

Air Pollution Prevention and Control in Beijing, Tianjin, and Hebei: Mr. Lin vs. Botou City EPB

Case Facts

Ms. Li, a New York Times journalist based in Beijing, is reviewing a case of conflicting interests among the owner of a coal-fired boiler, the nearby residence and the city EPB, caused by the increasingly stringent control on air pollution.

In this case, Mr. Lin owned a factory in Botou City, a county-level city in Cangzhou Municipality, Hebei Province. His factory was powered by its own coal-fired boiler, which was also used for residential heating for the nearby compound of 2500 residents. The capacity of this electricity-generating boiler was over 65 steamed tons/hour, so, by the categorization in the national standards, the boiler must meet “The Emission Standard of Air Pollutants for Thermal Power Plants (GB 13223-2011).” This emission standard prescribes two groups of emission limits – the first relatively loose one applies to ordinary areas while the second more stringent one (i.e. the special emission limit) applies to critical areas for air pollution prevention and control. Because Cangzhou was not prescribed as a critical area in the notice of the former Ministry of Environmental Protection (MEP) on February 27, 2013¹, Mr. Lin’s boiler only needed to comply with the relatively loose emission limit. Mr. Lin had the legal pollutant discharge permit to use the boiler and emit within the limit.

However, as the efforts of combating air pollution in Beijing-Tianjin-Hebei (Jing-Jin-Ji) and surrounding areas ramped up, the requirement for Mr. Lin’s boiler also became more stringent.

On January 16, 2018, the former MEP included Cangzhou Municipality in the critical areas covering “2+26” municipalities to comply with the special emission limit from October 1, 2018 in “The Notice on Implementing Special Emissions Limits in Jing-Jin-Ji Atmospheric Pollution Transport Corridor Municipalities”² (hereafter referred to as the Notice on Implementing Special Emissions in “2+26” Municipalities). This means that Mr. Lin’s boiler would need to meet the more stringent standard in GB 13223-2011 from October 1, 2018. Unfortunately, the on-spot inspection of the local EPB officials on August 28, 2018 showed that the emission from Mr. Lin’s boiler exceeded the special emission limit.

Afterwards, on July 11, 2018, the central government established a new leadership working group focusing on air pollution prevention and control in Jing-Jin-Ji and surrounding areas.

Then, on September 27, 2018, the Ministry of Ecological Environment (MEE) issued the “The Comprehensive Management Action Plan for the 2018-2019 Autumn and Winter Air Quality in Jing-Jin-Ji and Surrounding Areas”³ (hereinafter referred to as the Critical Action Plan). Amongst others, the Critical Action Plan required that relevant provinces (municipalities) submit to the

¹ 关于执行大气污染物特别排放限值的公告（环境保护部公告 2013 年 第 14 号）
http://www.mee.gov.cn/gkml/hbb/bgg/201303/t20130305_248787.htm.

² 关于京津冀大气污染传输通道城市执行大气污染物特别排放限值的公告（环境保护部公告 2018 年 第 9 号）
http://www.mee.gov.cn/gkml/hbb/bgg/201801/t20180119_429997.htm.

³ 关于印发《京津冀及周边地区 2018-2019 年秋冬季大气污染综合治理攻坚行动方案》的通知（环大气[2018]100 号）
http://www.mee.gov.cn/gkml/sthjbgw/sthjbwj/201809/t20180927_630570.htm.

working group:

- A list of comprehensive boiler regulations to be submitted by the end of October 2018;
- Enterprises relying on coal-fired boilers which would undertake rectification measures before the end of October 2018.

Following the instructions in the Critical Action Plan, the comprehensive boiler regulations developed by Botou City included, amongst others:

- The elimination of the single coal-fired boilers with the capacity below 65 steamed tons/hour by the end of September 2018;
- New regulations on boilers with the capacity over 65 steamed tons/hour. This category of boilers must complete rectification measures to meet “The Emission Standard of Air Pollutants from Boiler (GB13271-2014)” or “The Emission Standard of Air Pollutants for Thermal Power Plants (GB 13223-2011)” based on their own categories by the end of September 2018;
- In order for industrial-production boilers to stay connected to the heating-grid, they must meet the regulations by the end of September 2018. Those who were unable to meet the standards within the required time period would be shut down⁴.

As a result, Mr. Lin’s boiler faced the possibility of being shut down if not rectified by the end of September 2018. This, however, was not for a lack of trying on Mr. Lin’s part. In 2015, he procured new equipment to reduce the emissions from the boiler. Yet, the local EPB officials informed Mr. Lin that he had to purchase and install additional equipment to meet the new standard. After calculating the price of the new equipment and the loss from suspending operation for equipment installation, Mr. Lin found out that the cost of rectification would exceed the expected annual income from the factory over year 2019.

Mr. Lin felt that it was unreasonable to ask factories owners like him to meet the stringent requirement at their own expenses, especially on short notice. He would like to push back on the decision of the EPB.

In addition, the connection of the neighboring compound to the central heating facility in the city would not be able to complete in time for the winter 2018/2019. So, the residents, including many of Mr. Lin’s family members and friends, would depend on the boiler in his factory as the only source of winter heating.

The local EPB officials, on the other hand, faced a great pressure to enforce the Critical Action Plan. In fact, all the relevant provinces (municipalities) involved in the Critical action Plan had to make a progress report by the 5th day of each month to the leadership working group. The local EPB officials must give top priority to complying with the Critical Action Plan to secure the careers of their own and their leaders.

Ms. Li would like to write an article based on this case to explore the conflicts in the legal and policy

⁴ “Shutting down” corresponds to the Chinese word “关停”, which means stopping operation for a period of time or forever.

frameworks of China's air pollution prevention and control. She first needs to conduct a legal and policy analysis of the case.

Case Introduction

Mr. Lin owned a factory in Botou City, Cangzhou Municipality, Hebei Province. The factory had a coal-fired boiler, which not only generated electricity for production in the factory, but also provided the only available source of winter residential heating for a compound with 2500 residents near the factory. In 2018, Cangzhou Municipality was included in the critical areas for air pollution control to comply with the special emission limit, so Mr. Lin's boiler must meet a new standard that was more stringent. On August 28, 2018, the local EPB inspected the factory and concluded that the emission from Mr. Lin's boiler exceeded the special emission limit. Mr. Lin was ordered to install new equipment to meet the new standard. The cost of new installation would exceed the annual income from the factory. In addition, Botou City developed comprehensive boiler regulations after the Ministry of Ecological Environment (MEE) issued the Critical Action Plan to manage 2018-2019 autumn and winter air quality in Jing-Jin-Ji areas. According to the regulations of Botou City, the rectification of Mr. Lin's boiler must be completed before the end of September 2018, and the EPB would order the boiler to be shut down otherwise.

Relevant Legal Codes and Policies

➤ Law

Environmental Protection Law of the People's Republic of China (2014 Revision) [Article 16]

Atmospheric Pollution Prevention and Control Law of the People's Republic of China (2018 Amendment) [Article 7, 39, 40, 99]

Measures for Pollutant Discharge Permitting Administration (For Trial Implementation) (Revised) [Article 58]

Administrative License Law of the People's Republic of China [Article 8]

Legislation Law of People's Republic of China [Article 95]

Administrative Reconsideration Law of the People's Republic of China (2017 Amendment) [Article 6,7,10]

Administrative Litigation Law of the People's Republic of China (2017 Revision) [Article 12, 25, 29]

Rules of Public Complaints of Hebei Province [Article 18]

➤ Policy

The Emission Standard of Air Pollutants from Boiler (GB13271-2014) 锅炉大气污染排放标准

The Emission Standard of Air Pollutants for Thermal Power Plants (GB 13223-2011) 火电厂大气污染排放标准

Regulations on the Handling of Official Documents by Party and Government Organs (July 1, 2012) 党政机关公文处理工作条例 (中办发[2012]14号)

the Notice on Implementing the Special Emissions Limits (February 27, 2013) 关于执行大气污染物特别排放限值的公告 (环境保护部公告 2013年 第14号)

The Notice on Implementing Special Emissions Limits in Jing-Jin-Ji Atmospheric Pollution Transport Corridor Municipalities (January 16, 2018) 关于京津冀大气污染传输通道城市执行大气污染物特别排放限值的公告 (环境保护部公告 2018年 第9号)

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The Comprehensive Management Action Plan for the 2018-2019 Autumn and Winter Air Quality in Jing-Jin-Ji and Surrounding Areas (September 27, 2018) 关于印发《京津冀及周边地区2018-2019年秋冬季大气污染综合治理攻坚行动方案》的通知（环大气[2018]100号）

Measures of Heat Supply and Consumption in Hebei Province 河北省供热用热办法（2013）（河北省人民政府令（2013）第7号）

Instruction of Prohibiting One-Size-Fit-All Enforcement in Ecological and Environmental Administration in Hebei Province 河北省严格禁止生态环境保护领域“一刀切”的指导意见（冀气领办〔2018〕238号）



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