

## 环境保护法律热点问题

### 环保专题系列（一）----土十条之后《土壤污染防治法》正式通过

导言：近年来，国家大力加速环境保护的立法并加强执法强度，而土壤及地下水污染相关的一些案例（如江苏某外国语学校的“毒地”事件、河北某化工企业的农田排污和地下水污染事件等）一定程度上反映了土壤污染防治和保护方面的立法和执法实践亟需完善与加强。在此背景下，《土壤污染防治法》于近日顺势诞生。

#### 一、政策回顾

在中国坚持可持续发展战略，优化经济结构的背景下，环保工作取得了长足的进展，然而形势依然严峻。为此，国务院于2005年发布《关于落实科学发展观加强环境保护的决定》，这一决定推动了后续各项环保政策的出台，其中也不乏关于土壤污染防治的专门政策。与此相关，为进一步加强土壤污染治理，国务院于2016年5月印发《土壤污染防治行动计划》（简称“土十条”），构成了全国土壤污染防治工作的行动纲领。“土十条”强调“防”和“控”，提出开展土壤污染调查、加强污染源监管、开展污染治理与修复等要求，以期实现土壤的安全利用，并且提出到2020年基本建立土壤污染防治法律法规体系。“土十条”颁布后的同年12月，环境保护部（即生态环境部的前身）出台《污染地块土壤环境管理办法（试行）》，且各地纷纷出台落实“土十条”要求的实施方案。

#### 二、新法通过

2018年8月31日，十三届全国人大常委会第五

次会议全票通过了《中华人民共和国土壤污染防治法》（下称“《土壤污染防治法》”），并将于2019年1月1日起施行。《土壤污染防治法》提出“预防为主、保护优先、分类管理、风险管控、污染担责、公众参与”的原则，从规划、标准、普查和监测、预防和保护、风险管控和修复等多方面做出规定。它是我国第一部土壤污染防治领域的专门法，也是贯彻落实“土十条”要求，推动土壤污染依法防治的重要一步。此前，土壤污染的防治法规主要分散在大气污染防治法、水污染防治法等规定中或者被附带地提及。《土壤污染防治法》的出台填补了我国土壤污染防治专门立法的空白。为此，我们归纳了以下与生产型企业（也包括生产经营中可能涉及污染物储存和排放的企业）联系较为密切的内容供参考：

#### 1、土壤污染的定义

“土壤污染”是指因人为因素导致某种物质进入陆地表层土壤，引起土壤化学、物理、生物等方面特性的改变，影响土壤功能和有效利用，危害公众健康或者破坏生态环境的现象。

#### 2、土壤有毒有害物质名录与风险管控标准

生态环境部牵头公布重点控制的土壤有毒有害物质名录。国家将制定土壤污染风险管控标准，同时鼓励省级政府制定不得低于国家标准的地方标准。实践中，监管部门将根据该名录和标准，判断土壤污染的情况以及采取对应的管控措施。

### 3、土壤污染状况普查与详查

生态环境部会同相关部门，每十年至少组织开展一次全国土壤污染状况普查，而国务院有关部门及地方政府视实际情况组织开展详查。国家建立土壤环境信息与数据共享机制。地方政府将根据普查和详查的结果制定土壤污染防治规划，开展或要求企业（即土地使用权人）开展土壤污染状况调查。

### 4、土壤污染风险评估

对土壤污染状况调查报告评审表明污染物含量超过土壤污染风险管控标准的建设用地地块，土壤污染责任人、土地使用权人应进行土壤污染风险评估并向环保部门报送评估报告，未进行评估将被处以最高可达人民币一百万元的罚款，且直接负责的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。

### 5、土壤污染重点监管单位

地方政府应制定本行政区域土壤污染重点监管单位名录，被列入名录的企业将负有更多的防治义务，例如应制定、实施土壤污染防治工作方案，其生产经营用地的用途变更或者在其土地使用权收回、转让前应进行土壤污染状况调查。违反义务并造成严重后果的将会被处以最高可达人民币二百万元的罚款甚至被责令停产整治。

### 6、建设用地土壤污染风险管控和修复名录

国家实行建设用地土壤污染风险管控和修复名录制度。省级环保主管部门会同相关主管部门制定建设用地土壤污染风险管控和修复名录，视情况要求

风险管控或修复并向社会公开被列入名录的地块。此外，地方政府部门不得批准被列入土壤污染风险管控和修复名录的污染地块作为住宅、公共管理与公共服务等用地。

### 7、土壤污染风险管控和修复义务的主体

确立了土壤污染责任人、土地使用权人和政府顺序承担土壤污染风险管控和修复义务的原则。土壤污染责任人（无法认定时，土地使用权人；如不明确或者存在争议的，由相关政府部门进行认定）负有实施土壤污染风险管控和修复的义务。如土壤污染责任人或土地使用权人未采取风险管控措施或实施修复，将被处以最高可达一百万元的罚款，且直接负责的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

在目前国家大力推进土壤污染防治立法进程的大背景下，土壤污染的防治成为新的监管重点之一。伴随《土壤污染防治法》的后续的实施，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。我们后续也将就企业过程中关心的一些问题（比如土壤污染调查）进一步推出文章。

如您有任何具体的问题，**欢迎邮件联系我们：**  
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## Environmental Protection

### Environmental Protection( Series 1)–Soil Pollution Prevention Law Officially Adopted

In recent years, China has accelerated the development of environmental protection legislation and at the same time strengthened enforcement of relevant laws. This follows on from a number of soil and groundwater pollution incidents, including a “poisonous land” case involving a foreign language school in Jiangsu, and a farmland sewage and groundwater contamination case involving a chemical company in Hebei, which have drawn attention to the need to optimize and strengthen legislation and law enforcement practices for soil protection and pollution prevention. It is in this context that the Soil Pollution Prevention Law has recently been adopted.

#### I. Policy Review

China has a commitment to sustainable development strategies during the drive to optimize the country’s economic growth. While there has been considerable progress towards environmental protection, there is still much cause for concern. For this reason, in 2005, the State Council promulgated the *Decisions on Implementing the Scientific Outlook on Development and Strengthening Environmental Protection* (“Environment Decisions”). The Environment Decisions led to the development of

various subsequent environmental protection policies, including some that addressed soil pollution prevention. Specifically, in order to further strengthen soil pollution control, in May 2016, the State Council issued the *Action Plan on the Prevention and Control of Soil Pollution* (the “Action Plan”). As the national strategy for soil pollution prevention and control, the Action Plan involved a strengthening of supervision over sources of pollution and the requirement to undertake soil pollution surveys, to control pollution, and, where necessary, to undertake soil restoration in order to ensure the safe use of soil. The Action Plan required the establishment of a comprehensive regulatory regime on soil pollution prevention and control by the year 2020. In a further development, in December 2016, the Ministry of Environmental Protection<sup>1</sup> released the *Administrative Measures for the Soil Environment of Polluted Land (for Trial Implementation)*. Various local authorities have also introduced their own plans to implement the Action Plan.

#### II. Adoption of New Laws

On August 31, 2018, the National People's Congress passed the *Law of the People's*

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<sup>1</sup> The predecessor of the Ministry of Ecology and Environment

*Republic of China on Prevention and Control of Soil Pollution* ("Soil Pollution Prevention Law"), which will come into effect on January 1, 2019. The Soil Pollution Prevention Law is based on the principals of "prevention first, priority in protection, classification management, risk management, polluter's responsibility, and public participation." It addresses these from perspectives including planning, standards, survey and monitoring, prevention and protection, risk control and restoration.

Previously, any legal requirements relating to soil contamination were found dispersed throughout other laws and regulations, such as the Air Pollution Prevention Law and the Water Pollution Prevention Law. The Soil Pollution Prevention Law is the first specialized law on soil pollution prevention and control in China, and it represents an important milestone in implementing the requirements of the Action Plan and underscoring the use of the law to prevent and control soil pollution. We have summarized the key content of the Soil Pollution Prevention Law of relevance to manufacturing companies, including those involved in the emission and/or storage of pollutants as part of their operations:

- **Definition of soil pollution:** "Soil pollution" refers to the phenomenon where a certain substance enters the surface soil of land due to human factors and causes changes in the soil's chemical, physical, and biological properties, as well as other characteristics, thereby affecting the functionality of the soil, the effective utilization of the soil, which endangers public health or destroys the ecological environment.
- **List of toxic and hazardous substances**

**which affect soil and risk control standards:** The Ministry of Ecology and Environment (the "MEE") has published a list of the main substances that are toxic and hazardous to soil. The state will establish standards for soil pollution risk management, and will encourage provincial governments to develop local standards that are no lower than national standards. In practice, it will be the responsibility of regulatory authorities to evaluate soil pollution and to take the necessary measures based on the list and published standards.

- **General survey and detailed investigation of soil pollution status:** The MEE, together with other competent authorities, is required to undertake a nationwide survey of the soil pollution status in China at least once every ten years. Relevant departments of the State Council and local governments must organize their own detailed surveys based on actual conditions. The state will organize the necessary mechanisms to share the relevant data on the condition of the soil. Based on the results of the abovementioned surveys, local governments should formulate plans for the prevention and control of soil pollution locally and conduct, or require enterprises, that is the land user, to conduct surveys on the status of local soil pollution.
- **Soil pollution risk assessment:** If the soil pollution assessment report indicates that the pollutant content of construction land exceeds the soil pollution risk control standard, the person responsible for soil pollution, or the land user, shall conduct a soil pollution risk assessment and submit the assessment report to the environmental

protection authorities. Where there is a failure to undertake the assessment, the person responsible for soil pollution, or the land user, will face fines of up to RMB 1 million, and the directly responsible person will be fined up to RMB 20,000.

- **Enterprises for pollution monitoring:** Local governments shall formulate a directory of enterprises in their administrative regions that are required to monitor their soil pollution. Enterprises listed therein will face more stringent prevention obligations, such as formulating and implementing their own plans for the prevention of soil pollution and conducting soil pollution status investigations prior to altering the land usage for production or operation purposes, or before the transfer or reversal of land use rights. If the enterprise breaches such obligations and causes serious consequences, it will face a fine of up to RMB 2 million, and may be ordered to suspend production for rectification.
- **Listing of construction land subject to pollution risk control and/or restoration requirements:** The State shall implement a list of construction land subject to pollution risk control and/or restoration requirements. At a provincial level, the environmental protection authorities shall, together with other relevant authorities, develop their own list of polluted construction land that is subject to soil pollution risk control and restoration; and if necessary, these authorities may require risk control or restoration of the polluted construction land and make this information available to the public. In addition, local government authorities may not approve contaminated

land parcels that appear in the List of Polluted Land Subject to Soil Pollution Risk Control for use as residential land, or as land that is used for public purposes.

- **Persons responsible for the risk control and/or restoration obligation of polluted soil:** The Soil Pollution Prevention Law sets forth risk control and soil restoration principles and obligations for persons responsible for soil pollution, land users, and the government. Persons responsible for soil pollution<sup>2</sup> have the obligation to limit the risk and undertake soil restoration. If the person responsible for soil pollution or the land user does not take risk limitation measures or undertake restoration, such person will be fined up to RMB 1 million; the directly responsible person will be fined up to RMB 20,000; and in serious circumstances, there could be criminal liabilities.

### III. Conclusion

The state appears to be vigorously and determinedly using the legislative process to prevent and limit soil pollution. The subsequent implementation of the Soil Pollution Prevention Law provides a strong suggestion that future regulation to prevent and limit soil pollution will become ever more standardized and strict. We will continue to follow up on any developments in this area and to share any items of relevance, such as results of soil pollution surveys, to our corporate clients. If you should have any specific inquiries, please feel free to contact us by email: [ecoenvpro@junhe.com](mailto:ecoenvpro@junhe.com).

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<sup>2</sup> When non-identifiable, the land user, and if unclear or contentious, the relevant government authorities.

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