



ENVIRONMENTAL UPDATE

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**Chinese Soil Pollution Law To Be Modeled
On United States Superfund Statutes**

In an attempt to tackle the increasing soil pollution and effectively control the risks caused by soil pollution to human health and environment, the Ministry of Environmental Protection (the “MEP”) of the People’s Republic of China (the “PRC”) issued the draft *Provisional Rules on Environmental Management of the Soil of Contaminated Sites* (the “Draft Rule”) on December 15, 2009. The MEP seeks comments at the same time from the relevant ministries and departments under the State Council of the PRC.

Based on a *National Soil Pollution Survey*, China is facing serious environmental problems caused by contaminated sites and the soil surrounding such sites. For instance, most of the contaminated sites in China were directly used to build residential or commercial buildings without any investigation or assessment being conducted prior to such use. The current Chinese legislation has provisions on this subject, but they are limited and separately placed under different laws and regulations, making it difficult to implement in practice.

The Draft Rule, once promulgated, will be applicable to the supervision and management of activities of soil investigation, risk assessment, treatment and remediation of contaminated sites¹ when there is any change of the land use classification² or the owner of the land-use right of such sites (except for contaminated sites of a radioactive nature)³.

The Draft Rule mainly establishes a basic system under which the soil of contaminated sites may, depending on specific situations, be subject to environmental

¹ Pursuant to Article 3 of the Draft Rule, contaminated sites refer to the land, the soil of which is polluted due to the conduct of such activities as manufacturing, operating, using and warehousing toxic or hazardous substances, storing or disposing hazardous abandoned substances, and mining activities, etc..

² Pursuant to Article 4 of the Draft Rule, change of land use classification refers to developing and utilizing contaminated sites for sensitive purposes such as residential buildings, commercial buildings, schools, parks, greenbelt, play grounds and farmland.

³ See Article 2 of the Draft Rule. However, it is worth noting that, according to Article 11 of the Draft Rule entitled Commencement of Investigation and Assessment, the environmental investigation and assessment process will be triggered only by change of land use classification.

investigation, risk assessment, treatment and remediation requirements, details of which are summarized as follows:

I. Environmental Investigation and Risk Assessment of Soil of Contaminated Sites

Under the Draft Rule, if the responsible party⁴ at a contaminated site (the “Responsible Party”) proposes to change the land use classification of such site, it will be required to appoint a qualified agent (the “EIA Agent”) to conduct an environmental investigation and assessment (“EIA”) of the soil on the contaminated site before submitting any application to governmental authorities for making such change.

The scope of the EIA covers the following aspects: (i) the basic situation of the site; (ii) the land use classification of the site and the changes of the owner of the land use right; (iii) the major production activities within the site and the pollution sources; (iv) the status of the buildings, equipment and facilities within the site; (v) the environmental status of the underground water and sensitive targets on and around the site; and (vi) the extent and scope of soil pollution on and around the site.

The EIA Agent must conduct the EIA in three stages in accordance with the standards and technical specifications issued by the MEP and the procedures elaborated below:

Stage 1 – Preliminary Environmental Investigation. The EIA Agent should, through information collection and on-site investigation, make a preliminary judgment as to whether the soil of a specific site is polluted, prepare a preliminary environmental investigation report and file such report with the local environmental authority. If such soil is not polluted, such local environmental authority should notify the Responsible Party in writing of the termination of the EIA.

Stage 2 - Detailed Environmental Investigation. If the soil of a specific site is likely polluted, the EIA Agent must, in light of the site situation, determine whether the soil of such site is polluted through on-site sampling, analyzing and testing, prepare a detailed environmental investigation report and file

⁴ Pursuant to Article 7 of the Draft Rule, the responsible party at a contaminated site refers to a person who causes soil pollution to a specific site or the owner of the land-use right of a specific contaminated site.

such report with the local environmental authority. If the investigation results indicate that such soil is not polluted, such local environmental authority should also notify the Responsible Party in writing of the termination of the EIA.

Stage 3 – Risk Assessment of Soil Pollution. If the soil of a specific site is determined to be polluted, the EIA Agent must, in line with the proposed change of land use classification and the land use planning, conduct risk assessment of soil pollution, prepare a report on such assessment and file such report with the local environmental authority. If the concentration of the soil pollutants is lower than the limits of required remediation, the local environmental authority should notify the Responsible Party in writing that there is no need to conduct any treatment or remediation for such site. If the concentration of the soil pollutants is higher than the limits of required remediation, the local environmental authority should notify the Responsible Party in writing of the need to commence a treatment and remediation process for such site and make a filing with the environmental authority at higher-level.

II. Soil Treatment and Remediation of Contaminated Sites

Under the Draft Rule, if a contaminated site needs treatment and remediation according to the conclusion of the above-mentioned risk assessment of soil pollution, the owner of the land-use right (the “LUR Owner”) of such contaminated site must appoint a qualified agent (the “STR Agent”) and commence the soil treatment and remediation (“STR”) of the contaminated site within three months after its receipt of the notice from the relevant environmental authority.

The STR Agent must, in line with the report on risk assessment of soil pollution, land-use planning and proposed change of land use classification, prepare a plan for soil treatment and remediation (“STR Plan”) and file such plan with the local environmental authority at higher-level with a copy to the local environmental authority at lower-level on such plan.

The STR Plan should cover the following aspects: (i) scope and goals of the treatment and remediation project (the “TR

Project”); (ii) technical and processing procedures of the TR Project; (iii) environmental protection measures to be taken in the course of carrying out the TR project; (iv) time schedule for the TR Project; and (v) supervision plan for the TR Project.

The LUR Owner is required to appoint a qualified supervision agent (the “Supervision Agent”) to supervise the implementation of the TR Project prior to the commencement of such project. The Supervision Agent should submit a project supervision report to the LUR Owner and the local environmental authority, respectively.

After the completion of the TR Project, the LUR Owner is required to appoint a qualified third party to conduct the check and acceptance of such project and file the check and acceptance report with the local environmental authority at higher-level. In addition, the LUR owner is also required to make a timely public announcement on the completion of the TR Project.

Furthermore, it is noteworthy that the Draft Rule explicitly provides that the Responsible Party is legally obligated to carry out the soil environmental investigation, assessment, treatment and remediation of contaminated sites, and should bear the related expenses. The Draft Rule also has detailed provisions on how to determine the obligations of the relevant parties under each of the following circumstances:

(i) In the event that the Responsible Party changes due to merger, split-up or transformation, the Responsible Party’s obligations of investigation, assessment, treatment and remediation should be undertaken by the successor of the Responsible Party. If the relevant parties reach other agreements prior to such change, such agreements should prevail; however, the relevant parties would not be exempted from the said obligations because of such contractual arrangement.

(ii) In the event that the land-use right of a contaminated site is transferred, the transferee of such land-use right should

undertake the obligations of investigation, assessment, treatment and remediation, and bear the related expenses. If the relevant parties reach other agreements, such agreements should prevail; however, the relevant parties would not be exempted from the said obligations because of such contractual arrangement.

(iii) If it is impossible to determine the Responsible Party for a specific contaminated site due to historical reasons, the relevant local government should be responsible for the investigation, assessment treatment and remediation of such site and bear the related expenses.

In addition, according to the Draft Rule, the MEP will be responsible for formulating the standards and technical specifications for the environmental management of contaminated sites. The MEP had, during the period from September 2009 to February 2010, released a total of four sets of draft standards for seeking comments from the relevant ministries and departments under the State Council. These draft standards include (i) *the Draft Technical Specification for Environmental Site Investigation*, (ii) *the Draft Guidelines for Risk Assessment of Contaminated Sites*, (iii) *the Draft Guidelines for Soil Remediation of Contaminated Sites* and (iv) *the Draft Technical Guidelines for Environmental Monitoring of Contaminated Sites* (collectively, the “Draft Standards”). It is mentioned in the Draft Standards that China’s site environmental protection standards will be composed of the aforesaid four standards, which are to be formulated by referencing the relevant existing PRC laws and standards as well as the standard practice of the United States, Canada and other countries.

It is still uncertain when the Draft Rule and the Draft Standards are expected to be enacted. In addition, it was also reported recently in the newspapers that China is in the process of drafting a law on prevention and control of soil pollution, which will need to be reviewed and passed by the National People’s Congress. However, no such draft law is currently available from public official sources.

If you have questions about any of these items, please contact your regular Sidley Austin LLP contact.

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