

环保法律热点问题

环保专题系列（三）—土壤污染调查相关的合规注意事项

导言：续上一篇简讯“企业环评及环保竣工相关的合规注意事项”，本文将重点探讨近年来生产企业（尤其是生产经营中可能涉及污染物储存和排放的企业）关心的“土壤污染调查”及相关问题。

一、土壤污染调查的法律要求

2019年1月1日生效的《土壤污染防治法》围绕土壤污染调查、风险管控和修复做出了一些规定，例如全国土壤污染状况普查、有土壤污染风险的建设用地地块的土壤污染状况调查、建立建设用地土壤污染风险管控和修复名录制度，以及土壤污染重点监管单位生产经营用地的用途变更或者其土地使用权收回、转让前的土壤污染状况调查要求等。

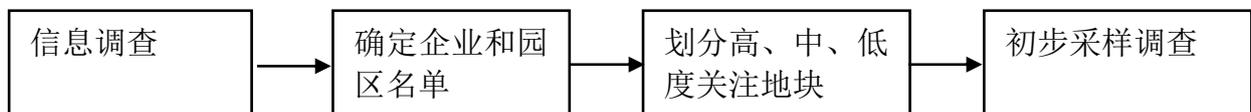
《土壤污染防治法》针对土壤调查的规定是相对原则性的，而在各地方政府落实国务院于2016年5月印发的《土壤污染防治行动计划》（简称“土十条”）、同年12月由环境保护部出台《污染地块土壤环境管理办法（试行）》的实施方案以及一些地方政府出台的2018年度的土壤污染防治计划

中，我们注意到了地方政府已经或正在落实一些比较细致的方案或要求。就此，我们在下文简要归纳了一些要点供相关企业参考。

二、土壤污染调查的具体要求和违规法律后果

- (1) 重点行业企业用地土壤污染状况调查（政府部门主导）

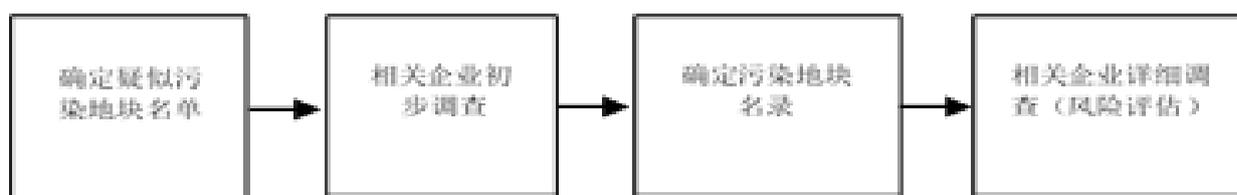
通常，地方政府首先就重点行业（主要包括从事有色金属冶炼、化工、焦化、电镀、制革、危险废物处理处置和其他涉及危险化学品生产、储存、使用的行业）开展用地基础信息调查，综合考虑企业生产规模、特征污染物等因素筛选出调查企业和重点工业园区名单；其次，根据地块土壤质量和污染源、污染物迁移途径等情况，将筛查名单中企业地块的潜在风险划分为高度、中度或低度关注地块；最后，对高度关注地块以及部分有行业代表性的中、低度关注地块启动初步采样调查（请见下附流程图）。



(2) 疑似污染地块和污染地块调查（政府部门协调企业进行）

地方环保部门基于重点行业企业用地土壤污染状况调查的情况再与其他政府部门协商一致确定疑似污染地块名单，名单内的企业需进行**土壤环境初步调查**并编制初步调查报告。随后，地方环保部门会根据企业提交的初步调查报告建立污染地块名录，若企业地块落入该名录内，应开展**土壤环境详细调查**并编制详细调查报告，说明污染物的分布以及对土壤、地下水污染的影响情况等。此外，依照《污染地块土壤环境管理办法（试行）》，企业还应在土壤环境详细调查的基础上开展**风险评估**

并编制报告，说明污染物、风险水平、治理与修复建议等。而根据《土壤污染防治法》，对土壤污染状况普查、详查和监测、现场检查表明有土壤污染风险的建设用地地块以及用途变更为住宅、公共管理与公共服务用地的地块，均应进行土壤污染状况调查。土壤污染状况调查报告应报政府部门组织评审，如评审表明污染物含量超过土壤污染风险管控标准，土壤污染者、土地使用权人应进行土壤污染风险评估。如发生土壤污染者、土地使用权人未依法进行评估的，视具体情况，将可能被处以最高可达一百万元的罚款，且相关的企业主管人员和其他直接责任人员将被处以二万元以下的罚款（请见下附流程图）。



与此相关，生态环境部与国家市场监督管理总局联合发布并于 2018 年 8 月 1 日实施《土壤环境质量农用地土壤污染风险管控标准（试行）》（GB 15618-2018）、《土壤环境质量 建设用地土壤污染风险管控标准（试行）》（GB36600-2018）两项新的国家标准。新标准设定了**土壤污染风险筛选值和管制值**以及相应的风险管控要求。根据 GB36600-2018，土壤中污染物含量不超过风险筛选值的，通常认为建设用地的土壤污染风险可以忽略；污染物含量超过风险管制值的，通常认为风险不可接受，应采取风险管控或修复措施；污染物含量介于筛选值和管制值之间的，需进一步评估风险以判断是否需要采取风险管控或修复措施。

(3) 土壤污染治理与修复

严格来说，企业应当监控污染物排放，防止污染物渗透至土壤，在出现环境污染突发事件时向环保局及相关部门进行汇报；同时，按照“谁污染，谁治理”的原则，企业应当其对生产经营中造成的污染进行治理与修复。《土壤污染防治法》也明确了“土壤污染责任人负有实施土壤污染风险管控和修复的义务”。与此相关，生态环境部则重点监管土地再利用的环节（即已/拟收回土地使用权或用途拟变更为居住用地和商业、学校、医疗、养老机构等公共设施用地的污染地块），要求对再利用污染地块进行风险评估。对于评估确认需要治理与修复的地块，企业应依法开展治理与修复工程，工程完工后应委托第三方机构开展治理与修复效果评估并编制评估报告。污染地块未经治理与修复，或者经治理与修复但未达到相关土壤环境质量要求的，有关环保主管部门不予批准选址涉及该污染地块

的建设项目环境影响评价文件。根据《土壤污染防治法》，如土壤污染者或土地使用权人未采取实施修复，将被处以最高可达一百万元的罚款，且相关的企业主管人员和其他直接责任人员将被处以二万元以下的罚款；情节严重的，可能会有刑事责任。

三、 结语

伴随《土壤污染防治法》的后续实施，可以预见未来对于土壤污染防治的监管将更加规范和严格，如企业用地存在历史污染或者是生产经营中引发或可能引发土壤污染的，应当未雨绸缪，采取适当的措施以评估相应的环境及法律风险，积极应对和配合政府正在或可能发起的调查行动。

如您有任何具体的问题，欢迎邮件联系并同步抄送 ecoenvpro@junhe.com。

朱 核 合 伙 人 电 话：86 21 2208 6340 邮 箱 地 址：zhuh@junhe.com

倪天伶 律 师 电 话：86 21 2208 6346 邮 箱 地 址：nitl@junhe.com

王争鸣 电 话：86 21 2283 8243 邮 箱 地 址：wangzhm@junhe.com

本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息，敬请关注君合官方网站“www.junhe.com”或君合微信公众号“君合法律评论”/微信号“JUNHE_LegalUpdates”。



Environmental Protection

Compliance Considerations Related to Soil Pollution Surveys

Introduction: After last article “Several Issues Concerning Legal Compliance of Environmental Impact Assessment and Environmental Protection Facilities Completion Acceptance”, this article will focus on the soil pollution survey and related issues of relevance to manufacturing companies in recent years, especially those involved in the emission and/or storage of pollutants as part of their operations.

I. The Legal Basis for Soil Pollution Survey

Soil Pollution Prevention Law effective on January 1, 2019 has made some regulations on soil pollution surveys, risk control and/or restoration, such as the nationwide survey of soil pollution status, the soil pollution status survey of construction land with potential soil pollution risks, the implementation of the list of construction land subject to pollution risk control and/or restoration requirements, as well as the requirements of soil pollution status survey for enterprises for pollution monitoring when altering the land usage for production and operation purposes.

Soil Pollution Prevention Law for soil surveys are relatively principled. When the local governments implemented the *Action Plan on the Prevention and Control of Soil Pollution* (the “Action Plan”) issued by the State Council in May 2016, the *Administrative Measures for the Soil Environment of Polluted Land (for Trial Implementation)* issued by the Ministry of Environmental Protection in December 2016 and in 2018 soil pollution control plans issued by local governments, we noticed that local governments have implemented or are implementing some additional detailed plans or requirements. In this regard, we’ve briefly summarize some points below as reference for relevant companies.

II. Specific Requirements of Soil Pollution Investigation and Legal Consequences of Violations

1) Survey of Soil Pollution Status on Enterprise Land in Key Industries (Led by Government Authorities)

Generally, local governments firstly conduct the

fundamental information surveys of land in key industries (mainly including non-ferrous metal smelting, chemical, coking, electroplating, tanning, hazardous waste disposal, and other industries involved in the production, storage, and use of hazardous chemicals) and make the list of surveyed enterprises and key industrial parks selected according to production scale, characteristic pollutants and other factors; secondly, according to the soil quality, pollution sources and pollutant migration routes, the potential risks of the enterprise land in the screening list are divided into high, moderate, or low; finally, preliminary sampling surveys are initiated towards all high risk land and some moderate or low risk land in specific industries.

2) Investigation on Suspected Polluted Land and Polluted Land (Enterprises Coordinated by Government Authorities)

The local environmental protection authority shall, based on the investigation of the soil pollution status of the enterprises land in key industries, determine the list of suspected pollution land by consensus with other government authorities. The enterprises in the list shall conduct **preliminary investigations on soil environment** and prepare preliminary investigation reports. Subsequently, the local environmental protection authority will establish a list of polluted land according to the preliminary investigation report submitted by the enterprise, and the enterprise whose land is listed shall conduct **a detailed survey of the soil environment** and prepare a detailed investigation report to explain the distribution of pollutants and their effects to the soil and groundwater. In addition, in accordance with the *Administrative Measures for the Soil Environment of Polluted Land (for Trial Implementation)*, enterprises also shall conduct **Risk assessments** and prepare reports based on the detailed investigation of soil environment, indicating pollutants, risk levels, governance and restoration recommendations. According to the

Soil Pollution Prevention Law, the construction land with soil pollution risks indicated by general survey, detailed investigation of soil pollution status, monitoring and on-site inspection and the land whose usage purposes are altered to residential, public management and public services, shall be conducted with the survey of soil pollution status. The soil pollution assessment report shall be reported to the government authority for evaluation. If the soil pollution assessment report indicates that the pollutant content of construction land exceeds the soil pollution risk control standard, the polluter, or the land user, shall conduct a soil pollution risk assessment. Where there is a failure to undertake the assessment, the polluter, or the land user, will face fines of up to RMB 1 million depending on the specific circumstances, and the person in charge or any other directly responsible person may be fined up to RMB 20,000.

Specifically, the Ministry of Ecology and Environment and the State Administration for Market Regulation jointly issued and implemented two new national standards, including *Soil Environmental Quality Soil Pollution Risk Control Standards of Agriculture Land (for Trial Implementation) (GB 15618-2018)* and *Soil Environmental Quality Soil Pollution Risk Control Standards of Construction Land (for Trial Implementation) (GB36600-2018)* on August 1, 2018. The new standard sets the maximum **screening value** and **regulatory value of soil pollution risk** and the corresponding risk management requirements. According to GB36600-2018, if the pollutant content in the soil does not exceed the risk screening value, it is generally considered that the soil pollution risk of the construction land is negligible; if the pollutant content exceeds the risk control value, the risk is generally considered unacceptable, and the risk management or restoration measures should be taken. Where the contaminant content is between the screening value and the regulatory value, the risk needs to be further assessed to determine whether risk management or

restoration measures are needed.

3) Soil Pollution Control and Restoration

Strictly speaking, enterprises shall monitor pollutant emissions to prevent them from polluting the soil and report to the Environmental Protection Agency and relevant authorities in the event of environmental pollution emergencies. At the same time, according to the principle of “who pollutes, who protects”, enterprises shall control and restore the pollution caused by themselves in production and operation. Soil Pollution Prevention Law also clarifies that *persons responsible for soil pollution have the obligation to limit the risk and undertake soil restoration*. Specifically, the Ministry of Ecology and Environment focuses on the regulation of land reuse, that is the polluted land whose use rights have been/will be reversed or whose usage will be altered to residential, commercial, educational, healthcare, nursing public facilities, and is required to carry out risk assessment on the reused polluted land. If it is confirmed that the land needs to be controlled and restored, the enterprise shall implement control and restoration according to the law. After the project completion, the enterprise shall entrust the third-party agency to implement assessments on the effects of the restoration project and prepare a report accordingly. If the polluted land has not

been controlled and restored or has not met the soil environmental quality requirements of the relevant planned land, the corresponding environmental protection authority shall not approve the environmental impact assessment statement for the construction project related to the polluted land. According to Soil Pollution Prevention Law, if the polluter or the land user fails to undertake restoration, such person will be fined up to RMB 1 million, the person in charge or any other directly responsible person may be fined up to RMB 20,000, and in serious circumstances, there could be criminal liabilities.

III. Conclusion

With the subsequent implementation of Soil Pollution Prevention Law, it is foreseeable that the supervision of soil pollution prevention in the future will be more standardized and stricter. If there is historical pollution in enterprise land or soil pollution caused or may be caused by production and operation, the enterprises shall take appropriate measures in advance to assess the corresponding environmental and legal risks, and actively respond to and cooperate with investigation actions being or may be initiated by the government. If you should have any specific enquiries, please feel free to contact us by email: ecoenvpro@junhe.com.

George Zhu	Partner	Tel: 86 21 2208 6340	Email: zhuh@junhe.com
Tianling Ni	Associate	Tel: 86 21 2208 6346	Email: nitl@junhe.com
Zhengming WANG		Tel: 86 21 2283 8243	Email: wangzhm@junhe.com

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of JunHe Law Offices.. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE_LegalUpdate.

