

# **Chinese Plan Environmental Impact Assessment Regulations 2009**

Translated by Kai-Yi Zhou

## **Chapter 1 General provisions**

### Article 1

The objective of these regulations is to strengthen Plan Environmental Impact assessment (PEIA), improve scientific rationality of planning, avoid environmental pollution and ecological degradation from the beginning, and promote economic, social and environmental development in a harmonious way.

### Article 2

1. PEIA should apply to plans developed by relevant ministries and commissions of the State Council, governments and their departments of administrative level above municipal with district<sup>1</sup> regarding land use, regional development, watershed and marine development, construction and utilization ('comprehensive plans'), and industry, agriculture, animal husbandry, forestry, energy, water resources, transport, urban construction, tourism and natural resources ('special plans').

2. Subject to Para. 1 Art. 2, the detailed scope of sectors to which PEIA applies will be drafted by the competent authority of environmental protection (CAEP) of the State Council jointly with relevant ministries and commissions of the State Council, and implemented after the State Council has ratified it.

### Article 3

PEIA application must comply with the principles of objectivity, openness and impartiality.

### Article 4

1. The State will develop a system to make PEIA information publicly available.

2. Governments and their departments whose administration level is municipal with districts and above shall make PEIA information publicly available.

### Article 5

The costs of PEIA application should be part of the budget for the development of a proposed plan. PEIA-related expenditure must be strictly supervised and audited.

### Article 6

Any organization or person has the right to report activities that breach these Regulations, or any plan implementation that has significantly adverse environmental impacts to the planning examination approval authority (PEAA), planning authorities or the CAEP. After any relevant departments have received a report, they should investigate and manage the case according to regulations.

## **Chapter 2 Assessment**

### Article 7

Planners should apply PEIA during the course of plan-making.

### Article 8

The PEIA should analyze, predict and evaluate the following:

- 1) Likely cumulative effects on relevant regional, river basin and marine areas due to the implementation of the plan;
- 2) Likely long-term effects on the environment and communities due to the implementation of the plan;
- 3) The relationship between economic, social and environmental benefits; and current and long-term benefits due to the implementation of the plan.

#### Article 9

1. When applying PEIA, relevant environmental protection standards and PEIA technical guidelines and technical specifications should be complied with.

2. The Technical Guidelines of PEIA are formulated by the CAEP of the State Council jointly with relevant ministries and commissions of the State Council. The Technical Specifications of PEIA<sup>2</sup> are formulated by ministries and commissions of the State Council according to the Guidelines. A copy of the Technical Specifications should be sent to the CAEP of the State Council to serve as a record.

#### Article 10

1. When drafting a comprehensive plan, an environmental impact chapter or note should be compiled on the likely environmental effects of implementing the plan.

2. When drafting a special plan, an environmental impact report (EIR) should be compiled before the plan is submitted for approval. When drafting a conceptual (or directive) plan for a special plan, an environmental impact chapter or note should be compiled subject to Para. 1 Art. 10.

3. A conceptual (or directive) plan in Para. 2 is a kind of special plan mainly addressing development strategies.

#### Article 11

1. An environmental impact chapter or note shall contain the following:

- 1) Analyses, prediction and assessment of the likely environmental effects of plan implementation, including an analysis of carrying capacity, analysis and prediction of adverse environmental impacts, and analysis of the environmental compatibility of the plan with other relevant plans;
- 2) Counter measures and solutions that can avoid or reduce adverse environmental impacts, mainly including policies, management measures and technical measures.

2. In addition to the above contents, the EIR should contain the conclusions of the PEIA process, including the environmental rationality<sup>3</sup> and feasibility of the draft plan, the rationality and feasibility of counter measures and solutions for avoiding and reducing adverse environmental impacts, and suggestions for how to adjust the draft plan.

#### Article 12

The planner or organization in charge of PEIA applications should compile the environmental impact chapter or note, or the EIR. The planner is responsible for the quality of the document.

#### Article 13

1. For special plans that may have adverse environmental impacts and directly involve the interests of the public<sup>4</sup>, before the plan is submitted for approval, the planner should publicly solicit comments and suggestions on the EIR from institutions concerned, experts and the public through

questionnaires, fora, meetings and/or hearings. These requirements do not apply to plans that have been legally classified<sup>5</sup>.

2. If institutions concerned, experts and the public have major divergence on the conclusions of the EIR, the planner should make further contacts by hearings, meetings etc.

3. The EIR submitted for approval should document comments or suggestions made by the public, state whether they have been adopted or not, and explain the reasons for doing so.

#### Article 14

To make significant changes or revisions to a plan's implementation area or period of application, or the scale, structure and layout of a plan which has been formally approved, the planner should re-apply PEIA or apply PEIA to the changes according to these regulations.

### **Chapter 3 Examination**

#### Article 15

When a planner submits a draft comprehensive plan or a conceptual plan of a special plan for examination and approval, the environmental impact chapter or note should also be submitted as a part of the plan to the PEAA. Where a draft plan is submitted without an environmental chapter or note, the PEAA should require the planner to supply this. If the planner does not supply this, the PEAA shall not examine and approve the plan.

#### Article 16

When planner submits a draft special plan, the plan's EIR should also be submitted to the PEAA. If an EIR is not submitted, the PEAA should require the planner to supply this. If the planner does not supply this, the PEAA shall not examine and approve the plan.

#### Article 17

1. For special plans that only local governments at or above the level of municipal with districts have the authority to examine and approve, before the examination and approval procedure may begin, the CAEP of the sector that the given special plan belongs to should convene an EIR examination team comprised of experts and representatives from relevant departments to examine the given plan's EIR. The team should provide written conclusions.

2. For special plans that only provincial governments and above have the authority to examine and approve, the EIR examination and approval process and procedure is formulated by the CAEP of the State Council working with ministries and commissions of the State Council.

#### Article 18

1. The members of an EIR examination team should be selected randomly from a number of experts in relevant topic areas within the national statutory expert database.

2. Those experts that participated in the compilation of the EIR are not eligible to be the members of the team.

3. More than half of the members of the EIR examination team should be experts. If the number of experts is fewer than half, the examination conclusions made by the team are not valid.

#### Article 19

1. The members of an EIR examination team shall prepare written EIR examination conclusions, basing these on their objective, fair and independent judgments. During the course of the EIR examination, the PEAA, the planner and the organization that convenes the team shall not intervene.

2. The EIR examination conclusions shall include the following:

- 1) The authenticity of the original materials and data used;
- 2) The rationality of the assessment methods used;
- 3) The reliability of the environmental impact analysis, prediction and evaluation;
- 4) The reasonability and effectiveness of the adopted counter measures and solutions for avoiding or reducing adverse environmental impacts;
- 5) The rationality of explanations of the reasons for whether comments and suggestions made by the public have been adopted;
- 6) The scientific rationality of the conclusion of the PEIA process.

3. The EIR examination conclusions should be agreed and signed by three-quarters of the members of the examination team. If members of a team have different opinions, those opinions should be truthfully documented and reported.

#### Article 20

If the following conditions occur, the EIR examination team shall suggest that an EIR must be revised and the revisions should be re-assessed:

- 1) in-authenticity of the original materials and data;
- 2) irrationality of the assessment methods used;
- 3) the analysis, prediction and evaluation of adverse environmental impacts is not correct and not thorough, therefore further examinations are required;
- 4) the adopted counter measures and solutions for avoiding or reducing adverse environmental impacts have serious flaws;
- 5) the conclusions of the PEIA process are unclear, unreasonable and wrong;
- 6) the EIR does not include an explanation of the reasons for whether comments and suggestions made by the public have been adopted, or the explanation for why comments and suggestions made by the public were not adopted are clearly unreasonable.
- 7) the contents of the EIR have other serious flaws and omissions.

#### Article 21

The EIR examination team shall not approve an EIR where:

- 1) according to current levels of knowledge and technological conditions, it is very difficult to come to a scientific judgment on the scale and extent of adverse environmental impacts caused by the implementation of a plan;
- 2) the implementation of the plan may cause significantly adverse environmental impacts and there are no feasible prevention or mitigation measures and solutions.

#### Article 22

1. When the PEAA examines and approves a draft special plan, its final decision should be made mainly based on the conclusions of the EIR and the conclusions of the EIR examination.

2. If the PEAA does not adopt the conclusions of an EIR and the comments and suggestions made by the EIR examination team, the PEAA shall provide written explanations for each individual conclusion, comment or suggestion of why it was not adopted, and those written explanations should be archived for future examination. Institutions concerned, experts and the public have the right to apply to review those explanations. These requirements do not apply to plans that have been legally classified<sup>6</sup>.

#### Article 23

If a plan that has undergone PEIA includes specific construction projects, when project EIAs are carried out for construction projects under the plan, the conclusions of the PEIA should be seriously taken into account and the contents of the project EIAs could be simplified based on the outcomes of the PEIA.

### **Chapter 4 Follow-up assessment**

#### Article 24

Soon after a comprehensive plan or a special plan which is likely to have significant adverse impacts on the environment<sup>7</sup> has been implemented, the planner should organize follow-up assessment for the PEIA. The planner should report on the outcomes of the follow-up assessment to the PEAA, and inform departments concerned including the environmental protection authority.

#### Article 25

The follow-up assessment of a PEIA should include the following contents:

- 1) comparative analysis and evaluation between those environmental impacts that actually occur due to the implementation of a plan and those environmental impacts documented in the EIR;
- 2) analysis and evaluation of the effectiveness of those counter measures and solutions adopted in the plan aimed at preventing or reducing adverse environmental impacts;
- 3) the public's comments on environmental impacts associated with implementation of the plan;
- 4) conclusions of the follow-up assessment.

#### Article 26

During the course of PEIA follow-up assessment, the planner should organize questionnaires, on-site interviews, hearings and/or other methods to solicit opinions from relevant departments, experts and the public.

#### Article 27

The planner should identify remedial measures without delay if significant adverse environmental impacts have been identified during the course of plan implementation; report the event to the PEAA, and inform the relevant departments including the environmental protection authority.

#### Article 28

Where the CAEP identifies significant adverse environmental impacts occurring during the course of plan implementation, the CAEP should re-check the findings without delay. Once confirmed, the CAEP should put in place improvement measures or suggest revisions to the adopted plan to the PEAA.

#### Article 29

After the PEAA receives a report from the planner or suggestions from the CAEP, the PEAA should organize a formal discussion, and the adopted plan should be reformulated or new mitigation measure should be put in place.

#### Article 30

If the total emissions of a key pollutant exceed the national limit or regional limit within the implementation area of a given plan, the examination and approval of EIR of new plans that increase the concentration of the key pollutant within the area should be suspended.

### Chapter 5 Legal liabilities

#### Article 31

If, during the course of a PEIA application, a planner practices fraud or is negligent of their duties, and this causes the PEIA process to be seriously inconsistent with facts, punishments should apply to the person in charge and other personnel with direct responsibilities in conformity with legal provisions.

#### Article 32

Where the PEAA is responsible for the following, punishments should apply to the person in charge and other personnel with direct responsibilities in conformity with legal provisions:

- 1) Approval is granted to a comprehensive plan or a conceptual plan of a special plan for which an environmental impact chapter or note should have been compiled according to law but was not;
- 2) Approval is granted to a draft special plan for which an EIR should have been compiled according to law but was not; or to a draft special plan whose EIR has not be examined by the EIR examination team.

#### Article 33

1. Where the authority that brings together an EIR examination team practices fraud or misuses its power during the course of an EIR examination, and this causes the PEIA process to be seriously inconsistent with facts, punishments should apply to the person in charge and other personnel with direct responsibilities in conformity with legal provisions.

2. Where a PEIA process is seriously inconsistent with facts due to fraud or neglect of duty by any experts of the EIR examination team, the CAEP in charge of developing the national statutory expert database shall remove the experts from the database and make an announcement to this effect. If representatives from the departments concerned practice similar activities, punishments should apply according to law.

#### Article 34

Where an EIR is seriously inconsistent with facts due to fraud or neglect of duty by any PEIA consultants, the CAEP of the State Council should circulate a notice to this effect. The fine is more than one time and below three times the consultation fee. If the PEIA consultants' activities constitute a crime, responsibility for the crime should be investigated according to law.

### Chapter 6 Supplementary provisions

Article 35 Provincial level governments will require their lower level governments to apply PEIA to their plans according to the local situation. Detailed application measures shall be formulated by provincial governments according to the provisions of the EIA Law and these regulations.

#### Explanatory notes by Kai-Yi Zhou and Riki Therivel (not part of the regulations)

1. The levels of Chinese administration are: national, provincial, municipal with districts, municipal without districts, and village.
2. The technical guidelines are for the whole country. The technical specifications vary by sector.

3. The term 'rational' comes up several times in this legislation. Its meaning should be defined by the government in future official explanations.
4. The legislation does not specify who decides whether a plan will have significant impacts and involves the public interest.
- 5, 6. The legislation does not specify what plans are legally classified, or how they become legally classified.
7. The legislation does not specify who decides whether a plan will have significant adverse impacts on the environment.