

*The 2008 Olympics: A Better Environment for Beijing
but what About China?*

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Chairman Levin, Chairman Dorgan, members of the Commission:

Thank you for providing me the opportunity and the honor to appear before you today.

The subject of today's hearing, "The Impact of the 2008 Olympic Games on Human Rights and Rule of Law in China," raises issues of critical importance not just to China, but to the world. Beyond the sporting events and pageantry, the Beijing Olympics more importantly may offer spectators the broadest window yet into a more needed feat of strength: whether the planet's fastest growing economy has developed the fundamental legal pillars worthy of the world's greatest stage. After the torch is extinguished at the Beijing National Stadium in August, international opinion likely will remember less the medals China's athletes take home than the nation's achievements—or lack thereof—on the fundamental issues of human rights, the rule of law, and environmental protection.

I am here today to address China's efforts to provide one of the most vital pillars of human life—a safe, healthy, and clean environment. Environmental leaders and scholars have often framed environmental protection as critical to human rights. For example, the landmark National Environmental Policy Act provides that Congress recognizes that "each person should enjoy a healthful environment and [that] each person has a responsibility to contribute to the preservation and enhancement of the environment."¹ In 1992 the U.N. Conference on Environment and Development noted that "human beings are entitled to a healthy and productive life in harmony with nature."²

With that backdrop, the 2008 Beijing Olympics are providing an extraordinary front row seat to assess the China's accomplishments and

¹ 42 U.S.C. Section 4331(c).

² Rio Declaration, Principle 1, June 3-14 1992.

challenges in providing a safe environment for the world's largest population. Importantly, though, while the Olympics may provide the world with its most vivid snapshots to date of China's environmental efforts preparing for a single event, it likely will be harder to glean China's ability to conquer the challenges facing the nation's environment beyond Beijing in the years and decades to come.

EPA's China Environmental Law Initiative

In September 2007 I instituted the EPA China Environmental Law Initiative after meeting in China with environmental officials, academics, students, non governmental organizations, and multinational corporations. The Initiative is premised on the experience in the United States that a strong environmental law framework is the critical prerequisite to a strong environment. In seeking to improve China's environmental laws I identified three reasons why the United States should help China advance its environmental laws, and thus its environment as a whole.

First, the American environmental law framework is the strongest in the world. Implementing the toolbox of environmental protection statutes Congress started passing in the 1970s has resulted in heralded improvements in environmental protection, and safe air, water, and environment for the nation. From an altruistic point of view, we should share this framework and our experience with China to help it develop a thorough framework tailored to its own geographic, economic, and political circumstances.

Second, and perhaps less altruistic, is the reality that what happens in China increasingly affects the environment here in several ways. Air pollution transported from Asia adds to levels of air pollution in the U.S. – increasing the challenge of air quality and public health protection. Researchers at Harvard University, using models, have estimated that Asia contributes roughly 30% of the background sulfate particulate matter in the Western United States.³ In 2000 China reportedly emitted over 25% of the total estimated worldwide human-generated mercury emissions into the atmosphere, contributing to the global pool of atmospheric mercury that

³ R. J. Park et al., *Natural and Transboundary Pollution Influences on Sulfate-nitrate-ammonium Aerosols in the United States: implications for policy*, 109 J. OF GEOPHYSICAL RESEARCH (2004).

circulates around the northern hemisphere and falls out in Asia, North America, and Europe.⁴

Some researchers believe that China already has overtaken the United States as the leading emitter of greenhouse gas emissions while others believe it inevitably will do so in the near term. China's thirst for energy and other resources brings with it environmental consequences across the globe.⁵ And less stringent controls over exports such as lead in toys can lead to environmental harms on any continent.

Third, multinational organizations and corporations increasingly are relying on China both as a growing market and a source of products, while NGOs and academics see an increasing need to understand environmental issues in China as well. Ambiguities in the Chinese environmental law framework create unique challenges for those seeking to understand environmental compliance in China. Thus, one goal of the Initiative is to help digest this information in the interest of advancing multinational understanding of the Chinese environmental law framework.

The EPA China Environmental Law Initiative is continuing the dialog between the United States and China, as well as other interested stakeholders, to advance the Chinese environmental law framework. At the center of this initiative is the first website we are aware of dedicated to Chinese environmental law. The website, which can be found at www.epa.gov/ogc, is a collaborative effort of institutions in the United States and in China and is available in English and Chinese. In the roughly three months since we started the website, the front page has been viewed over 4000 times.⁶ Users have viewed the Chinese translation of the front page over 2700 times.

This April, I will participate with my staff in a second OGC-organized symposium in China, focused on further development and implementation of

⁴ David Streets et al. (2004) US Geological Survey China-Mercury Meeting. "Mercury emissions in China: Update."; Elisabeth Pacyna et al., *Global anthropogenic mercury emission inventory for 2000*, 40 *ATMOSPHERIC ENVIRONMENT* 4048, 4048 (2006).

⁵ According to one account, to produce goods worth \$10,000, China uses six times the resources used by the United States. See Elizabeth C. Economy, *The Great Leap Backward?*, *FOREIGN AFFAIRS* (Sept/Oct 2007).

⁶ Each "view" does not necessarily correspond to a separate person: some users undoubtedly viewed the front page more than once.

environmental laws and the need and opportunity for public participation in environmental regulation.

The State of the Environment in China

According to the World Bank, between 1981 and 2001 the proportion of those living in poverty in China fell from 53 percent to eight percent. While this indisputably is a laudable accomplishment, what is less clear in 2008 is the percentage of those living not in economic poverty, but environmental poverty.

Robert Percival is the director of the acclaimed Environmental Law Program at the University of Maryland Law School, a collaborative partner in the EPA China Environmental Law Initiative. As he has aptly put it, “the good news is that things have gotten so bad that high officials cannot help but take note.”⁷ Indeed, the challenge in expressing the state of the environment in China is discerning which of the plethora of bad fact scenarios gives the best understanding of the dire situation.

For example, regarding air issues alone, particulate levels in Beijing are as much as 6 times that of New York City. Reportedly, more than 300,000 people per year die prematurely from air pollution in China⁸ and each year 400,000 new cases of chronic bronchitis are estimated to occur in 11 large Chinese cities.⁹ Emissions of sulfur oxides in China are highest in the world¹⁰, double the output of the United States in 2006¹¹, costing China an estimated 500 billion Yuan (US\$60 billion) in damage to buildings, crops, vegetation and human health.¹² Many Chinese citizens breathe air violating

⁷ Robert Percival, *Still Needed: Enforcement, Public Role (Is Chinese Environmental Law up to the Task?)*, 22 ENVIRONMENT FORUM 44 (2005).

⁸ WORLD HEALTH ORGANIZATION, WORLD HEALTH REPORT 2002 (2002); Clear Water, Blue Skies (World Bank ed., 1997).

⁹ ORGANIZATION FOR ECONOMIC CO-OPERATION & DEVELOPMENT, ENVIRONMENTAL PERFORMANCE REVIEWS, CHINA (2007).

¹⁰ Jianguo Liu & Jared Diamond, *China's Environment in a Globalizing World; How China and the rest of the world affect each other*, 435 NATURE 1179 (2005).

¹¹ SEPA, State of the Environment Report,

http://english.sepa.gov.cn/standards_reports/soe/SOE2006/200711/t20071105_112565.htm (China reporting 25,888K metric tons); U.S. EPA, National Emission Inventory,

<http://www.epa.gov/ttn/chief/trends/trends06/nationaltier1upto2006basedon2002finalv2.1.xls> (U.S. reporting 12,490K metric tons).

¹² Li Xinmin, in *The China Post* (3 August 2006).

Chinese national air quality standards.¹³ And, with this backdrop, China is planning to build over 500 coal-fired power plants before 2020.

By way of context and fairness, it should be noted that in the United States there were several decades of rapid economic growth before we as a nation took seriously the challenge of creating an environmental law framework in the face of pressing environmental concerns such as the Cuyahoga River and Love Canal. As described below, China clearly is taking measures to address environmental concerns during its era of rapid economic growth. The question is less the nation's motivation, but rather the sufficiency of its actions.

China's Will Is Toward a Better Environment

At the outset, it is important to make one point clear. From my first hand interactions and observations, China wills a better environment. Several factors are motivating this goal.

First, the 2008 Olympics is putting more than China's athletes on the world stage. With the international media presence and all eyes on the events there, China knows the world is watching not just the athletes, but its gray skies as well. With much of the world a spectator, China wants and needs to use the spotlight to promote a positive image about the nation that makes so many things the world consumes; a positive image that necessarily includes a clean environment.

Second, beyond the Olympics, China is aware that environmental concerns are drawing increasing scrutiny from multinational organizations and corporations. Just as poor labor conditions can lead to bans and boycotts, increasingly there is interest in looking behind products and into factories to ensure items are manufactured in an environmentally sound way. As China grows into an increasing global player in the world economy, it increasingly will be expected to justify a stronger environmental record.

Third, government officials are not shy to express their concern at protests of any sort. Knowing that environmental issues and advocacy are cause for protests and civil unrest, the Chinese government would appear to prefer

¹³ Mun Ho & Chris Nielsen, *Cleaning the Air: Health and Economic Damages of Air Pollution in China* (MIT Press, 2007) (in 1999, over 200 Chinese cities with air pollution monitors were out of compliance with at least one of the nation's air-quality standards for residential areas).

addressing concerns in the first instance. In 2007, thousands of citizens protested a chemical factory in Xiamen, expressing concerns about leukemia and birth defects. And in June, hundreds of Beijing residents protested the headquarters of the State Environmental Protection Agency itself regarding a waste incinerator. In personal conversations, Chinese officials have been very frank about their motivation to work proactively to address environmental issues to avoid more such unrest in the future.

Fourth the government officials I have spoken with on this issue expressed concern and motivation for the environmental health of citizens, regardless of other factors. There does seem to be great concern on how to achieve both economic and environmental objectives simultaneously. But I did observe among officials I met a genuine interest in improving the health and well being of residents.

China's Way Toward a Better Environment Is Uncertain

China for many years has taken at least symbolic steps toward adopting the laws that lead to a better environment. For example, since 1992 China has adopted environmental laws addressing air pollution, water pollution, solid waste, and clean energy production. However, many of these critical provisions lack teeth of enforceability. Many of the laws are vague, and more akin to guidance than regulations.¹⁴ Some were largely adopted from other countries without being adapted to China's geographic, economic, and political circumstances.¹⁵ And the role of public participation, which is as essential to environmental laws in the United States as substantive mandates, largely has been overlooked.

In reviewing the nexus between China's environmental law framework and a better environment for China, four themes are apparent which demonstrate both the strengths and weaknesses of the existing Chinese environmental law framework. As discussed below, each of these themes bears relevance to the 2008 Olympics.

First, the Chinese government's *understanding and messaging* of environmental issues and possible solutions appears to be as sophisticated as any other nation's. When speaking with Chinese officials from the national

¹⁴ Alex Wang, *One Billion Enforcers*, 24 ENVIRONMENTAL FORUM (2007).

¹⁵ Country Environmental Analysis for the People's Republic of China, ADB May, 2007.

State Environmental Protection Agency to the local Environmental Protection Bureaus, it is easy to be impressed by the depth of the understanding of environmental concerns, and the ideal solutions needed to address them. So, in short, the messages communicated by the government at all levels on environmental issues are sophisticated and strong.

Second, the government appears to take a pragmatic approach of *prioritizing* areas of immediate concern and takes steps toward addressing those situations. For example, rather than address air quality generally China might focus on acid rain specifically; rather than address water quality generally China might focus on a specific area of concern such as chemical oxygen demand. Undoubtedly an approach of prioritizing environmental concerns makes common sense. At the same time, though, absent an effective overall framework for addressing broader environmental concerns such as clean air and water generally, a concern lies with whether progress is being made on the plethora of issues not identified as priorities.

Third, one of the significant limitations at this time toward understanding the advancement of environmental protection in China relates to the critical roles that *transparency, public participation, and authentication* play in environmental law. It is relatively common to hear news in China that some environmental measurement has improved over a period of time. However, observers frequently raise doubts regarding the authenticity of such figures given their inability to “look behind the numbers” at the raw data and challenge the assumptions. This deficiency is compounded by the current presumption of little to no public participation in the lawmaking process, although as described below there is some evidence of progress in this area.

Fourth, and to me the most significant theme inhibiting the implementation of a strong environmental law framework, goes to the lack of a system of *cooperative federalism and enforcement* in China. In the United States, cooperative federalism is the necessary method by which the network of environmental laws works to ensure a clean environment for all Americans. Our laws work, in general, by delegating primary responsibility to states for implementation and enforcement, but ensuring the federal government will enforce a floor of beneficial measures and standards. In China in contrast, the national government has limited mechanisms to ensure its environmental goals at the regional and local level. To the contrary, the national government largely awards local governments and officials based on their increase in GDP, without little or no accountability for environmental

protection and harm.¹⁶ To me, the key to creating a strong framework in China is developing a different kind of cooperative federalism there, and thus eliminating this disjointedness between the goals of the national government and the incentives driving the provincial governments. In other words, a key way implement cooperative federalism in China may be as straightforward as holding government accountable for environmental advancement along with economic growth.

The 2008 Olympics: A Better Environment for Beijing, but what About China?

The Beijing 2008 Olympic Games Organizing Committee promoted the event as the “Green Olympics.” Consistent with that commitment, the Organizing Committee has identified scores of efforts to improve the environment in Beijing prior to the games.¹⁷ These efforts are as basic as improving water quality, upgrading sewer capacity, and promoting tree planting at a Beijing park. Other efforts are radically bold by any standard, including experiments to restrict car traffic by 50 percent on certain days and shuttering and relocating entire industries from greater Beijing, including the transitioning of the mammoth Shougang steel works to an island 139 miles from Beijing.

A report by The United Nations Environment Programme credited Beijing with “significant strides” and an investment of \$12 billion to improve the environment in advance of the Olympics.¹⁸ At the same time, it recognized concerns remaining with air quality despite the relocation of industry, particularly due to the introduction of 1,000 new car registrations daily. Indeed, in what may be the most qualitative assessment regarding Beijing’s air quality, it was widely reported earlier this month that dozens of countries have set up training camps for the days ahead of the events not in China, but in Japan, South Korea, and Singapore. Athletes are also testing their ability to train with face masks in anticipation of the Beijing air quality.

¹⁶ See Elizabeth C. Economy, *supra* note 5. Recently, China has moved to incorporate at least some consideration of environmental parameters. Charles R. McElwee II, *Who's Cleaning Up This Mess?*, CHINA BUSINESS REVIEW, January - February 2008.

¹⁷ Beijing 2008, Green Olympics, <http://en.beijing2008.cn/12/12/greenolympics.shtml>.

¹⁸ U.N. Environment Programme, Beijing 2008 Olympic Games - An Environmental Review, <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=519&ArticleID=5687&l=en>. See also *Hazy Outlook for Games*, *supra* note 20.

In its own way, the 2008 Beijing Olympics demonstrates both everything China is doing well to provide a healthier environment for its residents and the challenges that lie ahead.

First, the Olympics demonstrate China's world-class sophistication and ability to understand, communicate, and address environmental issues and challenges. Since 2005 China has identified scores of environmental challenges confronting the 2008 Olympics and has devoted significant resources toward organizing solutions and communicating the results. This demonstrates a capacity and ability among China's leaders, scientists, and industries to understand the most complex environmental issues and develop solutions. In other words, the financial and technical resources needed to promote a better environment seem to be available.

Second, the 2008 Olympics demonstrates the government's flexibility in prioritizing environmental concerns and targeting solutions toward those concerns. In this case, China prioritized a better environment for Beijing in time for the events. In many (but not all) ways it appears to have realized that goal and in other ways it has demonstrated the significant creativity and resources China can put toward addressing a problem when it wants to. However, questions that must be considered after August include the extent to which China merely transported environmental concerns from one area to another, the extent to which this Olympic priority was at the expense of other existing environmental concerns, and the extent to which the lessons learned in Beijing will be applied elsewhere in China.

Third, critical to convincing the world of a message is the assurance that the message is authentic and that the public trusts it. In this way, China arguably has made less progress. The plethora of numbers, criteria, and accomplishments cited by the government frequently come without the transparency we would expect and which are critical to other environmental law frameworks. This in turn can raise doubts about authenticity. For example, while China earlier this year reported new statistics touting dramatically improved air quality in Beijing, one observer discovered that in fact some monitoring stations had been moved from inside the city core to less polluted areas.¹⁹ On the other hand, there are some positive trends. When I was in Beijing, it so happened that the government published in the newspaper the text of proposed water law, and solicited views on the law.

¹⁹ Stephen Q. Andrews, *Beijing's Sky Blues*, WALL STREET JOURNAL, Jan. 9, 2008.

But even with a potentially encouraging trend of promoting increased public participation into environmental regulation, the pace must improve for the public to have meaningful input.

Finally, perhaps the most significant contribution of the Green Olympics will be not any measurable environmental benefit, but a possible awakening to a new approach toward addressing both the economy and the environment. While the Olympics demonstrate that China can address a specific problem by prioritizing resources toward specific solutions, what is more sorely needed are approaches on a national scale. This will require a system of cooperative federalism that encourages local governments to realize and achieve the goals of a clean environment for the nation. While the American system of cooperative federalism admittedly does not translate in China, the government can emulate such a scheme by holding provincial and local officials accountable for environmental protection and results in addition to pure GDP. We may begin to see improvements along these lines in the coming months, if predictions about elevation of China's environmental agency stature and role are borne out and accompanied by improved institutional relationships and legal authorities.

Clearly, the Olympics have brought environmental improvements to the residents of Beijing. What the 2008 Olympics hopefully will bring to all China is an environmental awakening that it can realize a better environment and economic prosperity as mutually achievable—not exclusive—goals.

Thank you, Mr. Chairmen, and members of the Committee. I would be happy to answer any questions you may have.