

On Disclosure of Environmental Information

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Abstract: Knowledge management is dependent on public access to information, and environmental information in particular. Good environmental governance calls for environmental information disclosure, which serves as a supplement to the traditional command and control and market based instrument. The Environment Protection Agency (SEPA) signed a new Decree on Environmental Information Disclosure (Trial) in 2007; and environmental verification became mandatory for IPO companies since 2008. At the mean time, SEPA is exploring ways of setting up environmental disclosure system for listed companies. In this article, the author reviewed the current environmental information disclosure rules within the current environmental and security monitoring framework, pointing their weakness and putting forward some suggestions.

Keywords: environmental information; environmental disclosure; listed company

1 Introduction

1.1 Definition of environmental information

According to the Aarhus convention, environmental information means any information in written, visual, aural, electronic or any other material form on:(a) The state of elements of the environment, such as air and atmosphere.....including genetically modified organisms, and the interaction among these elements; (b) Factors, such as substances, energy....., including administrative measures, environmental agreements, policies, legislation..... affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making; (c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above^[1].

No definition of environmental information is given in the Decree on Environmental Information Disclosure (Trial) in 2007(hereinafter refer to as the Trial); however, environmental information is classified into governmental environmental information and enterprise environmental information. The former refers to information obtained by

governmental administrative departments in fulfilling their duty; the latter refers to information related with environmental impact of business operation and environmental activities by enterprises^[2]. In this article, environmental information refers to the latter. Such information can take the form of digits, characters or graphics, and can be used by the governmental, the public and various enterprises in their decision making.

1.2 Role of environmental information disclosure

Environmental information disclosure means making the environmental information open to the public. In this article, only the enterprises environmental disclosure is considered, and it is sometimes referred to as enterprise environmental information report. Such instrument is new for environment conservation applied after the command and control and the market based instrument, such system can serve as a foundation for public participation in pollution control. As the information is open to the public, a pressure and an incentive is introduced to business environmental management, helping to increase the efficiency of the business management and reduce the cost of the government in pollution control. For listed companies, opening to environmental information is a supplement to the information disclosure system; it will force the companies to pay attention to environmental management, and giving companies with good environmental management a competitive edge. Such system of environmental information disclosure for listed companies will help to reduce the ad-

This article is sponsored by the Ministry of Education: Waste cost management based on value creation (08JC630070)

verse impacts on the environment, as well as ensure the investors against possible environmental risk. As such, pushing the enterprises to open environmental information has gained its momentum in the field on international environmental conservation. SEPA of PRC also has it high on the agenda of the year 2010. In this article, the author gives a review of the environmental information disclosure system within the current legal framework, comments on it and put forward some suggestions.

2 Review of the current environmental information disclosure rules in PRC

2.1 Rules within the environmental protection regulations

In this part, two levels of regulation are related with environmental information disclosure. The first level includes various laws such as the Environmental Protection Law, the Air Pollution Protection Law and related Laws in protection of natural resources, Laws on Environmental Impact Assessments and law on the Promotion of Clean Production. Requirement in these laws mandate that enterprises that have caused environmental accidents or have violated the national and local emission standards should disclose relevant environmental information to relevant government agencies. Such information is provided to the governmental agency only, not to the public, so it does not fit in with the definition of the environmental information disclosure in this article. The related requirements are reflected in the second level of regulation, that is regulations enacted by the State Council, including two fundamental ones, the Measures for enterprise Environmental Information disclosure^[3] and the Trial, which stipulate the basic requirement of environmental information disclosure. It also includes some regulation targeted at listed companies and companies applying for IPO, such as Guidance on monitoring the environmental protection activities of the listed companies (the so called Green Securities Order), Notice to carry out environmental verification for companies applying for IPO or refinancing and the Further Notice to carry out environmental verification for companies in the

heavy polluters industry. The above regulations specify the objects, subjects of disclosure, and the content, form and medium of disclosure. The objectives of mandatory disclosure are enterprise who violated the pollution laws of a range of specific polluters industry, the type of information disclosed includes environmental policy and the medium can be the newspapers, the WWW, home-pages of the companies or relevant government agencies. No periodic disclosure is mandated.

2.2 Requirement within the securities monitoring laws

Requirement for environmental information disclosure can also be observed in a series of decrees on content and format of information disclosure by China Securities Regulatory Commission (SCRC). Environmental information as one type of information is required to be disclosed in some temporary reports such as the prospectus and the listing memorandum, hence incomplete. Since the announcement of the Green Securities Order, the Shenzhen and Shanghai Securities Exchange published related guideline respectively^{[4][5]}, giving a certain detailed requirement on environmental information disclosure. Guidelines of Shenzhen Securities exchange lay some principles, without detailed requirement on disclosure, highlighting qualitative information only. Clauses in the guidelines of Shanghai Securities Exchange is a reinforcement of those in the Trial, with the exception that deadline for disclosure is shortened to two days. In particular, the guidelines mandate that environmental duty and liabilities should be disclosed in the financial reports as long as they meet the requirement of contingent liabilities as required in the accounting Standards. In the notice for publishing this guideline, companies are encouraged to disclose a measure of social contribution per share.

2.3 Comments on the current environmental disclosure system

From above, it can be seen that since 2003, environmental disclosure is required for companies applying for IPO or refinancing, and there is a trend for having

such disclosure included in periodic reports. The enactment of the Trial in 2007 gave direct and clear requirement on the duty of enterprise to disclose environmental information, while the subsequent announcement of the Green Securities Order shows the governing bodies' effort to rely on the securities markets to enforce the listed companies to disclose related information. Two guidelines of the Securities Exchanges make this effort more feasible. Unable to disclose environmental information timely, correctly and completely will be punished according to the guidelines of the Shanghai Securities Exchange. But there remain some drawbacks in the system.

2.3.1 Range of mandatory duty is limited

Mandatory duty is limited to enterprises who have violated the environmental laws or who have caused environmental accidents, so not all polluters are required to disclose environmental information. As a result, the monitor from the public comes only when the governing agency finds out the violation of the law, and not earlier than that. As long as the enterprise does not go beyond the limit of discharge pollutants allowed, or as long as the violation is not detected by the government, there is no duty for disclosing information. Prevention is impossible in this case. Even for those mandated companies to disclose information, there lacks requirement on measures, data collection and guarantee of the integrity of the information.

2.3.2 Weak Enforcement power and low cost of violation

The Trial is not a law enacted by the People's Congress, the legislative body in China, but rather, a regulation enacted by the State council, which put it in a lower level of the legal system. Enforcement of the Trial relies on the environmental protection agency, which is financial dependent of the local government, who has much incentive to push economic growth, sometimes at risk of environmental protection. Possible fine of violation of The Trial can not exceed RMB 100 thousand, relatively low as compared to benefit gained by violation. No remedy is specified when the violation becomes a tort to a third party, lowering the cost of violation for enterprise.

2.3.3 Lack of guidelines on voluntary disclosure, too much flexibility for enterprise.

Enterprises are encouraged to voluntarily disclose environmental information, however, there is no guidelines on the formats, contents of disclosure. Recently, voluntary disclosure by listed companies have increased, but the information is qualitative dominated, most of which relates to tax exemption, greenery, investment in environmental protection and so on. Information is incomplete, lacks comparability and integrity. Enterprise chooses to disclose positive information, and the public's right to know is harmed.

2.3.4 Lack of information sharing among governing bodies

According to the Green Securities Order, the environmental protection agency will inform the CSRC of listed companies who had violated the environmental laws the punishment that they got, and make the list of companies who have gone beyond the allowed limit of discharge, or have aroused major environmental accident open to the public, however, to the public and the related business partners (such as the financial institution and the insurance company, such information is not enough for decision making. The public has little information about the environmental performance of company in general. The only information they can get is that about companies who have violated the law, for those companies not on the list provided by the environmental agency, such information remains a secret, despite the fact that some of it is in the hands of the environmental agency. In addition to that, disclosure requirement in the Green Securities Order is not clearly reflected in regulation of securities regulations.

4 Suggestions for refining the system

Based on the analysis above, some suggestions are given as follows

1. Refine the mandatory duty of information disclosure. The range, the method of disclosure and the legal duty included should be clearly specified, the objective of disclosure should extend to all polluters, and the

listed companies in particular. Technical guidelines should be given by the government, and environmental verification of environmental performance should be carried out. Guidelines should be set up of voluntary disclosure, such as guidelines on preparing environment reports. Carry out research of financial impacts of environmental issues. Accounting standards, should consider the recognition, measurement, and reports of environmental liabilities, risk and other environmental issues, to increase the transparency of information in the financial reports.

2. Build up database for environmental information. Currently, the environmental protection agency and the CSRC has some way of sharing information, such as written letters, but the enterprises involved are quite limited. A database with public access can be built up. Lessons can be learnt from the Release and transfer registration of pollutants in other countries. International sharing of environmental information is also encouraged by the Aarhus convention. In this way, information can be readily available for decision making.

3. Enforce effectiveness the Trial and increase the cost of violation. Remedy for trot should be possible, so that the public can file a legal suit against the polluters and the damage can be fully compensated. Before the construction of plants, especially those with a certain environmental risk, public hearing should be held, in addition to the governmental approval. Preventive monitoring by the environmental agencies should be carried out in addition to the afterwards punishment. The CSRC can encourage environmental information disclosure in the disclosure system for listed companies. For example, in the appraisal of the internal control system, environmental policy and its execution can be considered as a factor for the evaluation of the internal control system. CSRC can also encourage green investment by setting up green index, or ranking list of environmental perform-

ance similar to the Domini 400, the Dows sustainability Index, or the Ethical Index Global. In this way, listed companies are constantly under the pressure to seek good environmental performance in addition to the traditionally financial performance.

4 Conclusions

Based on the definition of environmental information and its disclosure, the author briefly reviewed the related rules of disclosure within the current environmental and security monitoring framework, a comment is made and some drawbacks are pointed out. To overcome the drawbacks of lack of mandatory duty, lack of enforcement power, lack of guidelines on voluntary disclosure and lack of information sharing, the author suggests that the regulation should be refine, database of environmental information should be set up and closer cooperation with the CSRC should be encouraged.

Acknowledge

The author thanks the Ministry of Education for its sponsorship of the project (08JC630070) .

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