

# Towards an integrated environmental permit in China

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## IMPACT PARAGRAPH

Industrial production processes account for a considerable share of the overall pollution in China, as well as in Europe, due to their emissions into the air, water, and land. Different approaches to controlling emissions into the air, water, or soil separately bear the risk of being ineffective to combat the pollution as a whole: when pollution is eliminated in one media, there is a risk that the pollution will increase in another media. In order to combat the hydra-headed orge of pollution, the legal framework that attempts to implement integrated pollution prevention and control using the permit instrument was adopted in 1996 at the EU level and in 2020 in China. This research aims to examine to what extent the new regulatory design of the emissions permit system in China, considering the EU regulatory experiences towards integration and seen from the perspective of the specific Chinese situation, provides possibilities for or barriers to the implementation of integrated pollution prevention and control. It was found that China's emissions permit system, which establishes a single permit procedure regulating emissions into the air, water, and land by a single authority in the manner of a combined use of a generic approach and a case-specific approach to environmental trade-offs, has been a major step towards achieving an integrated approach, but some challenges still exist. The rules that require concrete levels of environmental quality to be achieved for specific media with the emissions permit system are vague and thus will not necessarily ensure the environmental effectiveness of integration. Furthermore, the vague rules that allow for flexibility for case-specific trade-offs may also lead to permitting authorities not choosing the best solution for a high level of environmental protection. Binding generic requirements, particularly the emission standards serving as the minimum requirements for emissions control under the China's emissions permit system, would legally eliminate the choice for an integrated approach in case-specific situations.

From an academic perspective, this research may contribute to a deeper understanding of the concept of an integrated environmental permit from a legal perspective. Most of the legal literature addressing the concept of integrated

environmental permits focus on discussing how integrated pollution control might be achieved. This study is one of the few studies that investigates how the EU emissions permit system for implementing integrated pollution control came about and it is the first study that examines how the emissions permit system has been developed in China for implementing integrated pollution control. Primarily, this study has demonstrated that a combined use of a generic approach and a case-specific approach to environmental trade-offs is necessary for implementing an integrated approach, and it suggests that the flexibility given to permitting authorities on the basis of the vague rules is not a perfect way to provide opportunities for case-specific trade-offs. In this vein, more opportunities for case-specific decision-making need to be explored without compromising the level of environmental protection. Furthermore, a low number of permitting procedures, a low number of authorities involved in the permitting process, and a clear competence structure may establish a good prerequisite for the substantive integration of permit decision-making that seeks and applies the optimal environmental control techniques to ensure the protection of the environment as a whole, but this cannot necessarily ensure that such substantive integration will be achieved.

From a broader societal perspective, the findings of this research are particularly relevant for the Chinese legislator since the Standing Committee of the National People's Congress plans to adopt an environmental code.<sup>908</sup> Codification is one of the main legislative techniques used to achieve internal integration, but whether internal integration will truly be achieved depends on how the provisions, such as those for the emissions permit system, within one code will be designed. By now, there is no relevant case law supporting an integrated approach yet. It remains to be seen whether this research may also serve as inspiration for judges when interpreting China's emissions permit system.

Furthermore, the 14th Five-Year Plan of National Economic and Social

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<sup>908</sup> Standing Committee of the National People's Congress, 2021 Legislative Plan of the Standing Committee of the National People's Congress, published on 16 April 2021.

Development and the Outline of 2035 Long-Term Plan Targets of the People's Republic of China emphasized an integrated approach to pollution control.<sup>909</sup> Since this research provides for an explanation of the rationale for an integrated environmental permit, together with a critical reflection of the current state of affairs of the integrated emissions permit in China, it can serve as useful guidance for the government to implement this plan. Moreover, this research might also be helpful for the ENGOs that focus on and are willing to comment on regulatory instrument choices to be made by the Chinese government, particularly in light of achieving a high level of environmental protection as a whole.

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<sup>909</sup> National People's Congress, the 14<sup>th</sup> Five-Year Plan of National Economic and Social Development and the Outline of 2035 Long-Term Plan Targets of the People's Republic of China (in Chinese: 中华人民共和国国民经济和社会发展第十四个五年规划和 2035 年远景目标纲要), 11 March 2021, chapter 38.