



US-China Business Council and AmCham Shanghai Comments on The Revised Shanghai Environmental Protection Regulations

May 20, 2016

On behalf of the American Chamber of Commerce in Shanghai (AmCham Shanghai) and the US-China Business Council (USCBC), we appreciate the opportunity to provide comments to the *Revised Shanghai Environmental Protection Regulations*. Our member companies represent a wide variety of industries, including a number of companies that have manufacturing operations in Shanghai. These members are united in their commitment to promoting effective environmental stewardship and developing solutions to reduce environmental impact.

AmCham Shanghai and USCBC members recognize that the revision of this law reflects a desire by regulators to promote environmental protection goals. Our companies share these goals, and have strong global expertise in working with governments and other industry players in ways that achieve these objectives while also promoting robust industry development. Many of our members have long offered high-quality solutions in China, contributing actively to the development of clean industry.

AmCham Shanghai and USCBC are pleased to offer comments on the draft law based on specific inputs received from our members. We recommend revisions to several articles in the draft law that need further clarification or may actually hinder the environmental goals of the *Revised Regulations*. Such concerns include provisions that relate to definitions of key terms in the *Revised Regulations*; methodology for measuring emissions and quotas, classification for environmental impact assessments, and transparency.

We encourage the Shanghai Municipal People's Congress actively to consider AmCham Shanghai and USCBC's comments while reviewing the *Revised Regulations*. Addressing these concerns in a comprehensive manner will help to improve the effectiveness of this law and clarify any misunderstandings.

Definitions and Scope of Coverage

AmCham Shanghai and USCBC understand the need to reduce noise pollution, but would like clarification on Articles 32, 49, and 74 as to whether the emission permit covers noise emissions and what thresholds and penalties apply for exceeding noise standards of the area surrounding the operation.

In Section 4 (Environmental Supervision and Management), we recommend adding the concept of third party supervision. In current practice, regulators or institutes of environmental science conduct supervisions of contaminated sites and their work can be supported by third parties that carry out specific tasks. This is similar to the practices in other developed countries. We recommend that third parties with appropriate legal qualifications are able to assist the government in regular supervision work.

Other important terms that need further clarification:

- **Relevant administrative departments** The *Revised Regulations* also refer to “together with relevant administrative departments” in numerous instances, such as Article 11, 12, 15 and 17. In order to provide more clarity of responsibility for both the EPBs and companies, we recommend further defining or omitting references to “relevant departments.”
- **Enterprise group** As each company is an independent business entity, we do not recommend other companies of the enterprise group be punished due to illegal activities of one company, as indicated in Article 31. If this Article needs to be retained, we recommend clearly defining the term “enterprise group”, such as whether the joint venture is included or a majority shareholding is necessary.
- **Hazardous waste** Clarification of definitions in Article 48 of hazardous waste and provide guidance on what products would fall under this definition.
- **Closing down and relocating** In Article 42, we recommend specifying whether the circumstance of “the pollutant-discharging unit is closed down or relocated” includes stopping manufacturing or moving to another place while the enterprise itself remains existing.(e.g. amendment of business scope).

Emissions Monitoring, Enforcement, and Quotas

We support closer monitoring of environmental emissions to reduce pollution and harm of the environment, and understand the need to address companies that exceed allotted emissions quotas. However, we encourage the government to consider a more transparent system that would allow companies the ability to obtain emissions quotas through transparent emission trading platforms. We recommend that drafting parties engage actively with industry, including foreign companies in impacted industries, throughout the process of defining emissions in Article 27 and emissions indicators in Article 33.

We understand the need for and encourage regular supervision and inspection, as noted in Article 37. We welcome reasonable actions to cooperate and support supervision inspections of regulatory departments, but suggest when implementing specific inspections, the legitimate rights and interests of enterprises should be fully guaranteed. This includes the protection of trade secrets.

We also recommend clarifying in Article 4 back-up and emergency equipment companies have in place when the pollutants discharging entity needs to dismantle or idle environmental protection equipment. Doing so should take into consideration companies with high standards that have already installed and run back-up and emergency environmental equipment.

Environmental Impact Assessments

When formulating the Shanghai Industrial Restructuring Guide Catalogue, as noted in Article 19, AmCham Shanghai and USCBC recommend that the administrative departments clearly define the scope of high-polluting and high-energy consuming industries, and encourage high-tech solutions to improve resource and energy utilization efficiency, practice waste resource recovery, and other methods that support sustainability and environmental protection goals. The statistical

accounting of different ministries and commissions/administrative departments of Shanghai shall be consistent, such as for energy consumption accounting.

AmCham Shanghai and USCBC understand the need to conduct thorough environmental impact assessments (EIA) to ensure environmental compliance of new operations, as noted in Article 29. Companies often plan out investment deployment within defined timelines to meet their customer demands, and recommend additional transparency in timelines for technical assessments in the approval time for the assessment. We also suggest clearer guidance and classification on when an EIA is required. This will help companies as they plan their investment in Shanghai.

In Article 31, we recommend that language is included indicating that “environmental protection departments should publicize their decisions according to laws in a timely manner when they decide to suspend or lift the examination and approval of the environmental impact assessment documents of construction projects...” Doing so will provide additional transparency in timelines to allow companies to readjust investment as needed so they can continue to serve their customers.

CONCLUSION

AmCham Shanghai and USCBC thank the Shanghai Municipal People’s Congress for providing this opportunity to comment on the *Revised Shanghai Environmental Protection Regulations*. We hope these comments are constructive and useful to the Shanghai Municipal People’s Congress Legislative Affairs Commission as it reviews the draft measures, and welcome the opportunity to continue to discuss these points in the future. If helpful, we would be pleased to convene a discussion with affected member companies to discuss the regulations and find practical solutions that would meet regulator objectives and allow companies effectively to operate in Shanghai.

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