Implementation of Chinese Environmental Law: Regular Enforcement and Political Campaigns

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ABSTRACT

While China has made great strides in establishing environmental laws and enforcing environmental regulation, problems of non-compliance and weak and slow enforcement remain. This contribution analyses cases of sub-optimum enforcement and the political campaigns that have been undertaken to deal with them. It will argue that enforcement problems are rooted in a lack of local legitimacy caused by conflicting interests of stakeholders. The case of Chinese environmental law enforcement holds lessons beyond its regional scope, about the role of law in balancing interests. Law itself does not exist in a vacuum: on the contrary, it is very much the result of conflicting interests and can be seriously challenged by the need to balance these interests. The use of political campaigns to enhance enforcement in China shows that the flexibility of political short-term policy instruments can offer incremental improvements to enhance the balance between the conflicting interests themselves and their relation with the legal system.

INTRODUCTION

Yunnan Province is the most southwesterly region of China, bordering Vietnam, Laos and Burma. It abounds in mineral resources, including tin, zinc, titanium, copper, antimony and phosphorus. The area west of Kunming, the provincial capital, is home to some of Asia’s largest phosphorus mines.

In the middle of a small village in this area, a chemical fertilizer plant has been built. According to the Yunnan provincial environmental protection bureau (EPB), pollution discharge from the factory meets its standards and is in compliance with regulations.\textsuperscript{1} Local farmers know better: they live amidst the white dust and acrid smells which are emitted from the factory on a regular basis. As a result their rice has turned red and 70 per cent of it

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\textsuperscript{1} See http://www.ynepb.yn.gov.cn/html/wrkz/wrkz_szfdbpfl_1.htm.

is useless; some fish ponds are now lifeless, and the farmers can no longer use water buffaloes to plow their paddies as polluted water has affected the animals’ feet, making them seriously ill. So far the farmers have taken little action against the pollution, as they know that their livelihoods are completely dependent on the industrial giant located in the centre of their village. The few investigations of the EPB have brought no change, and in the summer of 2004 the Kunming EPB still deemed the factory to be ‘in-compliance’. Then, in September 2004, the EPB carried out a night-time inspection and discovered illegal discharges for which the plant was fined 5,000 yuan.2

Down river there are several smaller chemical factories. By the end of 2003, it became clear that these small factories were also in serious violation of the regulations; their waste water contained acid levels far beyond those allowed in the relevant water-treatment standards.3 As a result, the local river water became so acidic that further downstream the metal turbines of China’s oldest hydraulic power station corroded and could no longer be used (Song and Zuo, 2003). Further down the river, Yunnan’s largest factory — the Kunming Steelworks plant in Anning city — had to halt production because the river water could no longer be used in the production process. Officials at the hydraulic power station and the steel factory complained to the authorities, and even involved the national television and several media (CCTV, 2004; Song and Zuo, 2003). It took nearly another year before, in September 2004, the local EPB was able to gather evidence of the factories’ violations. Even after proof had been found and sanctions were imposed, including a temporary halt to production, untreated discharge was still flowing into the Tanglang River in November 2004.4

China has made great progress in building a system of environmental law and in enforcing environmental regulations; nevertheless, problems of non-compliance and imperfect enforcement of these laws and regulations remain. In 2004 alone, the Chinese national media covered several large pollution/non-compliance cases, including the continued violations at the Huai River (Zhang, 2004), the Tuo river accident (Ju, 2004), which polluted the drinking water of one million inhabitants and caused over 300 million yuan in damages (Wang, 2004: 4), and the case of the small, highly polluting chemical factories at the Tanglang River in Yunnan (Song and Zuo, 2003). Since 1996, China has organized political campaigns to tackle problems of weak enforcement. Yet pollution violations keep recurring and successful

2. At the time of the research 5,000 yuan was approximately equal to € 500. From 1994 to 2005, the yuan was pegged to the US dollar at 8.2770. Since 21 July 2005 the yuan is linked to several currencies including the dollar, euro and yen at 8.11 against the dollar. The yuan can now fluctuate within a bandwidth of 0.3 per cent upwards or downwards.
4. This and the previous paragraph are based on interviews with local villagers, factory employees and EPB agents in Kunming, 2004.
enforcement seems impossible. This study will investigate how effective these political campaigns have been. It will argue that lax enforcement is rooted in conflicts of interest between national regulations and local stakeholders. As a result, the law lacks local legitimacy and local actors resist enforcement. It will show that political campaigns have gained a short-term victory over such resistance, but until a balance of interests is found, and local actors have alternative sources of income, sustained compliance will remain difficult. Nevertheless, because of their experimental and flexible modus operandi, political campaigns may be more successful than the law in finding such a balance.

The case of Chinese environmental law enforcement is relevant beyond its regional scope, as it offers important theoretical lessons about the role of law in a context of conflicting interests of sustainable development. The concept of sustainable development emphasizes the need to balance long-term and short-term economic, social and environmental interests (WCED, 1987). In a recent report, the World Bank recognized the importance of institutions, including legal systems, for sustainable development through their roles in balancing interests and implementing policies (World Bank, 2003: 44–5). This contribution will show that the law has difficulty achieving such a balance as it does not exist in a vacuum outside of the competing interests, but is itself the result of them. Without a balance of interests, implementation of the law is difficult. The use of political campaigns to enhance enforcement in China shows that the flexibility of short-term policy instruments can offer incremental improvements to enhance the balance between competing interests, and thus increase the effectiveness of the legal system.

This study is based on research conducted in Beijing, Sichuan and Yunnan between 2000 and 2004. During the earlier phase of the research, officials of relevant departments in the State Environmental Protection Agency (SEPA) and EPBs at provincial, municipal and district levels were interviewed. During the last year of fieldwork in Kunming, I interviewed villagers, factory employees, township leaders and county and municipal EPB personnel. Site research was conducted in three villages in the peri-urban Kunming area around Lake Dianchi and the Tanglang River. Researching environmental law enforcement in China is highly sensitive: it is extremely difficult to get reliable information. To deal with this problem, first, the research was based on as many different sources as possible, recognizing that each source has its own biases, sensitivities and untruths. Second, the research was conducted over a longer period of time, during which I was able to gain the trust needed to go beyond the first few layers of polite or clearly misleading answers. This relative depth has meant that to a certain degree the research can no longer be representative of all of China, or even of Chengdu or Kunming. For information on nationwide campaigns, official data had to be used as

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5. Lo and Fryxell also makes clear that generalizations about environmental enforcement in China are difficult due to large contextual differences (Lo and Fryxell, 2003: 106).
none other are available, even though such data — because of the overly optimistic way in which vertical information is reported within China’s bureaucracy — forms a problematic source (Cai, 2000).

The following sections will first describe and analyse the problems in regular law enforcement, including the nature of the legislation, local protectionism and bureaucratic and enforcement procedures. Two subsequent sections will then further examine the form and results of political-legal campaigns that were organized to improve problems in environmental law enforcement between 2001 and 2004, before some conclusions are drawn in the final section.

**LEGISLATION: FROM LACK OF CLARITY TO LACK OF LOCAL LEGITIMACY**

In theoretical terms, one can argue that conflicting interests pose a challenge for legislation (Teubner, 1983: 268, 271). Laws will either forge a compromise between the different interests and therefore become relatively vague and have less influence and control over outcomes; or it will be specific and will come to represent one type of interest while denying others; as such, it will be less accepted by those whose interests are not protected (van Rooij, 2004).

In China before 2000, environmental law largely fell into the former category: environmental legislation was a compromise and thus tended to be vague and weak (van Rooij, 2002b). Studies have shown that environmental law in China was the result of a prolonged bargaining process among different interest groups (Alford and Liebman, 2001; Asian Development Bank, 2000). Until the late 1990s this resulted in strong environmental protection (EP) legislative drafts being watered down into much feebler regulations (Alford and Shen, 1998: 417; Sun, 1996: 1027). Environmental law reflected the relative weakness of environmental interests and the much greater influence of industrial, economic and provincial power-holders. Until it was corrected with new legislation in 2002, for example, the Chinese environmental impact assessment (EIA) system did not define what kind of assessment should be carried out, or by whom (van Rooij, 2002b). The effect of such vague legislation is that those who have to apply the regulations are afforded a great deal of legal discretionary power; agents can more easily legitimize irregular decisions under the wide discretion implicit in such rules. This may have a ‘capture’ effect (Bernstein,

6. Another reason was that Chinese legislators in the 1980s and early 1990s followed a ‘piecemeal approach’ to law-making. With its rapidly changing society and relative inexperience with legal development, China needed a flexible and vaguely-formulated legal system that could be adapted to changes or new insights (Chen, 1999: 40–43).

7. ‘Capture’ in this context means that a regulating body is no longer able to enforce the law objectively because of its close relationship with the regulated industry. The regulator becomes ‘captured’.
1955; Lipsky, 1980) or even be corruptive (Klitgaard, 1988). While this study found no direct proof of corruption, even SEPA recognizes that agents at local EPBs have at times let personal connections or even bribes influence their enforcement behaviour (Wang, 2004: 4; Xie, 2004a: 10).

Since 2000, however, Chinese legislators have made clearer, tighter legislation.\(^8\) Sanctions for violations have increased considerably, with minimum sanction levels inserted to reduce the amount of legal discretion that can be exercised by enforcement agents.\(^9\) New legislation provides much clearer definitions, such as the list of EIA activities issued along with the new EIA law. These changes are probably linked to the gradual increase in concern about environmental issues which has been taking place in the national government and in several of the richer provincial governments since the second half of the 1990s (Jahiel, 1998: 52). The effect of the shift is that local level enforcement agents are more likely to go by the book and to enforce regulations more strictly. While this may be beneficial in many cases, there are times when legislation does not fit local circumstances; strict enforcement in these cases can lead to unreasonable consequences (Bardach and Kagan, 1982). In China’s unitary legal system, with its large regional differences, local regulation must be at least as strict as that of the national level.\(^10\) Now that national regulation has become more specific and precisely defined, there is less room for legislative adaptation at the local level.

**LOCAL PROTECTIONISM**

In spite of progress in Chinese environmental legislation, problems remain in the areas of implementation and enforcement. In certain cases, national legislation lacks local legitimacy: local actors do not share the environmental concerns of national regulation and have stopped regular enforcement. This has been dubbed ‘local protectionism’ in the literature, with local governments blamed for protecting their own economic interests rather than the environment (Alford and Shen, 1998: 417; Jahiel, 1998: 61; Liu, 2000: 3; Ma and Ortolano, 2000: 63; van Rooij, 2002a: 162–3; Sun, 1996: 1028; Yao, 1999: 14). However, when the different interests involved are analysed and the reasons for local protection are studied not just from a top-down but also from a bottom-up perspective, it can be argued that local protectionism may be justified in some cases. Furthermore, it is not just a

\(^8\) For example, the 2000 amendment of the Air Pollution and Prevention Law, the 2002 EIA Law, and the 2003 Administrative Regulations on Pollution Discharge Collection and Use Management.

\(^9\) Articles 39–48 of the 1996 Air Pollution Prevention and Control Law contained no details on how to impose fines. Articles 46–65 of the 2000 Air Pollution Prevention and Control Law, by contrast, contain detailed rules on minimum and maximum sanction levels.

\(^10\) See Law on Legislation Art. 63.
governmental phenomenon, but involves a wide range of local actors from enterprisemanagement to farmers.

The case of phosphorus mining at the Tanglang River west of Kunming is illustrative. The inhabitants of this area form a complex chain of interdependencies (Elias, 1978: 113): phosphorus mines depend on local resources and on local chemical factories; large chemical fertilizer plants depend on the mines, on smaller factories producing necessary side-products, and on local farmers who provide cheap labour; smaller chemical factories depend on the larger plants, on the mines, and on local labour; local farmers and labourers depend on jobs in the mines, plants and factories, and on income related to selling their farm produce to the industry workers. At the same time, local governments at the township or district (and to some extent even city) level depend on the local industries for tax revenue and for providing local livelihoods which help to maintain social stability; the local industries need local governments and their bureaus, including the EPB, for administrative support; local villages depend on the larger plants for their infrastructure and on all industries for land related revenues; and factories need the village land to expand their production sites. The result is that most actors in the area depend directly or indirectly on phosphorus-related income. Most of them do not support strict enforcement of environmental regulation, as they fear that this will break the chain of interdependencies and harm their interests.11

As a result, local township and district governments have protected small, highly-polluting factories in this area for years, because they produce Fluoride-Sodium-Silicate (FSS), an essential part of the larger plant production process. Even though such factories continually violate environmental law, the local government and the local EPB have not closed down production. This is not just to protect tax income (which is relatively insubstantial), or jobs related to these small enterprises (which are also few). Rather, a sudden halt of the small enterprises would severely affect all phosphorus-related production, and would therefore impact on all interdependencies and most livelihoods in the area. Similarly, a large chemical fertilizer plant in the same area has discharged illegally for many years, without detection. This was possible because farmers from the nearby village did not complain about the pollution, even when their lives were severely disrupted and they failed to get full compensation. Farmers know that their income is related, directly and indirectly, to the local factory. The factory provides them with jobs and food, it invests in local infrastructure, pays an annual compensation for part of their damages, and its employees buy the farm produce.12 Moreover, the factory plays a central role within

11. Interviews with local villagers, village leadership, factory employees, and township government officials in the Tanglang river area.
12. Interviews with farmers in the village surrounding the factory.
the phosphorus chain which supports the village’s mines and privately-owned chemical factories.

The situation is different further down river in the more urban area of Anning city. There, locals are not fully dependent on phosphorus-industry related income; they can find employment in the local steelworks or in the many service sector jobs the small city has to offer. Furthermore, they can sell their farm goods to the local urban population. Thus villagers living next to a fertilizer plant have protested about the factory’s pollution and have involved official and non-official channels, including the media, to get compensation. The plant in question has taken heed and has invested heavily in EP equipment; recently, it seems to have been in compliance with regulations.\(^\text{13}\)

These examples show that when alternative livelihoods are available, implementation and enforcement of environmental law is easier. But when much of the income in a given locality is dependent, directly or indirectly, on polluting activities, and when there are insufficient alternative sources of income available, few of the actors involved will favour strict environmental enforcement. In cases where environmental protection threatens local income and stability, national environmental law will lack local legitimacy. In such cases, local governments will turn a blind eye to small, polluting factories that should be closed down according to law, and will exert their power over local EPBs (through their control of EPB funding and appointments), to prevent them from fully enforcing the law. Moreover, local citizens will refrain from any protest or action, so that local protectionism of a polluting industry becomes widespread also amongst non-governmental actors. Thus, where there is no alternative which can provide ‘cleaner’ livelihoods, there is a logic to local protectionism: in such cases, the social and economical consequences of compliance with environmental laws could be dramatic.

**BUREAU ADMINISTRATION AND ENFORCEMENT PROCEDURE**

In contexts of conflicting interests, such as the area near Kunming, law enforcement is difficult because of the lack of local legitimacy and the resulting local protectionism. These problems are further exacerbated by difficulties in administrative and enforcement procedures, including a lack of funding and a large amount of real discretion.\(^\text{14}\)

In these contexts, EPB officials are supposed to enforce the law. Historically EPBs have always been weak institutions with little funding (Jahiel, 1998: 59; Sinkule and Ortolano, 1995: 69) and limited authority

\(^{13}\) Interviews with factory management and local EPB personnel.

\(^{14}\) For a more elaborate analysis of these problems see van Rooij (2002a, 2003).
(Lo and Leung, 2000: 677; Ma and Ortolano, 2000: 81; Sinkule and Ortolano, 1995: 189). At times, EPBs have been ignored by enterprises and governmental bureaus; they have been unable to carry out inspections, or to execute their sanction decisions. Since the late 1990s, EPB authority has improved somewhat nationally and especially in richer coastal areas, but funding still represents a real constraint. China’s decentralized administrative system means that most EPB financial resources come directly from the local government (Jahiel, 1998; Ma and Ortolano, 2000; Sinkule and Ortolano, 1995). This gives governments some leverage in trying to defend local industry at the cost of environmental enforcement, in the type of local protectionism described above. The rest of the EPBs’ resources stem from pollution discharge fees and are therefore dependent on continued pollution. A lack of funding (from any source) hampers enforcement: bureaus have chronic shortages of staff and materials such as cars, which are needed for inspections. Understaffed and increasingly overburdened, EPBs are often unable to carry out regular, proactive inspections at all of the polluting enterprises, and are forced to rely heavily on investigating complaints. As we have seen, citizens dependent on pollution-related income are unlikely to voice such complaints. The case of the large fertilizer plant in the phosphorus township shows that even richer factories with a long record of compliance may decide to stop using their costly EP installations if local citizens do not complain and inspections are lax. Moreover, enterprises in the areas researched are aware of the EPBs’ lack of resources, and use this to their advantage. The small chemical enterprises in the Tanglang area, for example, have been able to dodge

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15. During fieldwork, Sichuan EPB informants stated that obstruction of inspections at the lower levels was widespread (interviews with Chengdu EPB personnel, 2002).
16. Kunming EPBs have unsuccessfully tried to get local governments to co-operate in closing down enterprises (interviews with Kunming EPB personnel, 2004).
17. Interviews with EPB personnel of Zhejiang, Qingdao, Jinning, Shanghai, Shuhai, Guangxi, Xinjiang, Hubei, Tianjin, Hebei, Kunming, and Sichuan EPBs and SEPA.
18. The amounts involved vary across time and region. In 2000, a SEPA informant stated that most EPBs (except for those in Jiangsu province) only got 30 per cent of their resources from local governments. Later local informants told me that local government accounted for 40 per cent of EPB funding in Sichuan in 2001, and 70 per cent in Kunming in 2004.
19. Interviews with EPB officials from Sichuan, Chengdu, Kunming, Xinjiang, Wuhan, Guilin, Shanghai, Tianjin, Hebei, Zhuhai, Zhejiang, Shandong and Qingdao, and SEPA officials between 2000 and 2004. This had already been noted in the literature; see, for example, Jahiel (1997: 96–8); Ma and Ortolano (2000).
21. For example, since 2004 the Kunming EPB agents also have to carry out extra inspections at the city’s numerous restaurants, for which they have not been awarded extra funds (interviews, EPB staff, Kunming, 2004).
22. Also called ‘reactive inspections’ in the literature; see Hutter (1997: 105–6).
23. Interviews with Kunming EPB employees, local villagers and village leadership, and factory employees. SEPA also notes this problem nationwide; see Wang (2004: 8).
officials who try to gather evidence for violations by only discharging illegally at night, when the roads to their factories are very dangerous and regular inspections — because of a shortage of personnel and cars — are practically impossible.  

A second problem is that inspection agents and the bureau leaders who make decisions about sanctions have a substantial amount of discretionary power (Davis, 1969). EPBs lack internal management procedures to promote good and punish bad inspection work (van Rooij, 2003). In some instances, enterprises have been able to influence inspection agents through personal connections, gifts or favours (Wang, 2004: 4; Xie, 2004a: 10). At the same time, sanction decision-making procedures lack internal and external legal checks and balances, giving those in charge a large degree of freedom when deciding on punishment (van Rooij, 2003). Importantly, wide discretionary powers benefit local protectionism, as there are no repercussions when precise laws are not implemented strictly.

Over the years, Chinese policy-makers have offered solutions to these problems. They have issued statements on strict law enforcement (NEPA, 1998: 15), agent training (Song, 1997), stricter legislation (Xie, 2004a: 13, 2004b: 8), enhancing public awareness and participation in enforcement work (Song, 1997: 4; Xie, 2003; 6), prioritization of enforcement work (Wang, 1997: 23; Xie, 2004b: 8) and installing and strengthening internal reporting and disciplinary systems (Wang, 2004: 5; Xie, 1997: 4). While the suggestions offered can solve, and to some extent have been solving, some of the administrative and procedural problems described, none deals with the fundamental issue of gaining local legitimacy through balancing local and national interests.

ENFORCEMENT CAMPAIGNS 2001–4

By late summer 2004, things were starting to change in Kunming. First, on 6 September, the EPB finally found sufficient evidence to fine the small chemical factories that were illegally discharging, and obstructing EPB inspections. Additionally, the EPB approached the large fertilizer plant and demanded that it should undertake its own clean production of FSS and stop outsourcing this work to the small, polluting factories which had insufficient resources for clean production. These changes did not occur by accident, but were part of an ongoing national political campaign to

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24. Interviews with local EPB officials and enterprise employees. In Chengdu we heard similar stories.
25. In the Kunming research no direct evidence for such personal influence was found.
26. There are very few administrative review or litigation cases; of those that do occur, most are won by the EPBs (van Rooij, 2003).
27. Interviews with Kunming EPB agents and enterprise managers.
enhance environmental enforcement. SEPA has tried, since the mid-1990s, to put pressure on local governments and EPBs to improve enforcement.\(^{28}\) The first evidence of this was a campaign known as the *shiwu xiao* (‘fifteen small’), which was aimed at closing several types of severely-polluting enterprises, and was initiated by the State Council together with SEPA. In 1996, over 60,000 such enterprises were closed down (NEPA, 1997: 510). The second campaign, known as the *shuang da biao* (‘meeting two standards’), which ran from 1996 to 2001, was directed at larger, heavily-polluting enterprises. These enterprises were to reach certain standards by the end of the campaign on 31 December 2000, or be shut down. Throughout China, most enterprises were reported to have met the standards at the time of the deadline (van Rooij, 2002a: 175).

From 2001 to 2004, more campaigns were organized nationwide. In 2001 and 2002, the ‘Strict Inspections and Sanctions’ (SIS) campaign was pursued (Editorial, 2001a, 2002a), followed in 2003 and 2004 by the ‘Guaranteeing Public Health’ (GPH) campaign (SEPA et al., 2003, 2004). As before, the campaigns were enforcement strategies, involving work prioritization backed by political power. The campaigns ran each year from April to September; during this period several related departments, including EPBs, local governments, Supervision Departments and later also Justice Departments, co-operated to achieve the goals set in the campaign work schedule. Initially, especially in the 2001 SIS, the campaign was aimed at maintaining prior results and preventing the relapse into violation that became apparent several months after the original campaigns had ended in 1997 and in early 2001 — some 30 per cent of the small enterprises closed when the 1996 campaign reopened, and about 15 per cent of the larger enterprises which were forced to operate according to standards, stopped using their EP installations after the campaign had ended in 2001 (Editorial, 2001a: 2). The campaigns also continued a regional focus on several severely polluted rivers and lakes, including lake Dianchi in Kunming (Editorial, 2001a: 2; SEPA et al., 2004: 13). From 2002, however, and especially in the 2003 and 2004 GPH campaigns (SEPA et al., 2003, 2004), the emphasis shifted increasingly to dealing with those violations that the public complained about most loudly. In 2003, the scare surrounding SARS (severe acute respiratory syndrome) narrowed the focus to public health and drinking-water safety.

While the campaigns originally had a top-down character, and were applied across the whole country irrespective of regional differences, this has changed somewhat in the last two years. The 2003 GPH campaign

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28. There are other examples of such campaigns aimed at developing the legal system. For anti-corruption campaigns see Ye (2002); for ‘Strike Hard’ campaigns see Hu (2002); Tanner (1999). For legal education campaigns see Exner (1995); and on pre-reform mass campaigns see Bennet (1976).
prescribed several regional priority issues that local governments were to solve (SEPA et al., 2003). In this manner the campaign allowed for regional variation, although it was still prescriptive in nature. In 2004, variations were again recognized; local departments were to summarize local problems and make them part of the campaign (SEPA et al., 2004). In Kunming this resulted in the FSS production-related pollution problem becoming one of the campaign’s focal points (Anning EPB, 2004: 3).\(^\text{29}\) With significant national media attention, the Kunming government had to show that it was trying to solve the problem, even though it knew that local interests were at stake.

Campaign methods did not change significantly between 2001 and 2004. EPBs were to summarize the local issues related to ongoing national campaign targets, then establish work plans on how to deal with those issues, mainly by establishing schedules of inspections of the various violators (Editorial, 2001a, 2002a; SEPA et al., 2003, 2004). Work plans also included participatory methods such as setting up a hotline to allow citizens to voice complaints or report violations (Editorial, 2001a: 3). Most importantly, EPBs were to carry out inspections at priority sites as indicated by the ongoing campaign and to strictly punish any violations detected. They were also to close obsolete industries or factories with repeated violations. Finally, in the last phase of the campaign, results were to be summarized and reported to higher level EPBs (Editorial, 2001a, 2001b; SEPA et al., 2003, 2004); since 2002 results have also been made available to the press (Editorial, 2002a: 4).

**CAMPAIGN RESULTS**

According to Chinese government data,\(^\text{30}\) the national campaigns led to a growth in both the number of inspections carried out and the punishment of violations (sanctions) for the period 2001–3.\(^\text{31}\) The number of inspections jumped from 142,121 in 2001, to 316,000 in 2002 and 496,000 in 2003. The number of sanction decisions also increased, from 18,084 in 2001 to 21,000 in 2003 (although there was a dip to 16,000 in 2002) (Editorial, 2001b, 2002b; Xie, 2004b). In terms of results, however, the data show that the campaigns were more successful in producing extra inspections than in generating extra punishments. While in 2001, 13 per cent of inspections led to sanctions being imposed, by 2003 the ratio was only 4 per cent. The case of the Tanglang River FSS factories can help us understand this.

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29. Interviews with Kunming and Anning EPB personnel.
30. The only data available are from Chinese governmental sources. They should be used with caution.
31. For 2004 there are only partial data: these show that by July 2004 there had been 310,000 inspections and 8,000 cases.
As described above, these factories were allowed to go on polluting for years because they formed an important part of the local chain of interdependencies. National media attention helped make these factories local targets for the 2004 campaign, with the result that, from June 2004, agents carried out extra inspections. The campaign removed some of the existing local protectionism, as the relevant local township and district governments were forced, through cadre responsibility systems, to take part in the campaign and to be judged on the results achieved.\footnote{Interviews with township leaders and EPB personnel. The issue of the relation between cadre management and campaign success is raised by Edin (2003). Local protectionism was also weakened when the campaigns started to punish and sometimes even prosecute lax enforcement officials, putting extra pressure on local agents to work according to plan (Editorial, 2001b, 2002b; Huang, 2002: 19–21).} Cars set out regularly from Kunming to the mountains where the factories were located; for nearly three months no violations were found. With the rain the roads were bad and inspections could only be carried out during the day, while production and illegal discharge took place at night. So although the violation of the law was known about, and even filmed by the national media (CCTV, 2004), it still took many inspections before — finally — night-time inspections found enough evidence to make a case.

After the EPB had collected evidence, it fined the violating factories and ordered them to halt production.\footnote{Interviews with Kunming EPB personnel.} Nearly two months later, just weeks after the campaign had ended, the factories resumed production, even in broad daylight.\footnote{Based on personal observation, several times in November 2004.} This shows a second problem of the campaign: even when extra inspections do lead to more sanctions, this does not necessarily translate into sustained compliance. In fact, the reason why SEPA continues to organize annual campaigns is because of the rates of relapse (\textit{fantan}) (Editorial, 2001a: 2). Clearly, strict enforcement does not solve the underlying conflict of interests that cause relapse. The top-down pressure of political campaigns forces local governments and departments to demonstrate that they are trying to achieve campaign targets. These targets are set by SEPA, focusing solely on environmental protection and leaving little room for balancing the various interests involved. Even the 2004 campaign, which allowed for regional variation, required the Kunming government to enforce the law without concern for local interests. Closing the FSS factories disrupts the phosphorus interdependency chain, which has severe consequences for the local district and township economy. It is therefore hardly surprising that these small factories resumed production shortly after the campaign pressure had been lifted.

It is not all bad news, however. First, the increased use of public participation has enhanced awareness of environmental protection issues. The involvement of the public since the 2002 campaigns has created expectations
for change and thus put pressure on governments to deal with the problems that citizens most care about. In areas where most livelihoods are dependent on violation-related sources, such as those in Western Kunming, this might have little impact, but in many other areas it will make a significant difference (Lo and Fryxell, 2003; Lo and Leung, 2000). Second, campaigns may in the end lead to creative structural solutions. For instance, in the case of the Tanglang River, focusing the campaign on the river enabled the Kunming EPB to put more pressure on the large chemical fertilizer plant to start producing its own FSS in a clean and economically viable way, instead of buying it from small, highly-polluting enterprises. EPB agents were able to get leverage on one of these small enterprises when evidence for illegal discharges was found during increased campaign inspections at night. A deal was then struck between the EPB and the factory: the EPB would not publicize the violation and the sanction, in return for which the enterprise would set up its own FSS production and stop supporting the cheap, small-scale but highly-polluting producers. Thus the campaign may in the long term lead to sustainable compliance, in which the small, heavily-polluting factories can be closed as they are no longer necessary for local livelihoods.

CONCLUSION

The implementation and enforcement of Chinese environmental law remains difficult. Chinese policy makers have sought to solve this by passing clearer and stricter legislation, by enhancing the institutional set-up, and finally by organizing political campaigns. While these measures have brought improvement in many ways, they have not been able to fully deal with the root of the problem: the conflicts between the different interests involved. Chinese environmental legislators believe that stricter, clearer laws are better (Xie, 2004a: 13). However, as legislation gets stricter, law enforcement agents find it more difficult to adapt it to the different interests involved, and those whose interests are damaged are more likely to step up their resistance to the law (van Rooij, 2004). The result will be more costly enforcement and, ultimately, a decrease in implementation. Policy makers also believe that enhancing the bureaucratic set-up, by improving the management, training (Song, 1997, Wang, 2004: 5) and funding of the enforcement agents will produce results. While such improvements would certainly have benefits, as long as the agents are forced to implement strict legislation irrespective of the complex interests at hand, their work will remain difficult and sometimes impossible. Policy makers have also tried

35. In interviews with SEPA and various EPB officials between 2000 and 2004, all informants suggested that more funding — especially more independent funding — could enhance enforcement work. So far thorough funding reforms have not been possible.
to introduce public participation mechanisms (Song, 1997: 4; Xie, 2003: 6) but, as we have seen, these mechanisms can only work if the public itself supports environmental interests, which is not the case under circumstances such as those prevailing in West-Kunming. Finally, short-term political campaigns have been used to ensure incremental implementation; these have produced results, but many of those have proved unsustainable if the basic conflict of interests has not been solved.

The experience of China thus teaches us that successful law enforcement requires a balancing of interests. Achieving this is not easy: it requires a knowledge of all the interests and their linkages, finding a balance between them, and finally building law and legal institutions that reflect such a balance. The contemporary scale and differentiation of social interaction mean that the linkages of interests are often so complex that even the stakeholders are not fully aware of them (Elias, 1978: 131), let alone policy makers or legislators. Even where linkages are clear, however, problems remain. For environmental protection, sustainable development theory forms an important conceptual starting point, emphasizing the balance between present and future economic, social and environmental concerns (WCED, 1987; World Bank, 2003: 14). Yet in spite of the consensus on the need for this balance, achieving it in practice remains difficult (Boron and Murray, 2004; Carvalho, 2001; Rowledge et al., 1999). Recent literature has emphasized the role of institutions that are to integrate interests (for example, World Bank, 2003), including the legal system. However, the law has to be effective in protecting particular interests (Dworkin, 1978; Tamanaha, 2004: 102–4) but also has to provide legal certainty, a central requirement of the rule of law doctrine (Fuller, 1976: 63–70; Hayek, 1978: 210–12; Rheinstein, 1954: 61, 301; Tamanaha, 2004: 66). The need to protect ever-growing and differentiated individual interests while providing legal certainty has led to increasingly specific and strict regulation (Teubner, 1983: 264). Ironically — as we have seen — such specific legislation, will lack legitimacy and be more difficult to implement, precisely because it is not able to bridge or defend all different interests.

There seems, therefore, to be a basic paradox. The law is either specific, providing legal certainty and control over outcomes and protecting certain interests, but not adaptable enough to balance interests and gain legitimacy, and thus difficult to implement; or it is abstract and adaptable, able to balance interests and thus be accepted as legitimate and implementable, but without legal certainty or control over outcomes, and therefore less able to protect particular interests.36 This contradiction is especially troublesome for China with its large regional differences, rapidly developing society and

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36. Legal theorists have identified a similar problem when discussing the shift towards reflexive law at the cost of effective law and legal certainty; see Nonet and Selznick (1978); Tamanaha (2004: 82–3); Teubner (1983: 245, 274); Unger (1976: 198).
large, unitary, top-down legal system (van Rooij, 2004). Law of the command and control type (Connelly and Smith, 1999: 159–62; Moran, 1995: 73–85; Weale, 1992: 22–3), which includes most Chinese environmental law, will be increasingly challenged because of its static and top-down character. It may be able to function well only if it is supported by flexible political methods, such as the Chinese national campaigns, especially if these incorporate a bottom-up design. While such campaigns violate rule of law concepts such as legal certainty, their experimental and adaptive character makes them better able to find a legitimate balance of interests, whilst also achieving effective implementation. This remains the main challenge: to make legitimate yet effective law that also provides legal certainty.

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