of Ecotoxicology 736; He Guizhen and Lu Yonglong, ‘Risk Management Approaches for
Table 1 Statistics for citizen comments on environmental law drafts

| Name of law draft                                      | Time period of feedback                  | Number of individuals | Number of comments |
|--------------------------------------------------------|------------------------------------------|-----------------------|--------------------|
| Draft of Water Pollution Prevention and Control Law    | 05 September 2007 to 11 October 2007     | 307                   | 1,408              |
| Amendments to Renewable Energy Law (Draft)            | 28 August 2009 to 30 September 2009      | 79                    | 254                |
| Amendments to Cleaner Production Promotion Law (Draft)| 29 October 2011 to 30 November 2011     | 22                    | 179                |
| Amendments to Environmental Protection Law (First Draft) | 31 August 2012 to 30 September 2012     | 9,582                 | 11,748             |
| Amendments to Environmental Protection Law (Second Revised Draft) | 19 July 2013 to 18 August 2013 | 822                   | 2,434              |
| APPCL (Revised Draft)                                 | 30 December 2014 to 29 January 2015     | 971                   | 5,047              |
| Wild Animals Protection Law (Revised Draft)           | 30 December 2015 to 29 January 2016     | 1,640                 | 6,205              |
| Wild Animals Protection Law (2nd Revised Draft)       | 27 April 2016 to 20 May 2016             | 241                   | 878                |
| Environmental Protection Tax Law (Revised Draft)      | 06 September 2016 to 07 October 2016    | 118                   | 300                |
| Marine Environmental Protection Law Amendment (Draft) | 06 September 2016 to 07 October 2016    | 33                    | 49                 |
| Water Pollution Prevention and Control Law Amendment (Draft) for Advice | 27 December 2016 to 26 January 2017 | 75                    | 237                |

of environmental information, as well as the effects of information technology, will directly affect China’s future environmental governance. Moving forward into an information era, China’s environmental governance must integrate the EEID system with advancements in information technology to prompt enterprises to save resources and become more environmentally friendly. Using advanced modern information technology for disclosure will allow environmental supervision to tap into...
the power of bottom-up public participation and scrutiny, leveraging the power of
the public to support the government’s top-down enforcement efforts.

2.1.1.2 Problems of EEID implementation and government response in China

Although the Measures aimed to do well, the initial results of China’s EEID system
were relatively poor for a number of reasons. Foremost, responsibility for disclosure
focused on government and enterprises, but these bodies’ interaction with the public
was insufficient. For example, in both legislation and in practice, environmental infor-
mation was exchanged between government and enterprises without ever actually
being disclosed to the public; such was the case with real-time monitoring data for
key state-monitored enterprises. Moreover, enterprises and government faced an ab-
sence of standardised environmental reporting guidelines, third-party independent
verification of enterprise environmental information, and incentive mechanisms for
rewards and punishment to support the implementation of the Measures.13 The sys-
tem lacked an accounting and reporting system for environmental accounts, and had
no centralised means for reporting or unified standards for disclosed information.
Because of the human tendency to seek advantages and avoid risk, in many cases, en-
terprises were willing only to disclose qualitative information advantageous to their
business.

To confront these implementation challenges, the government adopted a series of
measures, including strengthening information disclosure during environmental
emergencies and attaching greater importance to formulating environmental guide-
lines. Yet, disclosure during emergencies often remained passive, and progress on
new guidelines, was slow.14 The government aimed to learn from the experiences of
pilot areas and to replicate successful practices nationwide, and it targeted publicly
listed companies and key polluting enterprises as the main subjects for mandatory
disclosure. But generally speaking, the government’s response towards improving
EEID has lacked enthusiasm and effectiveness. Although the lack of improvement
could be attributed in part to government laziness, the trends indicate the situation is
improving, as reflected by MEP’s nationwide campaign to supervise local environ-
mental law enforcement and the effective implementation of China’s newly revised
Administrative Litigation Law.15

Meanwhile, local governments have explored their own innovative means of pro-
moting EEID implementation. Some areas have strengthened environmental supervi-
sion to advance EEID; for example, Beijing implements strict environmental

13 art 23 of Measures regulates that local EPBs may reward enterprise honour, or special fund, or demon-
strative project for voluntary disclosing environmental information. But it does not fit for mandatory dis-
losure. art 24 regulates EPB shall establish a sound system of checking-up, social appraisal and
responsibility on governmental environmental information disclosure behaviour. But it does not fit for en-
terprise disclosure behaviour.

14 The earliest is the Shanghai Stock Exchange Guidelines on Environmental Information Disclosure for
Listed Companies in 2008. Until 2014, after the EPL enacted, MEP issued the Measures on
Environmental Information Disclosure of Enterprises and Institutions (hereinafter, as ‘the Measures on
EIDEI’).

15 See ‘The Central Environmental Protection Supervision’ <http://www.zhb.gov.cn/home/rdq/jdzf/
zyjhjbdc/dcjr/> accessed 28 March 2017. Also see Administrative Litigation Law (revised by NPC 1
November 2014, effective on 1 May 2015), arts 2 and 12.
inspections on listed companies, which has helped increase the ratio of environmental information disclosed by heavily polluting industries.16 In another successful example, Zhejiang has implemented a province-wide environmental credit rating evaluation system since 2007.17 Zhejiang was also the first province in China to launch a system requiring environmentally non-compliant enterprises to disclose their illegal acts, apologise for them and make commitments to the public. Other provinces have provided technical guidelines to support enforcement. For instance, Shandong province issued China’s first Enterprise Environmental Reporting Guideline in 2008, which aims to provide enterprises in Shandong with technical guidance on compiling environmental reports.

Still, other areas have focused on developing innovative means for advancing EEID. One example is Jiangsu province, which rolled out mechanisms for disclosing environmental behaviour information about major industrial sources in phases. Certain cities within Jiangsu developed their own innovative practices. Yangzhou and Zhenjiang regulated pollution sources of particular public concern, such as hospitals. Changzhou, Taizhou and Yancheng held community Round Table dialogues about environmental information.18 Jiangyin integrates enterprise environmental information into the credit reporting systems for local financial institutions.19

In Shanghai’s Minhang, Nanhui, Baoshan and Jinshan districts, enterprises that discharge pollution exceeding emissions standards are required to actively disclose their environmental data; other enterprises are encouraged to voluntarily disclose their data.20 Furthermore, these areas have capitalised on credit financing policies and sought environmental information exchange agreements with banks to further influence enterprises’ environmental performance.

2.1.2 Establishment of the public’s right-to-know for environmental protection (2014 onwards)

To address the shortcomings of the Measures, access to environmental information had to be established as a basic right under the law. Therefore, the new EPL dedicated an entire chapter to public participation and information disclosure, clearly stipulating the public’s right-to-know21 about environmental issues, laying a foundation for the public’s right to participate in environmental protection, and determining

16 Tian Cuixiang and others, ‘An Empirical Analysis on Environmental Information Disclosure of Listed Companies in Beijing’ (2008) 6 Time Economy and Trade 5, 6.
17 The Enterprise Environmental Behaviour Credit Rating Evaluation Implementation Plan in Zhejiang Province (For Trial Implementation) <http://www.xsepb.gov.cn/Info_Show.aspx?ClassID=6c2fc93f-44f1-40ac-8799-c18434a3a9da&InfoID=4bf2e00f-6ec4-4bce-b093-8db159d99a1> accessed 16 March 2017.
18 Dong Zhanfeng and others, ‘The EEID Progress and Prospect: A Practical Analysis on Jiangsu Province and Shanghai’ (2010) 5 Environment Protection 33.
19 ‘Jiangyin: Enterprises’ Environmental Information Become Financing Basis’ (Sina, 6 July 2005) <http://news.sina.com.cn/o/2005-07-06/08506362552s.shtml> accessed 16 March 2017.
20 ibid.
21 Zhang Lei and others provide a detailed argument about the ‘right-to-now’. See Zhang Lei and others, ‘An Implementation Assessment of China’s Environmental Information Disclosure Decree’ (2010) 22 Journal of Environmental Sciences 1649.
the contents of environmental information for mandatory disclosure by key enterprises.22

The newly amended EPL has been called the strictest environmental law in history in China23 and has positively impacted China’s EEID system. First, the new EPL has spurred the introduction of related supporting policies. To promote the effective implementation of the new EPL, the Measures on EIDEI (MEP[2014] No 31) were drafted and implemented, thus strengthening specific regulations governing the EEID system and improving the system’s operability.24

Secondly, the passing of related policies has in turn supplemented the implementation of the new EPL. Following the ratification of the new EPL, the CCCPC and the State Council issued a series of policies to clarify the terms of public participation and information disclosure. In a landmark move, the Fourth Plenary Session of the 18th CPC Central Committee on 23 October 2014 passed the CCCPC’s Decision on Major Issues Concerning Comprehensively Pushing Forward the Rule of Law. This Decision will be instrumental in developing a transparent government, safeguarding democratic rights and the formation of civil society, and constructing and implementing systems for public participation and information disclosure. To address significant opportunities and challenges resulting from major advancements in science, technology and industry, and to respond to various trends and characteristics under China’s ‘new normal’25 of slower economic development, the CCCPC established mechanisms for deepening institutional reforms and accelerating the implementation of strategic innovation-driven development.26 The opinions formulated by the CCCPC Central Committee and the State Council included mechanisms to safeguard the lawful rights and interests of innovative enterprises, endowing them with new powers and opportunities.27 For instance, the expansion of enterprises’ right to speak in national innovation decision-making, the acceleration of the reform of resource taxes and the fees-for-tax system for environmental protection, and the use of a variety of financial instruments with market-determined factor prices all support innovative development, and together form a standardised system of unified authority and transparent market access.

Another important document, the Opinions on Accelerating the Construction of an Ecological Civilization, issued by the Political Bureau of the CPC Central Committee on 24 March 2015, points out that, as an important political task for the

22 See the EPL, arts 53(1), 55 and 62.
23 See ‘The Most Severe New EPL Will Be Put into Effect’ <http://politics.people.com.cn/n/2014/1228/c1001-26286696.html> accessed 16 March 2017. Also see, Zhang Yan-ling and Dong Xiaodi, ‘About “the Most Severe EPL”, Chen Jining Said So’ <http://www.china.com.cn/lianghui/news/2017-03/09/content_40435863.htm> accessed 16 March 2017.
24 For EEID, the Measures on EIDEI defines key emitting units, the contents of public environmental information, the means, time limits and the promotion of the competent department of environmental protection as well as how to safeguard public participation.
25 President Xi Jinping put forward the word when he made investigation in Henan province on 8 May 2014. It is thought to release Chinese leadership’s judgment and attitude towards China’s economic situation. It means to optimise the economic structure and promote sustainable development in the future.
26 See ‘Opinions on Deepening Reform of Institutions and Mechanisms and Accelerating the Implementation of the Strategy of Innovation-driven Development 2015’. <http://www.gov.cn/xinwen/2015-03/23/content_2837629.htm> accessed 16 March 2017.
27 ibid.
entire Communist Party, the construction of an ecological civilisation requires the transformation of ‘green’ development into a new comprehensive national power, giving it a new international competitive advantage. It also necessitates the integration of a focus on constructing an ecological civilisation into economic, political, cultural and social development policies, as well as substantial improvement of the green economy.\footnote{28 See ‘Opinions on Accelerating the Development of an Environmentally and Ecologically Educated Society 2015’. <http://news.xinhuanet.com/2015-05/05/c_1115187518.htm> accessed 18 January 2017.}

Third, the implementation of the Measures has encouraged the issuance of related policies by local-level bodies. For instance, to supplement the local implementation of new EPL’s stipulations for information disclosure and public participation, the Standing Committee of the People’s Congress of Hebei Province issued local regulations on the rights, obligations and responsibilities for public participation in required environmental information disclosure for local government agencies and businesses.\footnote{29 See details in Hebei Regulation on Public Participation in Environmental Protection (Hebei ‘RPPEP’) 2014.} Spurring public participation on a local level through means of local regulations may help to solve common issues relating to lack of local enforcement in environmental protection.

From the Measures’ earliest basis for an EEID system to the EPL’s authorisation of the public’s environmental right-to-know, the systematisation of China’s EEID provides both theoretical and practical evidence for analysing the factors driving forward the development of China’s EEID system.

\section*{2.2. Key Terms under the China’s EEID System}

Examining the legislative basis for China’s EEID system clarifies not only who is obligated to disclose and what information must be made public, but also reveals key shortcomings in the architecture of the system that remain loopholes inhibiting the effectiveness of disclosure.

\subsection*{2.2.1 Selection of disclosure subjects}

China’s current legal framework for EEID includes two types: mandatory disclosure and voluntary disclosure. If an enterprise designated as a mandatory disclosure subject breaches requirements, fails to disclose information as required by law, discloses untruthful, incomplete or insufficient information or fails to disclose in a timely manner, then that enterprise may face legal repercussions including fines and other punishments. There are three main types of subjects for mandatory disclosure based on current environmental laws and regulations.

First, enterprises that breach pollution standards under normal conditions are required to disclose environmental information concerning the type and amount and time period of pollution discharge. These enterprises are those that exceed emission standards for specific pollutants or whose total gross emissions exceed standards for...
pollution control. In China, enterprises that breach pollution standards under normal conditions are generally responsible for the majority of environmental problems, so they also comprise the greatest proportion of subjects for mandatory environmental information disclosure.

Secondly, enterprises that produce or use specified harmful or potentially harmful environmental elements or treat such elements must disclose information. This category includes enterprises producing and utilising hazardous chemicals, facilities or sites that package hazardous wastes or collect, store, transport or dispose of hazardous wastes, and institutions that maintain or operate municipal sewage treatment facilities.

Thirdly, information disclosure is mandatory for enterprises that have caused or may cause environmental pollution and environmental damage incidents. China’s 2014 amended EPL maintains the stipulation of the original 1989 law stating that when environmental emergencies occur or may occur, the relevant enterprises or institutions should, in a timely manner, notify institutions or residences that might be affected. Additional provisions in China’s new EPL supplement and strengthen this provision and China’s system for EEID.

2.2.2 Scope of disclosed content

Considering the different situations and variation among disclosure subjects and the nature of businesses, current environmental laws and regulations in China specify three categories for the content for mandatory environmental information disclosure.

First, specified enterprises are required to disclose basic information about the content and amount of emissions and whether or not emissions exceed legal standards, as based on the Interim Measures on Cleaner Production Checks (hereinafter, ‘the IMCPC’) formulated and approved by the NDRC and SEPA in 2004. Article 8

30 For instance, in 2015, there are more than 8,000 cases that refer to the fine day by day, closing down and seizure, restricting and stopping production, nearly 3,800 cases that include transferring to administrative detention and suspected of environmental pollution crime, and 191 thousand environmental illegal enterprises among 17.7 million enterprises inspected throughout the country. There are more than 97 thousand administrative penalty decision documents and 4.25 billion yuan fine all of local EPB. Ministry of Environmental Protection, Report on the State of the Environment in China 2015, 3 <http://www.zhb.gov.cn/hjzl/> accessed 17 March 2017.
31 See the Measures for the Environmental Management and Registration of Hazardous Chemicals (for Trial Implementation) (adopted by MEP on 10 October 2012, effective on 1 March 2013) (hereinafter, as ‘the Measures for EMRHC’), art 22.
32 The Solid Waste Pollution Prevention and Control Law (originally enacted in 1995. It was amended by the 10th NPC Standing Committee at its 13th Meeting on 29 December 2004, the 12th NPC Standing Committee at its 3rd Meeting on 29 June 2013 and the 12th NPC Standing Committee at its 14th Meeting on 24 April 2015, became effective on 1 April 2005) (hereinafter, as ‘the SWPPCL 2015’) art 52.
33 See the Regulations on Urban Drainage and Sewage Treatment (adopted by State Council Standing Committee 24th meeting on 2 October 2013, became effective on 1 January 2014) (regulations on UDST) art 28(2).
34 See the EPL, art 47(3), item 2. Also see ibid, art 25.
of the IMCPC stipulates that enterprises included in the mandatory clean production audit list must disclose the following information: enterprise name, legal representative, enterprise address, pollutant names, emissions mode, emissions concentration and total amount, and whether or not emissions are in excess of legal standards.\(^{35}\)

More recent legislation has further buttressed earlier legislation related to EEID. The earlier 2008 Measures explicitly stipulate the principles, subjects, scope and methods of China’s EEID system, create a robust EEID system framework and raise legal protections for government supervision procedures and public monitoring of enterprises’ environmental behaviour. Moreover, Article 55 of the new EPL stipulates:

> Key units that discharge pollutants shall truthfully disclose to the public the names of major pollutants, means of discharge, effluent concentration and total emissions quantity, excessive discharge, and the construction and operation of equipment for prevention and control of pollution, and accept societal supervision.

The increasing focus on public participation and societal supervision in such legislation may serve as an important check on the truthfulness and accuracy of environmental information disclosed by enterprises.

Secondly, some laws require the mandatory disclosure of environmental information in the form of signs or labels\(^{36}\) in order to remind people to heed environmental risks and protect the public’s health.

Thirdly, enterprises are required to disclose environmental information when pollution accidents and environmental incidents occur, and also throughout the process of handling such incidents. In emergency situations, Chinese laws generally give the government power to publicly disclose environmental information, but these laws do not specify the contents of the information to be disclosed. However, the MEP’s 2011 Measures for the Reporting of Information in Environmental Emergencies\(^{37}\) contain provisions detailing the disclosed contents of preliminary reports, and ongoing reports and information on how such environmental emergencies are ultimately handled. These Measures can serve as a guide for the development of further legislation on mandatory disclosure of enterprise environmental information during environmental emergencies.

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\(^{35}\) See the IMCPC, art 8(1) .

\(^{36}\) The following examples illustrate specific instances in which Chinese legislation mandates such labelling for the purpose of environmental management: the SWPPCL 2015 stipulates that ‘identifying marks’ must be placed on hazardous waste; the Law on the Prevention and Control of Radioactive Pollution (was adopted by the 10th NPC Standing Committee at its 3rd Meeting on 28 June 2003 and became effective on 1 October 2003) specifies that ‘radioactive logos’, a ‘Chinese warning note’ and ‘radioactive marks’ be placed on radioactive pollution.

\(^{37}\) The Measures was adopted by MEP on 18 April 2011 and became effective on 1 May 2011. See art 13.
3. SHORTCOMINGS OF THE CURRENT LEGISLATIVE FRAMEWORK FOR EEID

China’s EEID system has expanded notably since its implementation in 2008. However, the system’s effectiveness still faces many obstacles. The following section discusses some of these structural issues.

3.1 Problems with China’s Current EEID System

3.1.1 Traditional limitations of principles underlying disclosure

Although the Measures and Regulations were implemented in 2008, because of their lower legal status than the Law on Guarding State Secrets (GSSL), both government and enterprise information disclosure must still adhere to the provisions of the GSSL, which follows the principle of ‘disclosure as the exception’. Because this law does not clearly delineate the scope of state secrets or business secrets, the law gives enterprises great discretion on the issue of confidentiality. ‘Disclosure as the exception’ provides a convenient excuse for businesses and also the government to not disclose or to delay disclosure of their pollution discharge records. The provisions of the 1998 GSSL deeply constrained the implementation of the EEID system since environmental information could be claimed to be a ‘state secret’. As such, lack of information ‘directly affects the ability of the participants to make sound and objective comments on the potential impacts of the project’.

To help solve the conflict between state secrets and proprietary information and mandated disclosure, the 2008 Regulations provided three categories of disclosure for government information: ‘required by law to be actively disclosed’, ‘should be actively disclosed’, and ‘the public may apply for access’. The Regulations thus prompted greater information disclosure, making it the norm rather than the exception. Under the Regulations, ‘commercial and personal secrets’ must be disclosed upon agreement after they are judged to have a significant impact on the public interest. Nevertheless, even then, a ‘discretionary disclosure’ approach is taken to determine whether or not they should be disclosed. However, revisions to the GSSL in 2010 accepted ‘disclosure as principle’. The law provides that ‘matters required by laws and administrative regulations to be disclosed shall be disclosed according to law’. This amended law thus confirms the legal effectiveness of Articles 9 to 14 of the Regulations. This coordination of legal norms further promoted EEID legislation and strengthened the implementation potential of the EEID system.

A new guiding case for information disclosure released by the Supreme People’s Court of China (the ‘SPCC’) follows this principle of ‘disclosure as the principle and nondisclosure as the exception’. On 12 September 2014, in Yu Suizhu v Bureau of...
The information should be disclosed if it is not prohibited by laws or regulations and if it relates to the special needs of the applicant’s production, living and research.\(^{44}\)

Furthermore, the judgment affirms that:

The defendant had failed to prove the information was prohibited to be disclosed by law and had not applied to not disclose the information, which is an error that applies under laws and regulations.\(^{45}\)

This case was released by the SPCC as a guiding document.\(^{46}\)

Although this verdict is not binding on the whole of China, it nevertheless reflects the SPCC’s attitude towards these sorts of cases and can guide local courts’ subsequent verdicts. This case poses three key takeaways supporting the idea that the Court’s judgment recognised ‘disclosure as the principle and nondisclosure as the exception’ for mandated environmental information disclosure. First, it supports that information must be disclosed is the norm, and that a legal basis must be cited and approved if an enterprise does not disclose information. Secondly, the defendant bears the burden of proof if he or she wants to obtain information prohibited from disclosure under law. Thirdly, the unique needs of the applicant shall be taken into consideration. The SPCC’s document on this case underlies its views, that is, affirming the tenet of ‘disclosure as the principle and nondisclosure as the exception’ as applicable to lawsuits involving environmental information disclosure. Such an endorsement confirms that this tenet shall guide trials and judgments of similar subsequent cases in China. More importantly, it not only serves as an example of promoting construction of environmental democracy through judicial reform, but may also potentially drive China’s NPC to effectively establish this principle within information disclosure legislation.

3.1.2 Limitations on the scope of subjects required to disclose information

Under current legislation, there are two primary types of subjects for whom disclosure is mandatory. First, an enterprise that is listed on one of China’s stock exchanges is required to disclose its environmental information only if it meets one of the following conditions: the enterprise’s discharge exceeds national or local pollution discharge standards; the enterprise’s discharge of key monitored pollutants exceeds the controls on total discharge quantity; each item’s energy consumption per product

\(^{43}\) The authors of this article have confirmed through the relevant channels that the case of the first instance and second instance judgment do not publish the case number.

\(^{44}\) Yu Suizhu v Bureau of Land and Environmental Resources of Sanya City <http://www.chinacourt.org/article/detail/2014/09/id/1437613.shtml> accessed 17 March 2017.

\(^{45}\) ibid.

\(^{46}\) ibid.
exceeds the limit; or, the enterprise uses toxic and harmful materials during production or discharges toxic and harmful substances.\(^\text{47}\) Secondly, an enterprise is required to disclose its environmental information if it causes or may cause environmental pollution or environmental damage that is prohibited by law.

The law stipulates that enterprises must report directly to residents. For instance, the reporting path stipulated in Article 97 of the Air Pollution Prevention and Control Law (APPCL)\(^\text{48}\) must be executed in accordance with the Emergency Response Law (ERL)\(^\text{49}\) and the EPL: the enterprise reports to other entities and residents that may suffer from its air pollution; the enterprise should also report to the local authorities in charge of environmental protection.\(^\text{50}\) There are similar provisions in many local environmental regulations.\(^\text{51}\)

3.1.3 Limited scope of disclosure contents

Compared with environmental protection legislation in the EU and the USA, apart from the legislative basis for the number and type of enterprises who shall disclose environmental information, China’s legislation contains relatively few clarifications of the contents of environmental information to be disclosed by enterprises. For example, greenhouse gases are not defined as pollutants in China’s legislation, so enterprises are not required to disclosure information about greenhouse gas emissions.

Meanwhile, from the perspective of cultivating enterprises’ awareness of environmental impacts, the narrow scope of the law may dampen enterprises’ sense of responsibility to the environment, the government and the general public. Indeed, the current EEID system does little to promote enterprises’ concern for their environmental behaviour, processes, standards and policies as well as their adherence to related laws and regulations. Furthermore, it clouds the public’s understanding of the significance of EEID, and effectively impedes EEID from guiding the public towards safeguarding their environmental benefits, promoting the effectiveness of public supervision of enterprises’ environmental behaviour and improving the relationship between the general public and enterprises. Lastly, from the perspective of cost-effectiveness of government environmental enforcement, expanding the scope of information for disclosure would allow the government to track enterprises’ environmental performance in full without a need for as many on-site visits, thus reducing administrative costs. The narrow scope of the law could also interfere with the government’s efforts to improve environmental administrative efficiency and its ability to balance environmental safety and services with environmental supervision.

\(^{47}\) See the CPPL 2012, art 17.

\(^{48}\) It was originally enacted in 1987, amended for the third time by the 12th NPC Standing Committee at its 16th Meeting on 29 August 2015, and became effective on 1 January 2016.

\(^{49}\) It was adopted by the 10th NPC Standing Committee at its 29th meeting on 30 August 2007 and became effective on 1 November 2007.

\(^{50}\) See the APPCL 2015, art 97(1). Also see the EPL 2014, art 47(3).

\(^{51}\) The Hebei APPEP 2014, art 18(3).
3.1.4 Lack of legal consequences for breaching EEID

‘Legal consequences’ refers to administrative, civil or criminal liability procedures initiated by concerned parties, relevant agencies or the general public. China’s current EEID system lacks a judicial supervision mechanism, making it difficult for China to achieve the ultimate purpose of such legislation: a cleaner, environmentally safer environment. The revised EPL authorises the public’s right to know, supervise and participate, also adds administrative responsibility towards heavily polluting enterprises that violate the disclosure regulations. But the current laws, including the new EPL, do not authorise the public to sue those enterprises that violate the EEID system. At the same time, some technical issues concerning the use of litigation in practice require more study and clarification of the law in order to make recommendations for improvement. For example, it is unclear whether enterprises can be directly sued for not disclosing environmental information, how to verify the cause and effect between non-disclosure and consequences, and how to assess the burden of proof.

An effective analysis of the legislative weaknesses of China’s current EEID system could help solve the system’s implementation dilemmas and improve the system’s implementation of laws and operational goals.

3.2 Analysis of Root Causes of Legislative Shortcomings

Examining the political, cultural and historical factors that shape the weaknesses of China’s current EEID system provides a solid starting point for proposing recommendations to strengthen the legislative framework of the system.

3.2.1 The influence of ‘General Rather Than Detailed’ legislative thinking

Western rationalism emphasises scientific experiments, logical arguments and the integrity of formal specification. Conversely, traditional Chinese thinking stresses grasping overall ideas through philosophical speculation. China’s mode of thinking has been greatly influenced by China’s three key philosophical traditions: Confucianism, Taoism and Chinese Buddhism, all of which focus on ‘understanding’. These philosophies have all greatly influenced the shape of China’s laws. Such a mindset reflects the principle of ‘rule by man’ rather than rule of law. Furthermore, Chinese philosophies ‘do not pay attention to careful logical analysis’, which results in ‘general, vague features’. Legislative provisions can ostensibly improve the efficiency of law enforcement, but in reality they often give more discretionary power to regulators. Lack of transparency of law enforcement increases the ‘grey areas’ and enterprises often take advantage of the ambiguity provided by these grey areas to skirt environmental information disclosure requirements. One such example is enterprises that use the ‘business secret’ excuse to avoid disclosing environmental information,

52 See EPL, arts 53 and 62.
53 For example, in China, there are 129 articles in the APPCL 2015 and 92 articles in the amended 2008 WPPCL (Water Pollution Prevention and Control Law). By contrast, there are 518 sections in the US Clean Air Act 1990 and 507 sections in the US Clean Water Act 1987. The number of sections underlies the scope of detail of US environmental legislation.
54 Pan Wenguo, Chinese English Contrast Platform (Beijing Language and Culture UP 1997) 359.
55 Mao Ronggui, Translation Aesthetics (Shanghai Jiao Tong UP 2005) 295.
claiming that the environmental information to be disclosed contains sensitive content that might compromise business operations.

The influence of the ‘inertia factor’\(^{56}\) whereby traditional Chinese culture resists change also cannot be ignored. It has been 39 years since China’s reform and opening up, but China’s willingness to transform from an agrarian rule of man state to a society governed by the rule of law and aiming to construct an ecological civilisation did not arise overnight. The ‘inertia factor’ in traditional Chinese culture likely impacts legislators, contributing to this delay in the shift in mindset. On the other hand, the sessions of China’s People’s Congress last only for 10 days and since deputies must consider and vote on revisions of legislation in such a short period of time, many deputies do not fully research the laws on which they are voting. As such, the legal effectiveness of Chinese legislation is greatly compromised and thus follows the same pattern of inertia in which laws are not substantively improved. At the same time, the ‘blockade’ concept of legal culture,\(^{57}\) also plays a role in shaping Chinese legislation. This concept emphasises policy, red tape and leaders’ speeches over the content of laws. Essentially, bureaucracy blocks meaningful change as its aim is to maintain the status quo. Although similar issues are sometimes present in Western legal cultures, they are even more prominent in Eastern legal cultures. As a result, laws in these cultures must be general, so they often lack detail to the point that they are ineffective.

The strong and rapid development of the Chinese economy and the rapid rise of information technology present another set of factors influencing China’s laws. These changes increase the number of variables affecting China’s reform and the government’s strategic decisions. Thus, complexity and uncertainty towards the environment and environmental problems may also cause legislators to embrace broad (ie vague) thinking.

### 3.2.2 Lack of willingness to sue

One of the foremost intentions of Confucianism, one of China’s most dominant, guiding philosophies, is to pursue a harmonious society. As a result, rulers have often regarded ‘no lawsuits’ as a goal so as not to upset economic progress, and a necessity supporting their ability to maintain social stability.\(^{58}\) This concept also affects citizens’ behaviour for dispute resolution. For example, since the founding of the People’s Republic of China in 1949, the government has favoured citizen petitions as an important means for solving disputes, which has in turn stifled the development of judicial remedies as a dispute resolution mechanism. Zhang Jinfan contends that the concept of ‘no lawsuits’ will bring about ‘difficulty [in the] development of the legal system, and a decline of legal authority and citizen awareness, as well as their legal consciousness’.\(^{59}\) So, at present, the adverse effects of ‘no lawsuits’ should be considered and taken into account when altering EEID legislation, since it becomes an even more important legal tool than in cultures where the rule of law is more robust.

\(^{56}\) Liu Zuoxiang, *Legal and Cultural Theory* (The Commercial Press 1999) 276.

\(^{57}\) Statements on ‘the conceptual legal culture’, see ibid, 268–71.

\(^{58}\) Zhang Wenxiang and Saqironggui, ‘The Dilemma of Traditional Litigation Conceptions (The intrinsic logic among “no suits”, “dropping suits” and “disgusting suits”)’ (2004) 3 Hebei Law Science 79.

\(^{59}\) Zhang Jinfan, *The Tradition and Modern Transition of Chinese Law* (2nd edn, Law Press 2005) 284.
The influence of the Chinese tendency to avoid lawsuits causes the overuse of the management mindset and strategy of ‘stability overrides everything’. Some lawmakers and administrative officials fear that if the poor environmental behaviour of enterprises is disclosed, the public will become angry and then large-scale rallies and clashes may break out, adversely affecting economic development. Government leaders generally hold that China requires social stability to develop its economy and thus enable the populace to live a good life. However, many government officials believe that if policies intended to maintain social stability go too far and the government operates with a lack of transparency and public participation, such a governing strategy will hurt the public’s right-to-know, and the government should better balance the relationship between maintaining stability and protecting rights.

Moreover, largely as a result of avoiding lawsuits and the Confucian mindset of the pursuit of harmony, Chinese enterprises often adopt a philosophy that tends to hide scandals from public view. Enterprises pay attention to their legal interests and political costs, worry that if they disclose negative environment behaviours, such as pollution incidents or pollution discharge not meeting standards, they will be exposed to and likely suffer from the public’s suspicion, resentment, alienation and loss of business. The ‘no lawsuits’ mindset has also affected the overall thinking of those who draft legislation. Legislators have generally failed to realise that if potentially unfavourable environmental information is disclosed and the public and government are permitted to evaluate and supervise this information, some good could result. For instance, subsequent public and government pressure to ameliorate environmental problems can also help enterprises improve their technology, environmental measures and management, and ultimately promote enterprises’ development.

3.2.3 Unclear definitions of key legal concepts

Some key legal concepts, such as ‘state secrets’, ‘business secrets’ and ‘personal privacy’ lack clear definitions in China’s laws and regulations. Furthermore, China currently lacks administrative or judicial interpretations that define them or could help define them and provide more details about these concepts. Legislative inertia stems from the idea that ‘Chinese people do not want others to know their actions immediately; they want people to think them over and then understand them’. This mindset is also manifest in contemporary Chinese legislation through the concept of ‘simple rather than complicated’; that is, using simple language to describe ‘secrets’ or ‘privacy’ to let enterprises and the government avoid disclosing detailed and comprehensive information. In other words, businesses can use to their advantage

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60 See Jin Taijun and Zhao Junfeng, ‘The “Vicious Circle of Maintaining Stability” of Grass-roots Government: Status Quo, Causes and Countermeasures’ (2012) 4 CASS Journal of Political Science 91.

61 See ‘Xi Jinping Attended the Central Government’s Working Conference on Politics and Law: Adhere to Strict Law Enforcement and Fair Justice’ (HSW, 9 January 2014) <http://news.hsw.cn/system/2014/01/09/051836134.shtml> accessed 18 March 2017. Also see, ‘Review: Six Major Bright Spots of the Central Government’s Working Conference on Politics and Law’ (Xinhua, 10 January 2014) <http://news.xinhuanet.com/legal/2014-01/10/c_125983653.htm> accessed 18 March 2017.

62 ‘The EEID may trigger regulators, environmental NGOs’ and social action, lead to political cost’. See Shen Hongtao, EEID: Theory and Evidence (Science Press 2011) 88.

63 Wenguo (n 54) 360.
ambiguous legal terms to protect their interests, including poor environmental records. The ambiguity of key legal concepts makes it difficult to apply the law. The above analysis on the root causes for legislative shortcomings could provide a comparatively helpful path for improving the contents of EEID legislation.

4. GENERAL REMARKS: STRATEGIES FOR PROMOTING LEGISLATIVE IMPROVEMENT

Based on the above analysis, the article puts forth a series of recommendations for promoting the improvement of EEID legislation.

4.1 Balance the Interests of the Government, the Public and Enterprises

Stakeholders’ social, economic and environmental interests are all interrelated. Active disclosure of environmental information by the government and enterprises not only safeguards the public’s right-to-know and the public’s ability to participate in and supervise environmental protection efforts, but also helps maintain the balance between these three groups’ interests. But, it remains unreasonable that EEID legislation places a greater emphasis on enterprises’ obligation to provide information to the government, rather than the reporting of information directly to the public by both government and enterprises.

Based upon a nomological analysis of consistent rights and obligations, China’s government should shoulder more legal responsibility to disclose information.64 Government should play a dominant role in implementing EEID, which can improve governmental transparency in the long run and facilitate the government’s transformation to a service administration. The government shall also hold a responsibility to inform and warn communities and other organisations and individuals who may suffer from environmental damage or be directly threatened, so as to avoid and minimise damage. As another key information disclosure subject, enterprises should be guided and encouraged to fulfil corporate social responsibility (CSR) requirements, voluntarily disclose non-statutory environmental information, and practice their role as environmental-friendly enterprise ‘citizens’.

Consequently, legislation should not only stipulate disclosure obligations for the government and for enterprises, but also support and help the government build its capacity for service by establishing a platform to facilitate interaction between government, the public and enterprises. Deepening the legal responsibilities of the government and enterprises in implementing EEID supports the public’s environmental right-to-know and creates channels to utilise the judicial system as a tool for supervision.

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64 Using empirical analysis and case studies, He Guizhen and others evaluate in detail the effects of the Measures on implementing government environmental information disclosure in China. Their analysis confirms the government’s dominant position in the system for information disclosure, analyses the causes of this problem and provides suggestions to rectify the issue. He Guizhen and others, ‘Evaluation of Environmental Information Disclosure by Environmental Agencies in China’ (2011) 32 Environmental Science 3137.
4.2 Strengthen Public Awareness of the Environment and Environmental Law

Public awareness of the environmental right to know should be strengthened by implementing a national environmental education strategy. It is a legal right and obligation for the public to receive environmental education. Public education curricula across China should incorporate an environmental component that teaches about the natural environment, how it is being destroyed and how to protect it. A national environmental education strategy can also disseminate knowledge about provisions that concern the public’s right-to-know and help to develop a sense of public participation in environmental welfare, and more specifically, in information disclosure. Incorporating in the curricula traditional Chinese culture’s focus on ‘harmony’ along with methods to protect the deteriorating environment will, along with environmental laws, promote the construction of a well-informed ecological civilisation. However, this recommendation is a long-term goal because today, ‘the most basic legal recognition and legal values of Chinese citizens still lag far behind changes and developments of the Chinese legal system’. Education is a long-term process, but it also has the potential to produce sustainable change. Environmental education that changes people’s minds, and for the younger generation, moulds their minds and behaviour, could motivate a long-term cultural shift towards public participation in environmental protection.

4.3 Emphasise the Contribution of Legal Practice to Legislation

In China, the NPC deputies and CCCPC members are the important subjects for connecting national laws and policies to the public’s environmental needs. As such, they should research the implementation of laws in practice to better understand the public’s specific demands for environmental information, challenges faced by enterprises in disclosing environmental information, and compare experiences across different localities. By analysing a range of materials and experiences, deputies and members can develop more comprehensive and effective legislative proposals to submit to the legislature for the drafting and amending of laws.

Environmental NGOs and experts also possess certain professional advantages that can and should be directed towards effecting change in laws and in society. They ought to apply their expertise to study problems with current and proposed environmental legislation, such as responsibility and relief mechanisms for EEID, and devise ways to coordinate government and enterprise data for EEID with companies’ annual reports or CSR and sustainability reports. Through collection, analysis and

65 Zuoxiang (n 56) 276.
66 The Outline of the Environmental Propaganda and Education Work in China (2016–2020) (issued jointly by MEP and other five Ministries, 30 March 2016) will help to expedite this process. By 2020, the objectives of the outline are: increase the national environmental awareness significantly; implement the ecological civilisation mainstream values successfully around the whole society; establish the system of social action of participating in environmental protection for the whole people; promote forming a social co-governance situation that combining top-down with bottom-up. See <http://www.zhb.gov.cn/gkml/hbb/bwj/201604/t20160418_335307.htm> accessed 19 March 2017.
67 See Xu Lili, ‘Pollution Map is in Force’ <http://www.cenews.com.cn/sylm/hjyw/201504/t20150413_790764.htm> accessed 19 March 2017 or <http://www.chinanews.com/ny/2015/04-13/7204186.shtml> accessed 19 March 2017.
research on EEID judicial cases, environmental public interest litigation and environmental incidents related to environmental information disclosure, these experts can analyse data to provide support for strengthening national legislation. For example, China’s new EPL contains strengthened provisions for environmental public interest litigation. Experts should study the feasibility and implementation requirements of judicial supervision if procedures similar to those for environmental public interest litigation are applied to EEID violations. By examining mechanisms underlying China’s EEID system, NGO experts can use data as a foundation for examining credibility, relevance and weight of evidence towards enterprises’ EEID performance and their attitudes towards EEID. Moreover, examining mechanisms that have also worked in other EEID systems may also provide valuable insight from which to draw lessons.

5. COMPARATIVE EXPERIENCES: STUDY AND REFERENCE LEGISLATIVE PRACTICE ON EEID
Studying EEID legislation in other countries allows us to examine not only these systems’ successes but also their deficiencies. Although differences between legal systems mean that lessons cannot always be directly translated, China may still learn from the successes and shortcomings of foreign EEID practice, especially that of the EU and the USA.

5.1 Overview of the EU and US Experience
The United Nations Economic Commission for Europe (UNECE’s) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (‘the Aarhus Convention’) uses relatively broad parameters to define reportable environmental information. In doing so, the Aarhus Convention establishes a legal framework for the 2003 Protocol of Pollutant Release and Transfer Register (PRTR) System (‘the Kiev Protocol’) of Europe, which clearly defines the scope of environmental information to be disclosed. Moreover, the Convention is not merely an environmental agreement: it links environmental rights and human rights, acknowledges that we owe an obligation to future generations and establishes that sustainable development can be achieved only through the involvement of all stakeholders. By granting the public rights and imposing on Parties and public authorities certain obligations regarding access to information and public participation, and backing up these rights with access to justice, the Convention links government accountability and environmental protection.

68 See Daniel Carpenter-Gold, ‘Castles Made of Sand: Public-Interest Litigation and China’s New EPL’ (2015) 39 Harvard Environmental Law Review 241.
69 Adopted on 25 June 1998 and entered into force on 30 October 2001. As of 27 July 2016, there were 47 Parties to the Convention, 35 Parties to the Protocol on PRTRs and 30 Parties to the amendment on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms (GMOs). <http://www.unece.org/env/pp/ratification.html> accessed 21 March 2017.
70 See Borut Stražišar and Metka Kralj, ‘The Aarhus Convention in the Nuclear Sector—Right to Information Versus Nonproliferation?’ (2016) 36 Journal of Radiological Protection S160.
In the USA, the Toxics Release Inventory (TRI) formulated by US EPA on the legal basis of the Emergency Planning and Community Right to Know Act 1986 (EPCRA), which requires enterprises to submit an annual report for all emissions of toxic chemicals listed in the TRI to the EPA.\(^7\) The Pollution Prevention Act 1990 (PPA), which expands the system for TRI, stipulates that results relating to the recycling, utilisation and the reduction of pollution sources should be included in this annual report. The EPA is required to make public an annual report for all citizens to access.

5.2 Justification for Studying the EU and US Experience
There are two main justifications for the relevance of studying the EU and US experience. First of all, developing countries and developed countries face similar environmental problems, leading to a convergence of system design in handling these problems. Legislation in these countries also draws upon similar theories: sustainable development, the environmental right-to-know and enterprise environmental responsibility. Sustainable development theory organically links environmental sustainability with development; thus, EEID systems often aim to support sustainable development goals. In spite of differing national conditions, countries generally hold the same common target of providing a convenient platform for environmental information disclosure that guarantees the public’s right-to-know.

There is a growing trend and reality that enterprises must be held responsible for compliance and violation of environmental laws, including EEID laws. Because China has the advantage of learning from the relatively long history of legal practice of environmental information disclosure systems in the EU and USA, China also has the opportunity to be more efficient in implementing EEID. China could benefit from seeking more international cooperation and exchange in constructing its system.

Secondly, China’s EEID legislation is influenced by modern democratic legislative ideas. For example, the Measures and the EPL include clauses guaranteeing the public’s environmental right-to-know. Some legislative articles in the Measures and the EPL appear to be modified versions of existing legal provisions of foreign countries. Because of the relatively advanced state of environmental information disclosure in the EU and USA, these systems could provide abundant environmental judicial cases and practice experience for China as it moves towards an environmental democracy where information disclosure, public participation and environmental public interest litigation all play effective roles in enforcing environmental laws and regulations. China should establish a centralised platform for the disclosure of such information to facilitate public access to it and spur the public to supervise enterprises’ environmental performance.

5.3 Practical Lessons for China’s EEID System
First, effective systems of EEID policies support and build upon one another, rather than overlap. For instance, the EU has formed a strict logical system of legal norms composed of the Aarhus Convention, Kiev Protocol, Enforcement Guidelines for the

\(^7\) [https://www.epa.gov/epcra/what-epcra](https://www.epa.gov/epcra/what-epcra) accessed 29 March 2017.
Kiev Protocol and the Aarhus Convention Implementation Guide as well as each Party's own laws. Throughout the EU and among individual Parties, the content of environmental information that an enterprise must be disclosed maintains breadth, the form of information disclosure is standardised but the means of disclosure flexible, and public access to enterprises’ environmental information is universally convenient. In the USA, the TRI, which falls under EPCRA, PPA, are enforced strictly by the national-level EPA and state and local governments. The unified national model ensures the order, continuity and effectiveness of legal implementation.72 Due to EPCRA’s success, many proponents now argue that ‘mandatory public distribution of information’ can have a substantial effect on improving ‘industrial environmental performance’.73 The TRI’s positive implementation results have also been supported by data on toxic substance emissions reductions, and it is also called as ‘one of the most effective environmental programs ever legislated by Congress and administered by EPA’.74 But in China, implementation of EEID legislation still remains up to local governments, so enforcement is weak. Legislation should cover each level as well as different areas including laws, regulations, rules and guidelines, so that the enforcement effects of EEID are efficient and predictable.

The second common thread is strengthening enterprises’ internal management to improve EEID implementation. For example, in order to improve market efficiency and protect the interests of investors, the US government attaches great importance to the quality of information disclosure. Internal control is the key to realising quality control targets. In 1992, the ‘Internal Control—Overall Framework’ issued by the American Committee of Sponsoring Organization (COSO),75 set goals for internal control, focusing on the reliability of financial reports, the efficiency and effects of business activities, and state of obeying relevant laws and regulations. Moreover, the 2004 new COSO report ‘Enterprise Risk Management—Overall Framework’76 emphasises risk management by using internal audits to guarantee the quality of information disclosure. The 2002 Sarbanes-Oxley Act forces US publicly listed companies to set up a sound internal control system that holds the CEO and CFO responsible for the effectiveness of internal control. Enterprises in China are at a critical juncture with regard to the construction of internal governance mechanisms.77 Learning from the foreign experience in enterprise internal control can strengthen

72 See Timothy Riley and Cai Huiyan, ‘Unmasking Chinese Business Enterprises: Using Information Disclosure Laws to Enhance Public Participation in Corporate Environmental Decision Making’ (2009) 33 Harvard Environmental Law Review 197.
73 ibid 198.
74 See Thomas Beierle, Environmental Information Disclosure: Three Cases of Policy and Politics (Resources for the Future Discussion Paper 03-16, 2003) 1.
75 On 14 May 2013, the COSO released its revisions and updates to it. COSO’s goal in updating the framework was to increase its relevance in the increasingly complex and global business environment so that organisations worldwide can better design, implement and assess internal control <http://www.aicpa.org/interestareas/businessindustryandgovernment/resources/corporategovernanceriskmanagement/internalcontrol/pages/coso_integrated_framework_project_aspx> accessed 23 March 2017.
76 <http://www.aicpastore.com/AST/Main/CPA2BIZ_Primary/InternalControls/COSO/PRDOVR~PC-99001S/PC-99001S.jsp> accessed 23 March 2017.
77 Li Keqiang, ‘Government Work Report’ <http://www.npc.gov.cn/npc/xinwen/2017-03/15/content_2018934.html> accessed 23 March 2017.
company internal control and the responsibility of companies’ management to adhere to laws, thus promoting effective implementation of EEID.

6. SPECIFIC REFORMS
The aim of studying China’s EEID legislative strategy and foreign experience is to rationally and effectively improve elements of the EEID system.

6.1 Broaden the Scope of Priority Items and Contents to Be Disclosed

6.1.1 Expand the scope of priority items for legislative revision
To maximise the positive impact on enterprises’ environmental behaviour and improve the government’s environmental supervision record, legislative priority should focus on the following two domains.

The first domain to prioritise for legislative revision is environmental pollution accidents, emergencies and incidents and the threats thereof. Industrial production poses both actual and potential threats to public environmental and legal interests, so enterprises are obligated by law to disclose environmental information. A key example of this is the huge explosion at a hazardous chemicals warehouse in Tianjin on 12 August 2015. This incident raised the public’s awareness of lax safety controls and the need for more public information on hazardous materials stored in warehouses and used in factories. This incident exposed many problems with China’s environmental laws and their implementation, especially with the legal framework for environmental information disclosure.78 The residents in the area had no means of accessing information about the types of chemicals stored in the Tianjin port, or the company’s safety reports or EIA reports. It is clear that the EIA and the safety assessment report for the establishment of the hazardous chemicals warehouse were of questionable quality. Moreover, information on safety management and the company’s environmental management information were administered by separate systems: the former was regulated by the Work Safety Law, but the latter was regulated by the EIA Law. There were also significant shortfalls in terms of public participation and proper implementation of EIA procedures during the construction of the hazardous chemicals warehouse.79

Polluting enterprises should be the subjects responsible for direct disclosure of information to the affected residents and larger communities affected by their air, water and solid waste discharges and accidents. If enterprises disclosed information in a timely and thorough manner, the damages of these incidents could have been significantly reduced. But if information disclosure during environmental incidents must continue to pass through cumbersome administrative review processes, similar environmental accidents will continue to occur and will continue to harm people,

78 For relevant reports and commentary on the Tianjin explosion, one may refer to: Xinhua News Agency, ‘Xi Jinping and Li Keqiang Raise Important Instructions on the Deadly Tianjin Explosion Incident’ (27 August 2015) <http://www.gov.cn/xinwen/2912599.htm> accessed 18 January 2017; Xinhua Network, ‘Investigation and Security Departments have Criminal Charges Against Those Responsible for the 8-12 Deadly Tianjin Blast’ <http://news.xinhuanet.com/legal/2015-08/27/c_1116384776.htm> accessed 18 January 2017.
79 Xi Yuming, ‘Questions about the Corporation: Is the Survey on Environmental Evaluation Real?’ (14 August 2015) <http://news.sohu.com/20150814/n418829675.shtml> accessed 18 January 2017.
property and the environmental ecosystem. Compounding the problems are companies’ cover-ups of environmental incidents and information relating to them, which has created public mistrust and has incited major social incidents or political unrest.

New legislation is needed that mandates enterprises to make public to nearby residents and communities when pollution accidents occur, allowing residents and communities to actively participate in recovery efforts and thus reducing governmental costs and efforts. At the same time, enterprises should also be required to report accidents to the local authorities.

The second domain in which legislative change is necessary is that the scope of required disclosure for release and transfer of hazardous chemicals and toxic substances should expand. Currently, most environmental pollution accidents can be traced to cases where enterprises ignore strict management measures and protections for toxic and hazardous substances. For instance, on 7 May 2014, a major radiation accident occurred in the city of Nanjing in Jiangsu province because the operational personnel mistakenly lost a highly toxic radioactive substance. Due to the highly toxic nature of certain substances, it is crucial for enterprises to abide by the principles of risk prevention and carry out preventive measures to mitigate risks. Environmental information disclosure is a key component of risk mitigation, especially when toxic and hazardous substances are used in general operations.

China’s MEP enacted the Measures for EMRHC in 2013. There are 19 articles involving EEID in the Measures, requiring enterprises using toxic chemicals to report the use of these chemicals as well as releases into the air, water and land. This system strengthened public supervision of hazardous chemicals and enhanced enterprises’ awareness of environmental risks and their compliance with environmental laws. Although a considerable gap remains between these Chinese measures and Western laws stipulating the types and quantities of hazardous chemicals mandated for disclosure, Chinese legislation involving environmental information disclosure has made substantive progress in the past decade. Closing this gap between Chinese and foreign EEID laws on toxic and hazardous substances will also gradually enhance the competitive capacity of Chinese enterprises in international markets.

6.1.2 Broaden the scope of environmental information required for disclosure

China needs additional legislation that establishes clear and enforceable regulations on the rights and obligations of enterprises to disclose environmental information on hazardous substances that they use, produce and release into the air, water and ground. In order to best influence stakeholders’ interests, China should adopt mandatory EEID legislation that balances the following key elements: the value of the

80 See the Interim Measures on Cleaner Production Checks 2004, art 18(2).
81 See Suzhou News Network, ‘Nanjing Discloses How of Radioactive Source Was Lost: Two Workers Threw Met Away after Picking Up’ <http://news.subaonet.com/2014/0513/1331743.shtml#blz-insite> accessed 18 January 2017.
82 ibid (n 31).
83 Measures for EMRHC, see ibid (n 31), ibid, arts 3, 5, 9, 11, 15, 17–20, 22–23, 25–26, 29, 31, 33–36.
84 See Liu Qi and Pan Weibin, Environmental Monitoring Guide (South China University of Technology Press 2008) 9–11. Also see Yang Ruoming and others, Environmental Monitoring (Chemical Industry Press 2009) 10–12.
environment’s natural ecosystem and its real and potential benefits; the elimination or reduction of enterprises’ negative environmental impacts; the costs and benefits of implementing an EEID system; and the costs of public access to environmental information.

Enterprises’ mandatory disclosure of environmental information is a legal obligation. Furthermore, legislation stipulating mandatory disclosure is becoming more specific and the scope of information disclosure is widening, thus heightening the requirements for enterprises’ development strategies. Enterprises need to seek a new balance between economic development, the maintenance of public environmental interests and the public’s demand for information transparency. Legislation should weigh the balance between enterprises’ pursuit of efficiency and profits and laws’ aim of ensuring fairness and a safe environment for all living beings that depend on the natural environment. One way to adopt a middle ground between enterprises’ economic advancement and the environmental rights of the public is by clarifying specific boundaries for mandated reporters and the contents of information to be disclosed.

First, legislation should adhere to the principle of ‘disclosure as the norm’. Information disclosure should be timely, accurate, comprehensive and accessible to the public. Using these principles as a framework for China’s EEID system can ensure formal rationality of the legal system and help to achieve procedural fairness. Underlying this principle is the legal protection of the public’s demand for their rights to statutory interests and the universal value of information transparency. By following this principle, China’s EEID system can become aligned with the ‘three basic characteristics of a rational system’.

Secondly, economic factors and market forces should be considered when determining the boundaries for mandatory reporting. Legislation requiring a wider range of EEID facilitates the public’s access to environmental information, and in turn strengthens public supervision and the effectiveness of public participation in environmental protection. However, the efficiency of the system must be addressed from an economic perspective. As Adam Smith contends, ‘In human society, every individual has his own principle of motion, which is different from that which the legislature might choose to impress upon him.’ As such, enterprises should be considered as separate entities among multiple stakeholders in this system. Sharing regulatory

85 For example, the EIDEPI Measures (MEP orders 31); Measures of Supervision and Management on Radioactive Goods Transportation Safety (MEP orders 38) (adopted by MEP 29 January 2016, effective on 1 May 2016).
86 For example, art 1 of the EIDEPI Measures regulates that aims at ‘maintaining citizens, legal persons and other organizations’ right-to-know, driving enterprises and public institutions to disclose environmental information to the public faithfully, and promoting the public to participate and supervise the environmental protection’.
87 Zheng Chengliang notes ‘Formal rationality is the combination of the following three features: firstly, the formal symbol system; secondly, logically consistent calculations rules (generalized operations, including all forms of reasoning); and thirdly, accuracy and repeatability of operation result (conclusion).’ See Zheng Chengliang, ‘On Ten Issues on the Formal Rationality of Law’ (2005) 6 Law and Social Development 24.
88 Masahiko Aoki, ‘Along the Balanced Point Evolution of Institutional Change’ in Liu Gang and others (trans), Claude Ménard (ed), Institutions, Contracts and Organizations —New Institutional Economics Perspectives (Economic Science Press 2003) 20.
outcomes based on unique political and social structures may minimise the consequences of the system’s negative externalities. Although there is no Pareto Optimal, considering enterprises as separate entities should minimise the transaction costs of running the system. In terms of economic benefits, Cohen and Santhakumar provide theoretical evidence that ‘mandatory information disclosure can facilitate the internalizing of a pollution externality.’ In other words, transparency surrounding environmental information will cause enterprises’ pollution to become a factor affecting the enterprise’s overall performance, thus forcing enterprises to internalise the costs of their environmental externalities.

Enterprises subject to mandatory disclosure of environmental information are, more often than not, powerful interest groups. They are often large taxpayers in a certain region or country that hold a monopoly position within the economy, society and/or politics. Compared with other types of enterprises, their actions significantly impact environmental policy and law, leading to an imbalance within the system and causing government failure in public policy. To avoid this, legislation should also consider the different types of enterprises and whether there will be full participation of various stakeholders in determining the boundaries of the system, so that procedural fairness of participation promotes substantive fairness.

6.2 Strengthen Enterprises’ Legal Accountability
In China, legislation currently limits punishment of violating enterprises to administrative responsibility. However, legal liability, including administrative, civil and criminal responsibility, should be the key mechanism for EEID implementation.

6.2.1 Coordinate the mechanisms of pollution responsibility and environmental damage with the EEID system
The ultimate goal of the EEID system should be to protect citizens’ rights and environmental welfare. Although the apparent aim of information disclosure is to protect the public’s right to access to environmental information to safeguard their health, their property and that of the extended community, the underlying aim is to urge enterprises to comply with environmental laws and regulations and improve their environmental behaviour, thus advancing both economic development and environmental protection. In China’s current environmental legislation, provisions for responsibility for environmental pollution and destruction are more specific and detailed than those stipulating enterprises’ responsibility for environmental information disclosure. Coordinating the systems of responsibility for environmental pollution and environmental information disclosure will strengthen environmental governance.

89 The authors mean there is not a state that could guarantee the best of implementing EEID system.
90 They contend that ‘in the case of “the polluter pays” principle, information disclosure is most appropriate when the victim underestimates the damages caused by the pollution and the actual level of damages exceed the cost of abatement. In the case of “the pollutee pays” principle, information disclosure is most appropriate when the pollutee overestimates the damages and the cost of control is greater than damages.’ See Mark Cohen and V Santhakumar, ‘Information Disclosure as Environmental Regulation: A Theoretical Analysis’ (2007) 37 Environmental and Resource Economics 616.
91 For example, the CPPL 2012, arts 36 and 39(2); the EPL 2014, art 62.
6.2.2 Draw on accountability mechanisms in other Chinese legislation

Combining the mechanisms of accountability in EEID with special provisions of accountability found in other types of PRC laws and implementing a means for easy information sharing can reduce the pressures of implementing various laws and regulations on the environmental departments of China’s government. For example, according to China’s Company Law, if an enterprise submits false information or uses other fraudulent means to conceal important (ie, potentially harmful to the environment and to the enterprise) environmental information during registration, then the enterprise registration authority may find that enterprise guilty of fraud.92 China’s Securities Law provides that the securities regulatory authorities shall publish the names of listed companies that do not obey the information disclosure laws, specifically those that do not disclose environmental information mandated for disclosure.93 The Food Safety Law includes detailed provisions for enterprises on information notification, publication and reporting to enhance food safety, and also establishes information sharing among governmental departments of health administration, quality supervision personnel, industry and commerce administration, food and drug supervision management and entry-exit inspection and quarantine. These laws provide robust examples from which legislation for EEID can draw.94

6.2.3 Introduce a system of responsibility for subjects required to disclose information

EEID laws should strengthen the liability of enterprises and third parties who violate environmental regulations. Enterprises are the owners and producers of environmental information and have the means to publicise environmental information. Third parties or independent bodies may certify the legitimacy and authenticity of enterprise environmental information. Enterprises and third parties are independent from one another, yet closely related. They have individual rights and legal obligations, but they share statutory obligations and responsibilities to disclose environmental information in a timely manner. Based on serious incidents of environmental data fraud that have taken place in China in recent years,95 this article contends that there is a trend for law to require some enterprises’ and governments’ environmental information to be certified by independent third parties before it is disclosed to the public. Some laws go even further, such as the CPPL 201296 which provides administrative or criminal sanctions for fraudulent behaviours in assessment and acceptance of enterprise information. Such joint liability under the new EPL will help

92 See the Company Law (amended 2013), art 198.
93 See the Securities Law (amended 2013), art 193.
94 See the Food Safety Law (amended 2015), arts 6, 8, 18, 20–23, 90–93, 96, 99, 101–02, 106, 111 and 145. These articles provide more details.
95 For example, a case on local government’s environmental fraud data has aroused public’s great attention. See Jiang Meng, ‘Are Only Environmental Officials Responsible for Environmental Monitoring Fraud Data?’ <http://opinion.people.com.cn/n1/2016/1026/c1003-28810528.html> accessed 24 March 2017.
96 Relating to the violations, the CPPL 2012 provides that any unit that ‘fails to sufficiently conduct evaluation and acceptance checks’ will be held responsible and ‘the directly responsible chief and other directly liable persons shall be subject to disciplinary actions according to law; and if any crime is committed, shall be subject to criminal liability according to law’. See the CPPL 2012, arts 27(5) and 39(2).
to prevent fraudulent behaviour among environmental information service agencies.97

Secondly, the responsibility of governments to disclose verified, well-documented environmental information should be strengthened. The government is stronger than the vast majority of enterprises, or citizen groups, so it should take on comparatively more duties and responsibilities.98 In the implementation of environmental information disclosure, the role of the government and the role of enterprises should reinforce one another. Therefore, the power of the government in EEID should be strengthened to guide and encourage enterprises to disclose environmental information according to the law and to improve environmental behaviour.

6.3 Strengthening Judicial Relief

The role of relief is to encourage courts and procuratorates to participate in the implementation of the EEID system by means of judicial processes. Relief also appeals to judicial authorities and justice for the sake of environmental protection.

6.3.1 Strengthen regulations on judicial relief in environmental legislation

The 2014 amendments to China’s EPL propose that qualifying organisations have standing to file environmental public interest suits, but only for actions that cause ‘environmental pollution, ecological damage, or harm the public interest’, and not necessarily against violations of mandatory environmental information disclosure.99 The matter of whether lack of environmental information disclosure harms the public interest and thus could serve as the basis for an environmental public interest suit poses both theoretical and practical questions. However, a recent public interest lawsuit100 seems to provide an entry point for addressing some of these questions, drawing close attention from the public.101 The lawsuit is significant because first, it could provide a direction for judging similar cases, and secondly, it may lay the foundation of considering the public interest value of environmental information in the future.

As part of the reforms to more fairly allocate Chinese judicial powers, from 1 July 2015, China’s Supreme People’s Procuratorate (SPP)102 started piloting implementation

97 See EPL 2014, art 65.
98 However, the survey demonstrated the following: (1) Not all Chinese government websites publish data sources and hundreds of Chinese cities’ regulatory information requires further disclosure; (2) There are also limits on accessibility to websites that disclose pollution monitoring data; (3) When requesting local government data, environmental protection departments sometimes refuse to disclose information citing reasons of confidentiality, or they obstruct environmental information disclosure or do not respond directly. See Lǐ (n 67).
99 See the EPL 2014, art 58(1).
100 On December 14, 2015, the China Biodiversity Conservation and Green Development Foundation (CBCGDF) v Volkswagen [2015] Er Zhong Bao Min Chu Zi No.0098 was accepted by the second Intermediate People’s Court of Tianjin. ‘The CBCGDF v Volkswagen was Put on Record’ <http://auto.qq.com/a/20151215/021739.htm> accessed 17 December 2015.
101 CBCGDF contends the Volkswagen installed emissions cheating software in some vehicles so that nitrogen oxide emissions under normal driving conditions were far greater than stated by the automobile manufacturer. See ibid.
102 The SPP is the highest legal supervising organ in China. It is mainly responsible for supervising regional and special supervising organs to perform legal supervision by law and protecting the unified and proper
of environmental public interest litigation in 13 provincial areas for two years. The SPPC also issued a relevant judicial interpretation that provides a basis for potential new opportunities to support the implementation of mandatory environmental information disclosure. Articles 10 and 16 of the SPCC’s Interpretation Concerning a Number of Issues with the Application of Law in Environmental Tort Liability Disputes (2015) clarifies separately the meaning of ‘evidence’ and ‘fraudulent’. Both of these articles’ detailed explanations should strengthen EEID-compliance behaviour.

Additional legislation passed in 2014 by the State Council or the MEP shows significant signs of progress. Article 13 (1) of the Interim Regulations on Enterprise Information Disclosure provides the following:

Where any citizens, legal persons or other organizations find the information disclosed by an enterprise to be false, they shall inform the relevant administrative departments for industry and commerce. An administrative department for industry and commerce shall, within 20 working days from the date of receipt of the tip-off materials, conduct verification and handling thereof, and inform the whistleblowers of the handling information in writing.

Furthermore, Article 17(1) stipulates specific situations in which the names of enterprises that violate enterprise information disclosure laws shall be publicised and those enterprises shall face punishments under the law. However, these provisions only concern relief for violations of more general enterprise information disclosure and not for mandatory environmental disclosure. Whether these provisions can be directly applied to mandatory disclosure and how they can be applied or quoted requires further study, both in theory and in practice. Article 15(2) of the EIDEPI Measures empowers citizens, legal persons and other organisations who find sewage treatment units that do not disclose information according to law to report those units to environmental protection authorities, but the provision still belongs to administrative law enforcement and does not provide full relief. The lack of judicial supervision on enterprise information disclosure provides significant opportunities for improvements in terms of judicial relief.

enforcement of State laws. See ‘State Structure of the PRC’ <http://www.npc.gov.cn/englishnpc/stateStructure/node_3826.htm> accessed 19 March 2017.

103 See ‘The decision of the NPC Standing Committee’s Authorization to Supreme People’s Procuratorate the Pilot Implementation to Carry Out the Public Interests Litigation in Some Areas’ <http://www.gov.cn/xinwen/2015-07/01/content_2888125.htm> accessed 19 March 2017.

104 These judicial interpretations include the following: the Interpretation on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Environmental Pollution 2013; the Interpretation on Several Issues Concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigation 2014; and the Interpretation Regarding Several Issues of the Application of Law in Cases of Environmental Tort Liability Disputes 2015.

105 State Council Decree [2014] No 654.

106 See the State Council Decree [2014] No 654, art 17(1).

107 ibid, (n 7).
6.3.2 Draw on relief regulations in other relevant legislation as a reference

Provisions in other relevant legislation, such as Article 13 in the Food Safety Law (2015 revision), concerning rights to judicial relief can serve as a solid framework for incorporating such provisions into legislation stipulating mandatory disclosure of environmental discharges, and types and amounts under the EEID system. The Work Safety Law\textsuperscript{108} also follows a similar legislative logic.

Several common elements of relief in other laws may prove relevant to improving judicial relief for mandatory EEID. First, enterprises or their managers (and relevant employees) have a statutory obligation to disclose environmental information. Secondly, the above subjects tend to violate their statutory obligation for information disclosure, and such violations often result in losses for other stakeholders. Thirdly, laws should provide that a certain organisation or individual has rights to judicial relief for such violations. Thus, relief can address the logical connection between rights and obligations in procedure law and play a supervisory role in subjects’ information disclosure. The design of the relief system for EEID should take the above elements into account. The system design of mandatory EEID is important, but the effectiveness of the system depends on its implementation and the cooperation of enterprises. Reasonable and complete procedures for judicial relief should incentivise enterprises to actively and accurately disclose environmental information.

7. CONCLUSION

Theoretically, environmental information disclosure could improve the state of guaranteeing public right-to-know. The true and complete information may enhance the public’s environmental consciousness and ability to participate in environmental protection. It also benefits a country to form a bottom-up democratic environmental governance.

Eight years after its initial establishment in 2007, China’s EEID system has transitioned from a trial system to a functioning system. A very practical value of China’s EEID results in its role of resolving social contradictions and maintaining social stability especially when an emergency happens. Failure to disclose information will lead to public suspicion of enterprise and government, draw public’s distrust and even conflict with enterprise and government.\textsuperscript{109} Another important practical value of EEID implementation in China is to show an honest and environment-friendly image to other stakeholders. Meanwhile, studies have shown that it could reduce the cost of government’s environmental administration and public’s environmental supervision and participation.\textsuperscript{110} However, the article finds there are outstanding problems with the implementation of EEID system, such as China’s traditional ‘no sue’ idea, imperfect legislative framework, the narrow disclosure scope and inadequate legal accountability mechanism, etc., involving EEID. To some extent, these problems may lead to passive influence on the construction of the EEID system.

\textsuperscript{108} It was originally adopted by the NPC Standing Committee on 29 June 2002, amended on 27 August 2009 and on 31 August 2014, and became effective on 1 November 2002. See arts 50, 51, 71 and 72.

\textsuperscript{109} Kun Fang and Wan Mei, ‘The Obligation and Responsibility on Enterprise in Marine Pollution Incident’ (2012) 5 Law Review 86.

\textsuperscript{110} Tian Cuixiang, ‘Empirical Studies on Accounting Information Quality: Review and References’ (2006) 2 Journal of Shanghai LiXin University of Commerce 30.
Thus, the article suggests a serious information disclosure mechanism to perfect implementation of EEID system, including: a reasonable system frame, a comparative wide content and scope, and a reasonable legal accountability mechanism; drawing lessons from the experience of the USA and the EU is also a comparative choice to improving the EEID system; and making full use of the educational function to harmonise Chinese traditional culture with environmental judicial reform.

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