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Rebecca Bratspies  
*CUNY School of Law*

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# **The Devil in the Details: A Reaction to Wu Changhua's *Improving the Legal and Policy Foundation for Public Access to Environmental Information in China***

Rebecca M. Bratspies\*

In this important essay about Chinese public disclosure law, Wu Changhua explores the role that public disclosure of information plays in developing a law-based society. She begins from two premises: that an informed citizenry is essential to democracy, and that openness in government is essential to accountability. From this vantage point, Wu explores a topic that goes to the heart of the relationship between the state and its citizens—the rights of citizens to obtain information held by their government. This question of public access to information implicates the very contours of citizenship and to some extent defines the nature of the state. As such, this question is one that all governments struggle with, and China is no exception. It is no small task to transform the culture of a government from one of secrecy to one of openness, and Wu makes a case that this process is already well underway in China.

Drawing heavily from the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, (which, incidentally, neither China nor the United States has signed), Wu identifies a

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\* Associate Professor of Law, CUNY School of Law. Thanks to Marcia Mulkey for organizing a fascinating roundtable workshop.

series of public goods that she claims are enhanced when a state promotes public disclosure of information. These public goods or virtues can be roughly divided into three categories: 1) sovereign virtues; 2) enterprise virtues; and 3) civic virtues. Wu opines that public disclosure will pressure regulators to keep timely and accurate records and that such disclosure can also be a tool to reduce corruption (sovereign virtues). She suggests that public disclosure will create incentives to improve performance and/or to innovate, and that such disclosure offers an opportunity to engage in comprehensive management (enterprise virtues). Finally, and perhaps most importantly, Wu articulates a belief that public disclosure promotes citizen empowerment (civic virtues). That is a staggering load to assign to citizen participation, and Wu appears cognizant of that fact. Given China's unique historical circumstances, Wu's central focus is on the conundrum of whether an effective regulatory regime is a prerequisite for public disclosure or whether public disclosure mechanisms can be a tool to build a clear and enforceable regulatory regime. A chicken-and-egg problem extraordinaire!

Against this theoretical backdrop, Wu introduces her readers to the most recent developments in Chinese law that she claims will move China away from its current default—that all government information belongs to the state—towards more openness and transparency. Wu describes a series of new Chinese laws and policy instruments intended to create rights of access to information and/or duties to disclose. She highlights the strengths and weaknesses of the various instruments, though she could have done more to flesh out the institutional and ideological obstacles to their full implementation.

Wu's primary example of China's new embrace of public participation, the Greenwatch Program, ought to raise some questions about the directions of China's future legal development. Greenwatch is a color-coded series of labels assigned to industries based on their compliance with environmental laws and regulations. Wu claims that Greenwatch "provides government-certified performance information in a format that is easy for the media to report and the public to understand." (p. 13)

One particular advantage Wu identifies is that the Greenwatch Program points consumers and activists to companies with superior performance. Wu's theory is that consumers armed with Greenwatch information will reward these environmentally-friendly companies and will punish those with poor environmental records. She describes the possibility of a virtuous cycle where public disclosure catalyzes cooperation between government, industry, and civil society to develop rigorous programs that further the goals of environmental protection and good governance.

It is easy to overstate the power of informal public pressure to transform society, and to underestimate the transaction costs and logistical hurdles to concerted action that frequently prevent consumer preferences from dictating market success or failure. Moreover, it is tempting to ascribe too much transformative power to information. The oft-repeated saw that "information is power" has undeniable truth, but it presupposes a system of responsive government and an empowered citizenry. Informal public pressure cannot replace a rule of law. Thus, Wu's focus on effective regulation alongside effective disclosure is particularly welcome, as is her recognition that public disclosure must be complementary to, rather than in lieu of, government enforcement.

Under Greenwatch, the Chinese public is certainly provided with more environmental information than before, and in an easy-to-understand format. Wu reports promising results from a Zhenjiang pilot program that suggests that Greenwatch has real potential to encourage increased compliance with existing environmental regulations. Replicating the Greenwatch Program's Zhenjiang successes on a wider scale will require strong political support from the Chinese government and the Communist Party.

The devil, of course, is in the details. Greenwatch may be as successful as Wu claims in increasing environmental compliance. As a model for public disclosure and transparency, however, Greenwatch seems to have some notable failings. There is no public participation in the color assignment process; citizens have no voice in determining what the criteria will be for any of the color categories; and there is no process by which concerned citizens may challenge the Greenwatch color that was assigned to any particular factory or industry. It is thus not clear how the virtues Wu ascribes to public disclosure of information are actually advanced by the Greenwatch Program. Wu hints at similar failings in many of China's new instruments guaranteeing access to information.

Despite these caveats, Greenwatch represents a step toward closing the gap between the theory and implementation of public disclosure in China. As such, it is a welcome improvement over a China in which concerned citizens can obtain no information about the environmental record of nearby facilities. While China still struggles to enshrine a governmental commitment to the rule of law, cynicism about those struggles should not blind readers to the very real progress that these new laws and regulations represent. Enacted law often takes on a life of its own, and these legal guarantees of public access to information may well foreshadow a Chinese government in which that right is respected. Breathing life into a legal regime is no easy task, and in this interesting and informative article, Wu highlights some of China's most pressing challenges if it is to develop in a fashion that ensures a healthy environment for its vast and growing population.

