

第五届世界水大会
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中国水业管理制度的法律分析
Legal Analysis of
Chinese Water Administration System

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引言 Foreword

➤ 水业基本法律 **Basic Laws of Water**

◆ 中华人民共和国水污染防治法（1984, 1996）[人大]

Law of Water Pollution Prevention (1984, 1996) [NPC]

◆ 中华人民共和国水法（1988, 2002）[人大]

Law of Water（1988, 2002）[NPC]

◆ 中华人民共和国防洪法（1998）[人大]

Law of Flood Prevention (1998) [NPC]

➤ 在基本法律下，国务院、各部委、地方颁布了一系列政府规章

Under the Basic Laws, the State Council, ministries and local authorities have enacted a series of government regulations and local rules.

政府规章

Government Regulations

➤ 关于水源 Regarding Water Sources:

- ◆ 天津市境内海河水系水源保护暂行条例（1981）[天津人大]

Interim Regulations of Water Sources Conservancy of Hai River in Tianjin (1981) [TPC]

- ◆ 太湖水源保护条例（1982）[江苏人大]

Regulations of Water Sources Conservancy in Tai Lake (1982) [JPC]

- ◆ 深圳经济特区饮用水源保护条例 (1995) [广东人大]

Regulations of Conservancy of Drinking Raw Water Sources in Shenzhen Economic Special Zone (1989) [GPC]

Government Regulations

➤ 关于水质 Regarding Water Quality:

- ◆ 生活饮用水卫生标准（1986）[卫生部]
Sanitary Standard for Living Drinking Water [MH]
- ◆ 生活饮用水水源水质标准（1993）[环保局]
Water Quality Standard for Living Drinking Water Sources [SEPA]
- ◆ 城市供水水质管理规定 (1999, 2004) [建设部]
Regulations of Urban Water Supply Quality (1999, 2004) [MC]
- ◆ 城市集中式饮用水源地水质监测、评价与公布方案
(2006) [环保局]
Proposal of Supervision, Estimation and Publication of
Water Quality of Urban Centralized Drinking Raw Water
Area (2006) [SEPA]

Government Regulations

➤关于水污染防治 Regarding Water Pollution Prevention:

- ◆ 饮用水水源保护区污染防治管理规定（1989）[环保局、卫生部、建设部、水利部、地矿部]

Administrative Regulations of Pollution Prevention in the Conservancy Zone of Drinking Raw Water Sources (1989)
[SEPA, MH, MC and MGM]

- ◆ 中华人民共和国水污染防治法实施细则（2000）[国务院]
Implementation Rules of Law of Water Pollution Prevention

- ◆ 医疗机构水污染物排放标准 (2005) [环保局]
Standard of Sewage Emission for Medical Institutes (2005) [SEPA]

➤关于供水 Regarding Water Supply:

- ◆ 城市供水条例（1994）[国务院]
Regulations of Urban Water Supply (1994) [State Council]

Government Regulations

- 关于水价和水费 **Regarding Water Tariff and Fee:**
 - ◆ 城市供水价格管理办法 (1998 [计委、建设部]); (2003 [国务院])
Administrative Measures of Urban Water Supply Tariff (1998 [SPC and MC]); (2003 [State Council])
 - ◆ 关于改革农业水价格有关问题的意见 (2001) [计委、水利部、农业部]
Opinions on Reforming the Water Tariff for Agricultural Use (2001) [SPC, MWR and MA]
 - ◆ 水利工程供水价格管理办法 (2004) [发改委、水利部]
Administrative Measures of Water Supply Tariff through Water Conservancy Projects (2004) [SPC and MWR]
 - ◆ 取水许可和水资源费征收管理条例 (2006) [国务院]
Administrative Regulations on Off-take License and Levy of Water Resources Fee (2006) [State Council]

Government Regulations

➤ 关于污水处理费 **Regarding Sewage Treatment Fee:**

- ◆ 关于加大污水处理费的征收力度建立城市污水排放和集中处理良性运行机制的通知》(1999) [国家计委、建设部、国家环保总局]

Notification on Enforcing the Collection of Sewage Treatment Fee (1999) [SPC, MC and SEPA]

- ◆ 广州市城市污水处理费征收管理办法 (1998) [广州市政府】

Administrative Measures of Guangzhou on Collection of Sewage Treatment Fee (1998) [Guangzhou Government]

- ◆ 沈阳市城市污水处理费征管办法 (2006.10.1) [沈阳市政府]

Administrative Measures of Shenyang on Collection of Sewage Treatment Fee (1 Oct. 2006) [Shenyang Government]

Government Regulations

➤ 关于许可 Regarding Licenses

- ◆ 取水许可水质管理规定 (1995, 1997) [水利部]
Regulations of Off-take License of Water Quality (1995, 1997) [MWR]
- ◆ 城市排水许可证 (2004) [建设部]
License of Urban Sewage Drainage (2004) [MC]
- ◆ 供水单位卫生许可(2004) [卫生部]
Sanitary License of Water Supply Units (2004) [MH]
- ◆ 涉及饮用水卫生安全的产品卫生许可(2004) [卫生部]
Product Sanitary License of Drinking Water Safety (2004) [MH]
- ◆ 取水许可和水资源费征收管理条例 (2006) [国务院]
Administrative Regulations on Off-take License and Levy of Water Resources Fee (2006) [State Council]

Government Regulations

➤ 关于市场准入 **Regarding Market Access:**

- ◆ 部委规章：建设部《市政公用事业特许经营管理办法》(2004.5)

Ministerial regulations: *Administrative Measures for the Concession of Municipal Public Utilities* (May 2004) issued by MC

- ◆ 地方立法：例如《北京市城市基础设施特许经营条例》(2006.3)

Local legislations: e.g. *Regulations on the Concession of Urban Infrastructure in Beijing* (March 2006)

- ◆ 地方政府规章：例如
《天津市市政公用事业特许经营管理办法》(2005.9)

Local government regulations: e.g. *Administrative Measures for the Concession of Municipal Public Utilities in Tianjin* (September 2005)

《山东省城市市政公用事业经营许可管理办法》(2006.5)

Administrative Measures of License for Municipal Public Utilities of Shandong Province (May 2006)

一 法律和法规背后

I Behind Laws and Regulations

- 国务院 State Council
- ◆ 建设部 Ministry of Construction (MC)
- ◆ 水利部 Ministry of Water Resources (MWR)
- ◆ 国家环保局 State Environmental Protection Administration (SEPA)
- ◆ 国家发改委 National Development and Reform Commission (NDRC, former SPC)
- ◆ 卫生部 Ministry of Public Health (MH)
- ◆ 其他部委 Others: 财政部 Ministry of Finance (MF), 商务部 Ministry of Commerce (MOC)
- ◆ 地方政府 Local Governments

二 问题

II Problems

- 部门利益冲突

The Conflict of Interests among Ministries

- 政府机构和职能重叠

The Overlapped Government Agencies and Functions

- 法规相互不衔接

The Inconformity of Laws and Regulations with Each Other

三 解决建议

III Proposed Solution

◆水是21世纪的首要战略资源

The water is the primary strategic resources in 21st century

◆整合才能实现有效的水资源配置和管理

The integration will allow an efficient allocation and administration of water resources

◆整合要求 The integration requires:

- ✓ 统一的法律制度和规章 Unified legal system and regulations
- ✓ 超部委的协调机构 Super-ministerial controlling body

演讲人简介

童新朝律师 武汉大学文学学士(1978—1982)、北京大学法学硕士(1983—1986)、加拿大拉瓦尔大学法学博士(1990—1994)。1986—1990在中华人民共和国外交部担任外交官。1993年开始律师执业并任合伙人。现任建设部市政公用行业专家委员会成员，中国国际法学会理事，中咨律师事务所合伙人。

业务专长包括基础设施、市政公用事业特许经营项目。曾担任国家计委首批试点BOT项目律师，并参加广西来宾2x350MW电厂BOT项目（中国第一个外商投资的BOT项目，国际计委试点项目）、长沙电厂BOT项目（国家计委试点项目），广东和江苏公路BOT项目(亚行技援)、成都水厂BOT项目（中国第一个水务特许经营/BOT项目，国家计委试点项目）、广西来宾电厂A厂TOT项目（中国第一个TOT项目，国家计委试点项目）、柬埔寨Kiriron水电厂BOT项目（中国第一个境外投资BOT项目）、上海竹园污水厂BOT项目（中国第一个通过规范招标民营投资的大型污水厂特许经营/BOT项目）、上海老港卫生垃圾填埋场BOT项目（中国第一个外商投资垃圾特许经营/BOT项目，亚洲最大规模）、杭州天子岭卫生垃圾填埋场BOT项目、广东佛山高明卫生垃圾填埋场BOT项目、长沙水业市场化改革、常熟自来水改制特许经营项目、青岛海湾大桥特许经营项目等一批重大特许经营/BOT/TOT/PPP项目。

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Mr. Xinchao Tong, PRC lawyer and partner of ZhongZi Law Office, Beijing; LL.D (1994) of Laval Univ., Canada; LL.M (1986) of Beijing Univ.; and B.A. (1982) of Wuhan Univ.; PRC Ministry of Foreign Affairs (1996-1990); admitted to Chinese Bar in 1993; native of China and English, French and Russian speaking.

Mr. Tong is specialized in infrastructure project finance and advised to major Chinese BOT projects, including Laibin B 2 x 350 MW BOT power project (the first BOT project in China with foreign investment), Chengdu water supply BOT project (the first water BOT project in China with foreign investment), Shanghai Laogang municipal waste sanitary landfill BOT projects and Shanghai Zhuyuan sewage treatment BOT project.

Mr. Tong has been listed in best law firms and individuals for project finance in Chambers Global the World's Leading Lawyers 2000-2001 and has been selected as leading lawyer of 2002 (*Asia Law & Practice, Leading Lawyers 2002*). He was Vice Chair of WTO Committee of Beijing BAR Association and councilor of International Law Society of China. He is a member of experts' team of public utilities for the Ministry of Construction.

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