



绿色追求 稳步前行

GREEN AND MEAN

中国政府大力整顿污染行业，包括要求工厂关闭及搬迁，但部分地方政府过于简单化的做法可能给制造业发展带来不良影响。作者：**Paul Davies、Bridget Reineking及Andrew Westgate**

THE CENTRAL GOVERNMENT'S CRACKDOWN ON POLLUTERS, INCLUDING FACTORY SHUTDOWNS AND RELOCATIONS, IS NECESSARY, BUT THOUGHTLESS ATTEMPTS BY SOME LOCAL GOVERNMENTS MAY AFFECT THE MANUFACTURING INDUSTRY, WRITE

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过去十年，中国快速建立了稳健的现代环境监管体制，包括因2014年《环境保护法》（《环保法》）所引发的对整个政策框架的彻底修订、对排放与排污许可的不断改革、为修复污染土地施加法律责任的新《土壤污染防治法》草案，以及2017年世界最大排污权交易制度的启动。

随政策变化一同而来的还有不断增长的公众意识和对环境问题的重视（尤其是空气污染与食品安全问题）以及中央政府对环境法律持续有力的执行。2014年，国务院总理李克强向环境污染正式宣战。2017年10月，环境保护作为“习近平思想”的一部分纳入中国共产党

China has made rapid strides in developing a robust, modern environmental regulatory system in the past decade. This progress includes a policy framework overhaul triggered by the Environmental Protection Law (EPL) in 2014, an ongoing reform of emissions and discharges permitting a new draft Soil Pollution Law to impose liability for remediation of contaminated land, and the launch of the world's largest emissions trading system in 2017.

Policy evolution has been accompanied by both growing public awareness and a focus on environmental issues – air pollution and food safety in particular – and the central government's increasingly

的官方意识形态，并在中国共产党第十九次全国代表大会上被写入党章。

不断增强执法力度的一个重要方面就是关闭工厂，在“对污染之战”中身负重任的监管者越来越频繁地采取这种办法。本文分析了中国工厂关闭背后的驱动力，以及公司如何才能为强制执行做好准备并免受损失。

重拳出击

过去几年见证了中国历史上在环境方面采取的最严厉措施。2015年7月，对这些措施的计划就已经开始，当时中央全面深化改革领导小组发布了《环境保护督察方案（试行）》。《督察方案》要求对全国31个省市自治区所有的污染企业与未能执行环境法的地方官员进行视察。同年，当时新上任的环保部部长陈吉宁郑重承诺，环境保护法不会是“纸老虎”，而是“有钢牙利齿的利器”。2015年年底，政府开始了四轮全国环境视察中的第一轮，最后阶段在2017年10月第十九次全国人民代表大会开始之前结束，上万家工厂暂时关闭。据估计，2017年全国曾一度有40%左右的工厂被迫关闭；据报道，仅河北、



vigorous enforcement of environmental laws. China's Premier, Li Keqiang, declared war on pollution in 2014, and finally, in October 2017, environmental protection was enshrined in official Communist Party ideology as part of "Xi Jinping Thought" – which was added to the party constitution at the 19th National Congress of the Communist Party of China (CPC).

One of the most significant aspects of this stepped-up emphasis on enforcement has been factory closures, which have been employed with increasing frequency by regulators tasked with fighting Premier Li's "war on pollution." This article analyzes the drivers behind factory shutdowns in China and the steps companies can take to prepare for, and protect themselves against, enforcement action.

A HEAVY HAND

The past few years have featured some of the largest environmental crackdowns in Chinese history. Planning for these crackdowns began in July 2015, when the Central Leading Group for Comprehensively Deepening Reforms issued a trial Environmental Protection Supervision and Inspection Plan. This inspection plan called for inspections across all of China's 31 provinces, targeting both polluting factories and local officials failing to enforce environmental law.

That same year, Chen Jining, then the newly appointed Minister of Environmental Protection, vowed that environmental law would not be a "paper tiger", but a "sharp weapon with teeth of steel". The government then launched the first of four nationwide environmental inspections at the end of 2015, with the last phase – in which tens of thousands of factories were temporarily shut down – ending shortly before the 19th National Congress.

Some estimates suggest that about 40% of the country's factories were forced to shut down at some point in 2017, and as many as 70,000 factories were reportedly shut down in the provinces of Hebei, Henan and Shandong alone.

These facility closures have become a major challenge for local and multinational manufacturers in China. Many small and medium-sized enterprises have been slow to adapt to the new wave of environmental regulations, and because smaller manufacturers often emit greater quantities of pollutants per unit of production, they have become a focus for regulators.

But even companies with state-of-the-art emissions control systems and robust compliance programmes have encountered difficulties due to shutdowns of their suppliers and customers, particularly those located in or around certain sensitive regions such as Beijing, and especially during the winter season, when ambient air pollution levels are typically higher.

Furthermore, because Chinese emissions limits are often enforced at the level of industrial parks, if the park as a whole does not meet emission targets, the government may order all park facilities to lower emissions or temporarily cease operations. Examples of these types of shutdowns in the past few years include:

- April 2016, the local government ordered all 28 companies located in Hai An Chemical Industrial Park in Haiyan, Jiangsu province to cease operations and address waste gas emissions that had led to odour problems and complaints from local residents. The majority of factories in the park were required to suspend operation immediately, and facilities were given three days to comply.

最高领导人定下了相当进取的目标,但终究负责执行的还是省和地方环保局

Chinese environmental policy has been driven in large part by ambitious goals set by top leadership ... but is primarily implemented by provincial and local [bureaus]

河南和山东三省就有多达七万家工厂关闭。

工厂被迫关停,使当地厂商和在华跨国厂商苦不堪言。许多中小型厂家因应对新一轮环保监管压力不佳,单位产能污染较高,成为当局重点打击的对象。另一边,配备最先进排污控制系统和严格遵守排放标准的企业,在供应商和客户接连倒闭的情况下也无法幸免——位于北京或附近敏感地区的企业在冬季周边污染水平相对较高时情况更为严峻。再者,中国的污染物排放限额一般是以工业园区为单位,园区总体不达标,政府有权要求区内全部厂家减少污染物排放甚至暂停作业。过去几年就发生了多次政府关停事件:

- 2016年4月,江苏省海安市政府下令要求海安工业园区内28家企业停业整顿废弃排放所产生的异味和处理附近居民的投诉。园内几乎所有厂家要即时停业并在三天内整顿。
- 2016年7月,商丘市政府下令要求商丘市梁园产业集聚区内全部200家企业(包括国药集团、康师傅和九牧王等知名上市企业)即时停产以执行当地的大气污染排放目标。监管机构虽然表示这只是暂时性的,但市政府通知内并没有明确关闭期限。该命令产生了极大的争议性,最终在同日被收回。尽管停产的实际影响范围不明,但一刀切的手法和当局朝令夕改,揭示了一部分地方政府在执法上存在不确定性。
- 2016年12月,地方与中央政府联合调查后,稷山工业园区内所有工厂被下令停业整改废水、废气及固体废物问题。政府报告表明无法遵守排放标准的企业将不获准恢复作业并无限期停业。
- 2017年1月,广东省环境保护厅下令关闭狮西工业区新业路一带多个聚集印刷厂的工业园,直至厂家整顿好监管当局发现的环境违规问题为止。
- 2017年12月,监管机构发现滨海经济开发区沿海工业园和江苏省另外36个工业园区违反了敏感受体的距离规定,下令在2018年12月底前通过拆迁敏感受体、改建园区,或者迁移或改造园区设施来完成整改。监管机构表明,如果有关问题没有得到处理,这些园区的许可将被撤销。

- July 2016, the local government ordered all 200 companies located in the Shangqiu City Liangyuan Industry Concentration Park (including well-known public companies such as Sino-pharmacy, Kangshifu and Jiumuwang) to suspend production immediately to meet local air pollution targets. Although regulators indicated to companies that the suspension was temporary, the government's notification did not specify a time period for the shutdown. The order proved quite controversial, and was revoked later the same day. Although the scope of the actual shutdown is not clear, the extreme shutdown order and its sudden revocation showed the uncertainty in some local governments' enforcement efforts.
- December 2016, after a joint local and central government investigation, all manufacturing plants in Jishan Chemical Industrial Park were required to suspend operations and rectify waste water, waste gas, and solid waste pollution issues. Further, a government report indicated that enterprises unable to ensure compliance with applicable emission standards would not be allowed to resume operations and would be suspended indefinitely.
- January 2017, the Guangdong Environmental Protection Bureau announced a shutdown of several industrial parks housing printing plants along Xin Ye Road in Shixi Industrial Area, until the plants rectified environmental violations the regulators had identified.
- December 2017, regulators found the Binhai Economic Development Area Coastal Industrial Park, and another 36 industrial parks in Jiangsu province, to be in violation of distance requirements from sensitive receptors. Regulators ordered the parks to resolve the violation by the end of December 2018, through relocation or removal of the sensitive receptors, park reconfiguration, or relocation or repurposing of park facilities. If the violations are not rectified, regulators have indicated they will rescind the authorizations of the industrial parks.

POLICY AND FACTORY SHUTDOWNS

Chinese environmental policy has been driven in large part by ambitious goals set by top leadership at the State Council and the Ministry of Environmental Protection (MEP), but is primarily implemented by provincial and local Environmental Protection Bureaus (EPBs). For example, China's highest policy making body, the State Council, issued the Action Plan for Air Pollution Control and the Action Plan for Water Pollution Control in 2013 and 2015, respectively.

Each plan established requirements for 10 types of pollution control methods related to air and water pollution. Because the MEP lacks the staff to effectively monitor the entire country, enforcement falls primarily to local officials, who have come under increasing pressure to enforce environmental laws and achieve environmentally based performance goals.

The EPL, for example, provides that government officials who fail to properly supervise regulated companies may face demotion, financial penalties or even criminal sanctions. The central government investigated more than 18,000 Chinese officials during the latest environmental crackdown in 2017.

The MEP conducted these latest investigations in conjunction with the Communist Party's primary anti-corruption task force, the Central Commission for Discipline Inspection. This co-operation



关厂的政策因素

中国之所以大刀阔斧整治环保，主要是因为国务院和环境保护部最高领导人定下了相当进取的目标，但终究负责执行的还是省和地方环保局。国务院分别在 2013 年及 2015 年发布了《国务院关于印发大气污染防治行动计划的通知》和《国务院关于印发水污染防治行动计划的通知》，各自列出了十项大气和水污染防治相关要求。由于环境保护部缺乏人手无法对全国进行有效监管，执法的重任主要落在地方官员身上，导致他们承受的环保整治目标压力越来越大。

《环境保护法》规定，政府官员如没有对受规管企业进行适当监管，可被降职、罚款或被追究刑事责任。单在 2017 年的环保整治中，中央政府就对 18,000 余名中国官员进行了调查。最近，环境保护部还联手大力打贪的中国共产党纪律检查委员会对官员进行调查，凸显出加大环保执法力度与国家主席习近平大力打贪两者的重叠。目前，除了 GDP 增长外，政府官员的表现还依据大气质量和其他环境指标进行评核，后两者有时甚至要比前者更加关键。《国务院关于印发水污染防治行动计划的通知》更将污染物控制设备的政府资金投入与计划的执行情况挂钩，鼓励企业主动配合执法。

为了达到领导人定下的目标，地方环保局和官员纷

highlights the overlap between increased environment enforcement and President Xi's larger anti-corruption campaign.

The performance of government officials is now also assessed on the basis of air quality and other environmental metrics in addition to, and sometimes more prominently than, GDP growth. The Action Plan for Water Pollution also ties funding for pollution control equipment to implementation of the plan to incentivize active enforcement.

In order to meet their ambitious targets, local EPBs and officials have sought broad regulatory powers to ensure compliance. For example, draft revisions to environmental protection regulations issued in April 2016 for Shanghai included a provision allowing project approvals to be suspended in counties, townships and industrial parks that exceed emissions targets.

Jiangsu province also issued a plan to “shut down a series of chemical industrial factories, relocate a series of chemical industrial factories, upgrade a series of chemical industrial factories, and restructure a series of chemical industrial factories” (the Four Series Plan).

EPBs and officials have also targeted particular industries for more stringent emission limits and potential shutdowns. The Action Plan for Water Pollution, for example, targets facilities engaged in paper-making, coking, nitrogenous fertilizer, nonferrous metals, printing and dyeing, agricultural and byproducts processing, the manufacture of active pharmaceutical ingredients, tanning, pesticide, and electroplating for regulatory scrutiny and potential closure.

Enforcement actions in China have also historically been tied to major events of national significance. Prior to the Beijing Olympics in 2008, cars were restricted by licence plate number in Beijing, and factories in surrounding provinces were shuttered for several months leading up to the games to maximize the chances of clear skies. Similar efforts before the Asia-Pacific Economic Co-operation (APEC) meeting in Beijing in 2014 led locals to coin the term “APEC blue” for the colour of the sky during the period that surrounding factories were shut down.

More recently, authorities have begun to issue policies relating to lower production limits or shutdowns in the winter, when older, district-wide heating systems are activated, leading to visible increases in ambient air pollution. In September 2017, the MEP, the National Development and Reformation Commission (NDRC), and the Ministries of Public Security, Finance, Housing and Urban-Rural Development, Industry and Information Technology, and Transportation, as well as six provincial-level governments, issued the Action Plan for Comprehensive Control of Air Pollution in Autumn and Winter for 2017-2018 in Beijing, Tianjin, and Hebei provinces and Surrounding Areas.

The plan established industry-wide production limits during the heating season (typically from 15 November to 15 March) for industries including steel making, coking, foundry, construction materials, non-ferrous metals, and chemicals, in addition to strengthening emissions control requirements. Based on this action plan, local governments in the region are issuing more detailed lists of industries and companies that will be required to curtail or temporarily cease production.

纷寻求广泛的监管权力以确保企业守规。2016年4月上海发布的《环境保护法》修订草案中就订明，超出污染物排放目标的县、市或工业园，其项目许可可被撤销。江苏省也发布了“关停一批、转移一批、升级一批和重组一批”化工企业专项行动（四个一批）。

环保局和官员对某些行业更采取有针对性的和严格的污染物排放限额和闭厂标准。《国务院关于印发水污染防治行动计划的通知》就重点针对造纸、焦化、氮肥、有色金属、印染、农副食品加工、原料药制造、制革、农药、电镀等行业进行监管并要求不及格企业关厂。过往还有一些中国执法行动是为了筹备重要的全国大型活动。2008年北京奥运会开幕前北京实施单双号限行，附近省份的工厂在奥运开幕前数月暂停生产，希望以蓝天迎接奥运。2014年亚太经合组织会议举办前北京也采取了类似措施，当地居民以“APEC蓝”这个新词来形容闭厂期间出现的晴朗天色。

近期，当局的政策目标主要是降低冬天百姓使用老旧供暖系统（导致大气质量明显恶化的原因之一）高峰期的工厂生产限额或在冬天闭厂。2017年9月，环境保护部、国家发展和改革委员会、公安部、财政部、住房和城乡建设部、工业和信息化部、交通运输部与六个省政府联合发布《京津冀及周边地区2017-2018年秋冬季大气污染综合治理攻坚行动方案》，在采暖季节（一般由11月15日至3月15日）对钢铁、焦化、铸造、建材、有色金属和化工等行业实施限产及提高排放管控要求。京津冀当地政府将根据该行动方案发布详细的限产或停产行业和公司清单。

拆迁令

近日，中国政府宣布，基于安全隐患和环境污染考虑，下令拆除包括北京和上海在内等大城市的郊区或工业园区内多类企业的厂房，迁移到远离市中心的工业园区，反映中国政府已经意识到停工停产只是权宜之计。2011年，国家安全生产监督管理总局公布了行动计划，要求危险化学品生产企业在2015年底将厂房搬迁到工业园区。更近期，国务院发布《国务院办公厅关于推进城镇人口密集区危险化学品生产企业搬迁改造的指导意见》。上述行动计划规定，无法遵守严格排放要求的企业，须要将生产设施搬离人口密集区（例如民居和商业区）。该行动计划原则上规定所有中小企和从事高危行业的大型企业在2020年底前搬迁厂房。2025年底前，所有危险化学品生产企业必须将厂房迁移到配套专业设施的工业园区。

《指导意见》要求地方政府提供财政补贴，支持搬迁行动，并减免赋税，补贴成本，同时要求银行及金融机构通过借贷与鼓励债券发行提供支持。同时，中国《国有土地上房屋征收与补偿条例》规定，建筑业主不仅可根据建筑的价值获得赔偿，还可根据生产损失与搬迁费用获得补贴。某些情况下，该补偿计划效果显著——2015年11月，上海和黄药业与上海政府签署土地补偿协议，协议规定其子公司可收到1.131亿美元赔偿款，以放弃其市内工厂余下三十五年土地使用权，搬迁到郊区一处价值9500万美元的工厂内。

RELOCATION ORDERS

The central government has recently issued policies calling for the relocation of entire classes of companies away from the outskirts or industrial sections of major cities like Beijing and Shanghai to specialized industrial parks far from urban centres, due to safety hazard and environmental concerns.

These policies suggest that the government recognizes that temporary shutdowns are a stop-gap solution. In 2011, for example, the State Administration of Work Safety issued a plan requiring companies manufacturing hazardous chemicals to relocate to chemical industrial parks by 2015. More recently, the State Council issued a Guiding Opinion on Pushing Forward the Relocating and Transforming of Hazardous Chemical Manufacturing Companies Located in Densely Populated Urban Areas.

The plan calls for enterprises located in densely populated areas, such as residential and commercial areas, to relocate their facilities unless they can meet strict emission limits. In principle, the plan requires all medium and small enterprises, and large enterprises in high-risk industries, to relocate by the end of 2020. By 2025, all companies manufacturing hazardous chemicals must relocate to industrial parks equipped for this purpose.

The guiding opinion calls for local governments to support relocation efforts by offering financial support for relocation, and offering tax breaks to offset the costs, and for banks and financial institutions to offer support through lending and encouraging bond issuances.

China also has a national Regulation on the Expropriation of Buildings on State-owned Land and Compensation, which entitles the owners of a building to compensation for not only the value of the building, but also for production losses and relocation costs. In some cases, this compensation scheme appears to have worked well; Shanghai Hutchison Pharmaceuticals reached a land compensation agreement with the Shanghai government in December 2015, under which it would receive US\$113.1 million in subsidies to give up its remaining 35 years of land use rights at a site within the city and relocate to a new US\$95 million factory in the suburbs.

Implementation, however, remains uneven. Many cash-strapped local governments may have trouble offering meaningful compensation to factories forced to relocate. For example, in an implementing regulation issued in December 2017, the government of Yunnan province issued a plan to implement the guidance, which proposed to offer compensation of just RMB200-300 (US\$32-48) per square metre of the facility's footprint.

As a result of funding shortfalls, implementation has proceeded very slowly, with many facilities identified for relocation in provincial implementation plans not even having started the process of moving for lack of capital, despite a deadline less than three years away. Unless funding for relocation of such facilities can be secured, either through government assistance or through lending institutions, some facilities may simply shut down and not reopen.

In comparison with national relocation policies, which are generally financed by the central government and enforced systematically across an industry, provincial EPBs have usually required certain non-compliant factories to relocate at their own cost.

然而，政策的实施并不均衡。许多政府缺乏资金，可能无法向被迫搬迁的工厂发放实质性补偿。例如，2017年12月发布的一则实施条例中，云南省政府公布了《指导意见》的实施方案，方案提出仅按照每平方米200-300元人民币为工厂设备进行补偿。由于经费不足，实施进程十分缓慢，距离最后期限还有不到三年，但许多省级实施方案中已明确需要搬迁的工厂仍因缺乏资金尚未开始动工。这些工厂的搬迁资金必须得到解决，不管是通过政府援助还是金融机构借贷，否则一些工厂将直接关闭，不再重开。

国家拆迁政策一般由中央政府资助，并在行业内系统实施，然而省级环保局要求某些不合规工厂自行承担其搬迁费用。例如，江苏省南通市当地环保局将南通新高印染有限公司列入《大气污染防治重点项目清单》，责令其于2017年搬迁改造，但并无经济支持或当地政府赔偿。因此，该公司设备被迫停产、搬迁，费用自行承担。

适应监管环境

在中国经营的公司无法消除监管性停产的风险及不可预测性，但可采取积极措施减少并减缓监管所带来的影响。首先，公司应适应监管环境及当地监管者的政策指令。符合目前的监管要求还不够，公司还应“居安思危”，预测监管者下一个重点监管领域。第二，公司不只应明确其自身监管合规义务，还应了解其搬迁地址所在的工业园区的排放限制或排放要求。尽管公司无法控制其周边工厂是否在适用限制内，但其可以提高自身预测监管者将在何时或以何理由限制生产的能力。

第三，公司应鉴别并聘用熟悉当地监管者措施及该地区人员的当地法律顾问。中国的执法活动中，当地监管者的工作重点与行动方向具有很强的不确定性，因此，与当地关系熟悉与否对于应对执法行动至关重要。第四，公司应为员工准备并培训应急方案，以处理突击监管检查及其后果。

幸运的是，尽管工厂面临大范围关闭，但有信号表明环境保护部已意识到工厂的突然关闭引发了诸多问题，并对中国作为世界制造商的领先地位造成潜在影响。中国环境保护部政策法规司司长别涛表示，环境保护部“反对部分地方采取简单、粗暴的方法”，并将关闭工厂称为“不负责任的滥作为”。尽管与美国国家环境保护局等机构相比，中国环境保护部人员短缺，但环境保护部提高了对各地方环保局的监督，加强了对各环保局的控制，同时，工厂关闭也可能成为未来工作的重点。跨国企业应同环境保护部合作，支持其为提高中国环境法执法的透明度与一致性所做的努力。▲

For example, Nantong Xingao Dyeing, of Nantong City, Jiangsu province, was put on a Key Pollution Rectification Project List by the local EPB and subsequently ordered to relocate in 2017, with no apparent financial support or compensation from the local government. As a result, the company was forced to wind down production at its facility and relocate at its own expense.

ADAPTING TO REGULATORY ENVIRONMENT

Firms operating in China cannot eliminate the risk and unpredictability of regulatory shutdowns, but they can reduce and mitigate the effects by taking proactive measures. First, companies need to be attuned to the regulatory environment and local regulators' policy directives. Compliance with current regulations is not enough – firms need to “see where the ball is going” in order to anticipate regulators' next area of focus.

Second, companies need to understand not only their own regulatory compliance obligations, but also any emission limits or requirements that apply to the industrial park or district in which they are located. Although firms cannot control whether their neighbouring facilities stay within the applicable limits, they can increase their ability to anticipate the periods or reasons for which regulators will seek to curtail production.

Third, companies need to identify and engage competent local counsel who are familiar with the regional personnel and the practices of the local regulator. Because local priorities and the discretion of local regulators drive so much of the uncertainty in enforcement activity in China, these relationships and a local familiarity can prove critical in preparing for, and responding to, enforcement actions.

Fourth, firms should prepare and train employees on response plans to handle surprise regulatory inspections and the aftermath of such inspections.

Fortunately, despite the widespread use of factory shutdowns, there are indications that the MEP is aware of the issues created by unpredictable closures and the potential impact on China's position as the world's preeminent manufacturer.

The director general of the MEP's department of law and policy, Bie Tao, has stated that the MEP “opposes reckless law enforcement by simply shutting down polluting companies”, and has called such shutdowns “irresponsible and capricious”.

Although the MEP remains understaffed in comparison to agencies such as the US Environmental Protection Agency, the agency has increased its oversight and authority over local EPBs, and factory shutdowns may become a focus of this effort in the future. Multinationals should engage with the MEP to support its efforts to increase transparency and consistency in Chinese environmental law enforcement. ▲

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