

## **Feature 3**

# **Research on the Environmental Information Disclosure System in Sudden Environmental Pollution Incidents: Taking Zijin Mining Pollution Incident as an Example**

**Luozhong Wang**

In recent years, China suffers a variety of sudden environmental pollution accidents. Both the government and public attach great importance to the environmental information disclosure in the process of environmental emergency management, because the environment information publicity is not only an important mode according to which the public realize the right to know the environment truth, but also a premise that the public defend their rights of life health and property when the sudden environmental pollution takes place and actively take part in dealing with this event. In this paper, the author takes 2010 Zijin Mining pollution incident as an example, analyzing the issues and providing solutions to environmental information disclosure in sudden environmental pollution incident.

## **3.1 Analysis of Zijin Mining Pollution Incident**

### ***3.1.1 Introduction of Zijin Mining Pollution Incident***

On July 12, 2010, the A-shares and H-shares of the listed company Zijin mining were suspended all of a sudden. In the afternoon of the same day, Fujian Provincial Department of Environmental Protection announced the environmental pollution accident, which resulted from a leakage of sewage reservoir of Zijin copper mine. The acidic wastewater leaked into Tingjiang River, containing copper ions and sulfate ions, causing large fish kills. Preliminary statistics showed that the amount of fish poisoned or killed within the basin of Tingjiang River of the Mianhuatan reservoir area only has reached 1.89 tons. The incident, happened on July 3rd, had been concealed for nine days. After then, Zijin Group announced on its official

website a series of “Accident Briefings”, without mentioning any information concerning about the way of discharging of the main pollutant or amount of the exceeded discharge.<sup>1</sup>

Before the pollution incident, Zijin mining had been blacklisted repeatedly in inspections of environmental protection departments. As early as May 2010, the Ministry of Environmental Protection criticized 11 listed companies for unscheduled rectification in serious environmental problems; Zijin Mining Group is among them. In the follow-up disposal of this pollution incident, another huge leak occurred again in the evening of July 16, five hundred cubic meters of wastewater leaked into the Tingjiang River.

As a result of the pollution incident, vice-president of Zijin mining was detained, and the head of Shanghang County was suspended from duties. On September 30, Zijin mining received a 9.56 million RMB fine, which was the highest one ever, issued by Fujian Provincial Environmental Protection Office. Meanwhile, Zijin Group was ordered to take actions to clear up all the pollutants.

### ***3.1.2 China’s Transparency Problem of Environmental Information Reflected from the Zijin Mining Pollution Incident***

From the pollution incident of Zijin mining, it is not so optimistic for the transparency of environmental information of Chinese government and companies.

First of all, companies consider too much about their own interests, which makes the publicity of environmental information delayed, incomplete or untruthful.

Throughout the whole pollution incident of Zijin mining, the delay of environmental information publicity lies in: After the accident, Zijin concealed the accident up to nine days. On answering the question why Zijin mining had not made known to the public the information of the pollution accident until nine days after it happened, the general manager of the company’s securities department said, “When things just happen, the reasons for the incident should have a judge as soon as possible. After the judge clearly convey to the masses, it will not cause panic.” According to his speech, the reason why Zijin mining concealed the accident is to make clear the reasons and avoiding public panics. It seems that Zijin mining covered up the incident on behalf of public interests. If the company announced the incident at the first moment, fishermen would have taken actions of preventions and remedies, which could have reduced the damages caused by the incident. But on the contrary, the company was trying to block all the negative news until the incident became too big to be covered.

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<sup>1</sup> Retrieved from <http://green.sohu.com/s2010/zijinmining/>, revised by the author.

The incompleteness of environmental information publishing lies in: After the incident, Zijin Group announced on its official website a series of “Accident Briefings”, without mentioning any information concerning about the way of discharging of the main pollutant or amount of the exceeded discharge. Meanwhile, the vice president declared that the leakage mainly related to natural disasters, continuous heavy rain resulted in the rapid uplift of the water level in the solution pool, the uplift exceeded the high mark of sewage pool and formed a shear due to this imbalanced upper and lower water pressure, which led to several crackings of leakage-proof barrier, resulting in leakage of sewage pool. However, according to later investigations, the sewage drainage was opened by someone illegally. Zijin tried to cover up the “man-made” disasters by “natural calamities”.

The false corporation environmental information disclosure lies in: Zijin Mining declared in July 8 that “the water quality has been improved, and the total copper concentration and pH value have been restored Surface Water Quality Standards III.” However, according to the local people, fish were still dying.

Secondly, the delay of local government environmental information release affects the government’s credibility and authority.

The government should release environmental information immediately after the pollution accident. However, the source of government’s environmental information is often from the enterprises. When an environmental pollution accident occurs, the trouble-making company fails to report to relevant government authorities in time, but tends to delay or conceal contamination. Deeply entangled in vested interests, the local government seldom reveals environmental information in an accurate and timely manner, which directly undermines the government’s credibility and authority.

Two days after the accident, dead fish were observed in large-scale waters of Tingjiang River. It was not until one week later did the Fujian Provincial Department of Environmental Protection officially reported Zijin Mining pollution accident. Government authorities’ delay in information dissemination and their failure in informing the public of its cause, hazards, emergency response, recovery work progress and the need for public co-ordination led to all kinds of rumors which greatly affected the public mood, triggering a general panic and trust crisis. Even worse, if the government and officials deliberately conceal environmental information for their own interests or even make up untrue information, social conflicts will definitely be intensified and even develop into social panic.

In short, there are four major problems concerning environmental information release in China’s environmental pollution accidents: first, delay or cover-up; second, release under public pressure; third, selective release of incomplete information; fourth, make up untrue information to fool the public.

## **3.2 Defects of China's Environmental Information Disclosure System**

Since 2003, Chinese government successively promulgated a series of environmental laws, regulations and policies, including the “Cleaner Production Promotion Law”, “Environmental Impact Assessment Law” and “Regulation for Public Participation in the Environmental Impact Assessment”, which guarantee and regulate the environmental information disclosure on varying degrees. On May 1, 2008, the “Regulations on Open Government Information” promulgated by the State Council and the “Measures for the Disclosure of Environmental Information (for Trial Implementation)” (hereinafter referred to as the “Measures”) promulgated by Department of Environmental Protection came into effect simultaneously, which presented in more detail the requirements for environmental departments and corporations for disclosing the environmental information. However, due to the flaw of environmental information disclosure system in China, local governments and enterprises would feel it's hard to disclose the relevant environmental information accurately and timely, when similar environmental pollution accidents occur as Zijin Mining pollution.

### ***3.2.1 In Terms of Law Making, Low Legislation Level, Unscientific and Infeasible Relevant Regulations in Environmental Information Disclosure***

Firstly, there is no specialized “Environmental Information Disclosure Act” in China. Laws and regulations about environmental information disclosure scattered in the “Environmental Protection Law”, “Water Pollution Control Act”, “Law on Prevention and Control of Pollution From Environmental Noise”, “Environmental Impact Assessment Law”, “Clean Production Promotion Law” and other separate laws and regulations; even the “Measures” issued specially by Ministry of Environmental Protection, it only sets general requirements of environmental information disclosure for the government and enterprises under normal condition, without considering the distinctiveness of environmental information disclosure in the sudden environmental pollution incidents.<sup>2</sup>

Secondly, the level of normative documents for environmental information disclosure legislation ranks low. As the guiding draft of the “Measures”, “Regulations on Open Government Information” issued by the State Council is subject to the unrevised “State Secrets Protection Act” and other laws. The stance

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<sup>2</sup> Zhu Q (2007).

of original confidential laws views too much confidentiality, the development of “Government Information Disclosure Regulations” and its following the “Measures” would lead to a relative lower legislation level. Whenever there is a similar Zijin Mining pollution incident occurs, local governments and enterprises tend to refuse to disclose the relevant environmental information on the pretext of “commercial secret”, “inconvenience, likely to affect the social stability”, “off the record, as it would easily lead to the media hype”.

Thirdly, some of the provisions of environmental information disclosure are not scientific enough. For example, according to the current regulations, it is mandatory for “two-exceed” companies to disclose their environmental information—“enterprises with severe pollution and whose emission of pollutants exceeds the national or local emission standards, or whose total emission of pollutants is greater than the quota of total controlled emission determined by local government”. Listed companies, which are controlled strictly by the government, are not included in the mandatory list. In fact, as public companies, listed companies have greater obligation to disclose various kinds of important information to the public. “Measures” requires companies to disclose information based on the industrial characteristics rather than corporation scales, making a lot of companies escape from disclosing environmental information,<sup>3</sup> which violates the original intention of the “Measures”. Furthermore, the “Interim Measures for Information Report of Major Water Pollution Incident” and “National Emergency Plans for Handling Sudden Environmental Incident” and other documents take the economic losses caused by environmental pollution as one of the conditions to define sudden pollution incidents, such as “direct loss of water pollution over 10 million RMB” can be identified as a major water pollution incident. In practice, it takes time to count and calculate the economic loss which brings pretext for trouble-making corporations not to report the incident on time, becoming an institutional reason for delaying reporting.<sup>4</sup>

Finally, requirements on environmental information disclosure are not detailed enough for implementation. For example, the “Measures” does not distinguish businesses’ voluntary and mandatory environmental information disclosure, and the content is decided by the business itself. Companies tend to brag about their achievements in environment protection and keep silent about those may undermine their image or performance. In such cases, the released information may be one-sided, useless or even false, which is against the legislative intent.

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<sup>3</sup> Zhang X (2009).

<sup>4</sup> Gu M, Xu F (2011).

### ***3.2.2 In Terms of Law Enforcement, Weak Supervision by Government on Businesses' Environmental Information Disclosure***

The “Measures” stipulates that for mandatory disclosure, enterprises should release their environmental information on major local media and file for record to local environmental protection departments, and environmental protection departments shall have the right to verify the environmental information released by the enterprise; enterprises that voluntarily disclose environmental information may release to the public their environmental information on the media, internet or in the form of disclosure of their annual environmental reports. Environmental protection departments may grant certain rewards to the enterprises that voluntarily disclose information on their environmental behavior and comply with environmental protection laws and regulations. Therefore, according to the “Measures”, the authorities can only supervise enterprises through weak approaches such as “record” and “verification”, so it is difficult to ensure the authenticity and timeliness of the environmental information disclosure. Without unified standards and legal procedures, government’s rewards for enterprises that do voluntary disclosure may be arbitrary and lack of supervision intensity.<sup>5</sup>

### ***3.2.3 In Terms of Relief Right, Lacks of Effective Relief Approaches in Government Environmental Information Disclosure***

If citizens believe that an environmental protection department has failed to fulfill, in accordance with the law, its obligations in respect of open government environment information, they may report to the higher level environmental protection department. This is the approach of protecting their right to know about environmental information provided in the “Measures”. However, such behavior of the environmental protection department belongs to environmental administrative inaction, of which the public have right to initiate administrative litigation or administrative review, rather than simply report to the higher level. According to Article 26 of the “Measures”, if citizens, corporations and other organizations believe a specific administrative action of an environmental protection department in its open government environmental information work has infringed their lawful rights and interests, they may, in accordance with the law, apply for administrative review or institute an administrative lawsuit. However, the current “Administrative Procedure Law” only provides administrative lawsuit on administrative body’s infringement on personal and property rights, while access to

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<sup>5</sup> Zhang X (2009).

environmental information is a right to know. Under the existing regulations, violation of right to information can not directly lead to an administrative lawsuit. Meanwhile, for environmental protection authorities' unjustified refusal to provide environmental information, or providing incomplete and untrue environmental information which leads to the damage of party's personal or property rights, there is no clear provision in law of letting environmental protection authorities to shoulder compensation liability.

### **3.3 Measures to Improve China's Environmental Information Disclosure System**

Information disclosure is the first step to dispose environmental pollution accidents. Measures should be taken to improve China's environmental information disclosure system as follows:

#### ***3.3.1 Theoretically, We Should Focus on Public-Oriented Environmental Information Disclosure and Follow "Disclosure is Principle While Non-disclosure is Exception"***

First of all, no matter "National Emergency Plans for Handling Sudden Environmental Incident", or "Environmental Information Disclosure Measure" and even the newly revised "Water Pollution Control Act", all focus on the environmental information reporting system between businesses and government authorities and between different government organizations, while the publicity of environmental information to the common citizens is neglected. Information tends to be weakened and blocked in hierarchy of reporting process, and eventually the blind spots in the law become the barriers hindering environmental information to the public. One thing that needs to be pointed out is that reporting to different authorities step by step is not equal to information disclosure. Disclosure of environmental information should be public-oriented, because protecting and realizing the public's right to know is not only a prerequisite of reducing personal and property damage in environmental pollution accidents, but also an important approach to adopt public opinion, seek public engagement and jointly overcome the crisis.

Second, in practice, environmental information disclosure is often subject to the interests of business and government. Whether to disclose information or not, and what kind of information to be disclosed all depend on the need of government management and business operation. In the future, government officials and business manager must change ideas in considering the content, quantity and mode

of environmental information, taking firm stand not unilaterally from their own needs, but also protect the citizens' right to know and public interests. Under the principle that "disclosure is principle while non-disclosure is exception", information that can help protect citizens' right to know, limit businesses emissions, improve environmental management should be disclosed; environmental information which involving state secrets and commercial secrets can be kept secret only after administrative permission.

### ***3.3.2 Legally, We Should Extend the Scope of Body in Compulsory Environmental Information Disclosure and Refine the Content and Methods of Disclosure***

First, we should extend the scope of body in mandatory environmental information disclosure. According to the "Measures", mandatory disclosure is only limited to "two-exceed" enterprises. But the scope is too narrow in the long run. Listed companies must be included in the scope of compulsory disclosure to facilitate public access to more complete environmental information. To that end, Article 11 and Article 20 of the "Measures" must be modified accordingly to formulate the content and approach of listed companies in environmental information disclosure.

Second, we should substantiate the content of disclosed environmental information. According to the "Measures", the mandatory disclosed environmental information of "two exceed" enterprises is very limited, only including the name, address, corporate legal representative, the name of the major pollutants, mode, content and total volume of emission, information on emission that had surpassed the standards or total emission that had surpassed the prescribed limits, information on the construction and operation of their environmental protection facilities and emergency plans for sudden environmental pollution accidents, etc. From the public point of view, these four categories of information provided under the "Measures" can not satisfy the public's information needs. Many environmental accidents' impacts are long-term. Compared with the four categories of information, the public want to know whether the incident will bring potential, long-term harm, or threat to future personal and property safety. If the answer is definite, what measures should the public take to cope the incident, considered to be highly relevant to public's interests.

Finally, unreasonable provisions of existing regulations should be amended. As mentioned above in current laws, the economic loss caused by environmental pollution are considered as important conditions for defining an environmental pollution incident, which becomes an institutional barrier for timely reporting and disclosing. It is recommended that we should combine the sudden incident and data of excessive amount of pollutants as standards for defining environmental



pollution incidents, since data of excessive pollutants can be available shortly after sampling.<sup>6</sup> Once the data exceed the stipulated standards, the trouble-making enterprise must immediately inform the public major environmental information in order to control and minimize the damage.

### ***3.3.3 Practically, We Should Improve the Relief System of Environmental Information Disclosure in Pollution Incidents***

No remedies no rights. For violation of obligations in environmental information disclosure, government authorities should improve procedures of receiving complaints and administrative review, strengthen the judicial remedies simultaneously.

After an environmental pollution incident, if the pollution enterprise delays, covers up or fabricates environmental information, leading to damage or increasing damage of the victim, the victim can sue the pollution enterprise. According to current laws, units or individuals directly harmed in environmental pollution can turn to the people's court to seek compensation. In practice, the victim often requires immediate compensation to reduce losses. Since China has no special litigation procedures for environmental pollution incidents, and general civil litigations take long time, which rarely help the victim claim compensation easily.<sup>7</sup> In the Zijin Mining pollution incident, the fishermen would rather dump dead fish in front of the county government office and factories to protest the incident and require compensation, than sue the trouble-making enterprise. Therefore, special procedures for environmental pollution incident litigation have far-reaching importance for protecting victims' interests.

### ***3.3.4 Systemically, We Should Set up Coordination Mechanisms Between the Government and Enterprises, as well as the Government and NGOs in Environmental Information Disclosure***

First, we should set up coordination mechanisms between the government and enterprises in environmental information disclosure. The main body of environmental information includes government departments and enterprises. Except for environmental pollution caused by natural factors, most environmental pollution incidents are caused by improper discharge of pollutants. Since enterprises know

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<sup>6</sup> Gu M, Xu F (2011).

<sup>7</sup> Gu M, Xu F (2011).

environmental information better than any other type of organizations, they are important responsible parties in environmental information disclosure. The “Measures” underlines the importance of enterprises’ environmental information disclosure. Under current laws, enterprises’ environmental information disclosure can be mandatory and voluntary. “Two exceed” enterprises must conduct mandatory disclosure to the public in line with environmental information regulations. This mandatory disclosure is actually done by the government and enterprises together. The voluntary disclosure means that enterprises voluntarily disclose environmental information as an important approach of fulfilling corporate social responsibility and enhancing their green image. As a complement of the government’s environmental information disclosure, voluntary disclosure is widely encouraged in foreign countries. EU, the US and other developed countries have established effective systems of enterprises’ environmental information disclosure, while in China such system is still in its infancy. In the future, China should improve and perfect the system of enterprises’ environmental information disclosure which is coordinated with that of the government. This is an important trend of China’s development in environmental information disclosure system.

Second, we should set up coordination mechanisms between the government and NGO. Environmental protective NGO plays multiple roles in environmental information disclosure: NGO can supervise the information disclosure of government and businesses on behalf of the public, report violation of environmental information disclosure obligations or even file an administrative litigation for public interest. Besides, environmental protective NGO can provide part of environmental information to the public. Through further processing and sorting environmental information of government and businesses, NGO can present more understandable information to the public. Environmental protective NGO also plays a very important role in environmental education and training, raising public environmental awareness, helping and promoting public participation in environmental protection.<sup>8</sup>

In conclusion, the *12th Five-Year Plan* period will witness more environmental pollution accidents in China. To improve the environmental information system is only the first step to prevent environmental pollution incidents and establish an environmental emergency management system. Enterprise and government that refuse information disclosure and public supervision will become a natural breeding ground for the spread of contamination. Zijin Mining pollution incident reflects many problems in China’s environmental information disclosure. Reflecting on these issues, we should take effective measures to improve China’s environmental information system. Considering the special nature of sudden environmental pollution incidents, environmental information disclosure must be timely, accurate and complete in this process.

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<sup>8</sup> Shen J (2010).

## References

- Gu M, Xu F (2011) The study of corporate environmental information disclosure issues in sudden environmental pollution incidents. *J Changsha Railway Univ* 1 35
- Gu M, Xu F (2011) The study of corporate environmental information disclosure issues in sudden environmental pollution incidents. *J Changsha Railway Univ* 1 36
- Shen J (2010) On the governmental disclosure system of environmental information. *Nankai J* 2 55
- Zhang X (2009) On the corporate environmental information disclosure system. *Rural Econ* 2 125
- Zhu Q (2007) On the environmental information publicity of sudden environmental pollution event. *Sci Law* 3 158