



THE US-CHINA BUSINESS COUNCIL

美中贸易全国委员会

June 14, 2019

Vice Minister Zhao Yingmin
Ministry of Ecology and Environment of the People's Republic of China
Beijing, China

Dear Vice Minister Zhao,

We very much appreciate your ministry's response to the issues we raised in our March meeting when I was in Beijing for the China Development Forum. We are grateful for this opportunity to continue engaging in constructive dialogue with your ministry. USCBC hopes to be a partner in helping China realize its environmental protection goals while minimizing the negative economic impact of environmental enforcement measures.

It is clear the Ministry of Ecology and Environment (MEE) is making great efforts to address many of our issues of concern in areas such as arbitrary enforcement, predictable approval processes, transparency, science-based rulemaking, and hazardous waste disposal. You mention multiple regulations that you are in the process of revising—we will continue to follow these developments closely, and look forward to providing input where appropriate.

On the specific items your ministry mentioned in its feedback, we have the following further suggestions:

One-size-fits-all enforcement We applaud your recently released guiding opinions on standardizing discretionary power for administrative enforcement. Any guidance provided on this can only be positive for the goal of creating a more predictable regulatory environment. However, because many of the factors leading to the arbitrary enforcement of environmental rules are structural in nature, we believe it is important to couple such guidance with efforts to build sufficient capacity in qualified inspectors and ensure that the incentives of local government regulators are designed to encourage the reasonable enforcement of environmental regulations.

We are particularly encouraged by your proposed administrative enforcement notice system, enforcement process recording system, and legal review system for major enforcement decisions. If implemented well, these have the potential to greatly improve transparency and predictability in the environmental enforcement process. We recommend that the administrative notice enforcement system act as a central hub for all enforcement notices, so that companies only have to check a single source. As part of the enforcement process recording system, we encourage regulators to disclose their testing methods and data, so that companies can better understand how inspectors obtained their results. In cases where there are significant discrepancies between official results and internal tests conducted by the companies themselves, this will better allow companies to clarify any misunderstandings and

address environmental issues if they exist. We also recommend the government create a formal channel for companies to dispute inspection results they believe are incorrect.

USCBC is also encouraged by MEE's efforts to incorporate more technology into the enforcement process. We welcome any measures that would more effectively target sources of pollution and give companies increased lead time to prepare before they may have to shut down or reduce capacity due to periods of high air pollution.

Environmental impact assessments We realize that the environmental impact assessment (EIA) process is continually improving, as you highlighted in many of the recent reforms you mention. Many of the challenges that companies mentioned where EIAs took longer than expected occurred where the higher-level policy was unclear, so the local regulators in charge of the process had insufficient authority to issue the approval. We encourage EIAs to be conducted on objective, predictable standards, rather than subjecting them to approval quotas or arbitrary requirements such as limiting new chemical plants within a certain distance of the Yangtze River.

We are pleased to hear that your ministry has created a system to expedite EIAs for major foreign-invested projects. These projects often bring international environmental best practices to China. However, we hope that this can be a transitional measure and that eventually there will be a predictable, rules-based, fair, and transparent EIA process for all new investments in China.

Another concern that companies mentioned in EIAs as well as other regulatory process are conflicts of interest, protection of trade secrets, and transparency in expert panels. We recommend that robust measures are taken to ensure there are no conflicts of interest among expert panelists and business confidential information is appropriately protected. Expert panel membership should be made public, and there should be a responsive channel for public and industry complaints about the process.

Transparency We applaud China's efforts to increase transparency not only for environmental regulations but all types of rules. Your efforts to post central-level laws, regulations, and standards online and provide public comment periods have greatly improved the ability of industry to provide constructive feedback and comply with new regulations. However, it can be particularly challenging to obtain environmental standards at the local level, particularly at the municipal and county levels. Oftentimes, the reason such local environmental standards exist is that they contain requirements stricter than national standards, and this is what companies ultimately must comply with on the ground. We hope that the transparency of local environmental standards can be improved, ideally with all environmental standards published in a centralized online database.

Science-based environmental standards We greatly appreciate your ministry's efforts to standardize the development of environmental standards and make them more transparent and science-based. Often, it is the enterprises themselves that have the most practical, in-depth knowledge of technical environmental protection measures. We encourage MEE to comprehensively include industry input when designing environmental standards, especially input from foreign companies with rich experience in markets around the world. We recommend allowing multiple channels for industry input and predictable processes for industry consultation at multiple stages of the standards drafting process.

We also encourage reasonable implementation timelines for environmental standards, which can require significant new capital investments by companies to upgrade existing facilities. While building a modern body of environmental standards is essential to realizing China's environmental protection goals, a regulatory environment that lacks stability and predictability creates challenges for companies to make informed business decisions. We urge regulators to engage in thorough consultation with industry to define implementation timelines for new standards and regulations.

Accessibility of hazardous waste disposal Of the nearly 30 member companies interviewed for our recent report on environmental compliance, almost all of them noted hazardous waste disposal availability and price increases as a top challenge. Although China's official hazardous waste disposal capacity was greater than the amount of waste produced in 2017, it can still be difficult for companies to find qualified vendors for the specific type of waste required in their location. According to the Qianzhan Industry Research Institute, only about 1 percent of companies are qualified to dispose of more than 25 categories of hazardous waste, and 88 percent are only qualified to dispose of five categories or fewer.¹ Companies have also noted that it can be difficult to obtain disposal services for small amounts of hazardous waste because it may not be efficient for the vendors. We are pleased to hear that your ministry is encouraging local governments to construct more disposal facilities. We hope that this can be conducted in a market-based manner, prioritizing efforts on the types of waste disposal there is greatest demand for.

USCBC is particularly encouraged to hear your commitment to treating all types of market entities equally for waste disposal, regardless of whether they are foreign-owned, private, or state-owned. Our understanding is that the permitting process is an important bottleneck making it difficult to increase the number of qualified hazardous waste disposal companies, so it is positive to hear that you are planning to revise relevant regulations. Member companies have also noted challenges with limits to hazardous waste storage, caps on the total amount of hazardous waste they are allowed to dispose of in a certain time frame, and the ability to transport it to other jurisdictions when treatment options are not available locally.

Again, we greatly appreciate your detailed response to the issues we raised in our last meeting, and we look forward to continuing constructive dialogue.

Sincerely,



Craig Allen
President
US-China Business Council

¹ “危废处置价非理性上涨 环境治理和市场利益博弈加剧 [Hazardous Waste Disposal Prices Increase Irrationally, the Contest Between Environmental Governance and Market Interests Intensifies],” Xinhua/新华网, June 7, 2018, http://www.xinhuanet.com/fortune/2018-06/07/c_1122948901.htm.