

**A COMPARATIVE ANALYSIS OF THE
1997 ENERGY CONSERVATION LAW OF CHINA
AND
THE IMPLEMENTING REGULATIONS OF
SHANDONG, ZHEJIANG, AND SHANGHAI**

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BACKGROUND

The Energy Conservation Law of the People's Republic of China (ECL or "national law") and provincial/municipal (hereinafter "subnational") regulations promulgated pursuant to the ECL (thus far in Shandong, Zhejiang, Shanghai) are, overall, characterized by (1) vague, aspirational language, (2) lack of clear division of government responsibility, and (3) insufficient detail on enforcement mechanisms. Nonetheless, certain duties and general policy positions can be ascertained from them. This report will first provide some background on Chinese law, the context within which these regulations sit. A discussion of differences between the three sets of subnational regulations follows. Throughout this report the Shandong regulations will be referred to as SDR, Zhejiang regulations as ZJR, and Shanghai regulations as SHR.

The vagueness of language one immediately notices upon reading the ECL and its subnational regulations is not unique to the ECL. It is a familiar feature in much of Chinese law, including important Chinese environmental laws, such as the 1989 Environmental Protection Law and the 1987 Air Pollution Prevention and Control Law.¹ Harvard law professor William Alford writes of Chinese environmental laws:

Significant elements of many major Chinese environmental measures seem more akin to policy statements than laws. The vagueness of these laws makes it difficult to determine just what is prohibited; consequently, it is unclear whether they have the potential to curtail specific behavior, demarcate government discretion, and provide predictability for business.²

This vagueness, according to some interviewed for this report, is a product of compromise over controversial issues and an unwillingness by drafters and passers of the law to commit government bodies, national and local, to hard obligations that almost certainly would not be followed.³ A primary issue during the drafting process was that legal duties to invest in energy conservation/efficiency measures would force local governments and companies to incur financial obligations that could be harmful or crippling to local economies.⁴ China's different regions vary

¹ See William P. Alford and Yuanyuan Shen, *The Limits of the Law in Addressing China's Environmental Dilemma*, ENERGIZING CHINA: RECONCILING ENVIRONMENTAL PROTECTION AND ECONOMIC GROWTH (Ed. M. McElroy, et al.) (hereinafter LIMITS OF LAW) for a discussion of the difficulties of addressing environmental problems in China through legal means.

² See *id.* at 412.

³ Interviews with Mr. Shi Yingyi and Dr. Xin Dingguo, both of Beijing Energy Efficiency Center (BECON) (hereinafter SHI/XIN INTERVIEWS). Dr. Xin was involved in the drafting of the national Energy Conservation Law.

⁴ *Id.*

greatly in their economic development. A softer law allows less developed regions time to improve economically without the financial burdens of legally mandated energy conservation.⁵

One crucial vagueness in the law is the frequent use of the word “should” (*ying* or *yingdang*), rather than the stronger “shall” or “must” (*bixü* or *dei*). In the translations of the regulations provided by South-North Center for Sustainable Development, the translators used “should” and “shall” interchangeably to translate the Chinese word *yingdang*. However, in a number of places the regulations use the stronger word, “must,” (*bixü*).⁶ My understanding of the Chinese language is that *yingdang* is definitely weaker than *bixü*. This suggests two possible explanations: (1) the different words all mean “shall” and require that a task or duty be followed; or (2) the use of different words is meaningful, the weaker language reflecting legislative compromise over controversial matters. A reading based on Western legal principles (assuming my reading of the plain meaning of the language is correct) suggests that the latter explanation is more plausible.

The status of subnational regulations in the Chinese system is not as straightforward as in countries with a more developed rule of law. The subnational regulations are only one source of law within a complex web of numerous other sources of Chinese law. Regulations passed by people’s congresses at the subnational level are only one of some eleven sources of law in the Chinese legal system. Sources of Chinese law are listed in the table below.⁷

SOURCES OF CHINESE LAW

1	Constitution of the PRC
.	
2	International agreements to which China is party
.	
3	Basic laws (<i>jiben fa</i>) enacted by the National People’s Congress (NPC), China’s highest legislative body
.	
4	Other laws (<i>faliü</i>) issued by the NPC’s Standing Committee (the ECL is an example of this)
.	
5	Standing Committee interpretations of the Constitution and basic laws (<i>lifa jieshi</i>)
.	
6	Regulations and other documents having the force of law (<i>xingzheng fagui</i>) issued by the State Council, China’s highest administrative body
.	
7	Ministerial regulations, national standards (<i>guojia biao zhun</i>), and rules (collectively, <i>bumen guizhang</i>) issued by national

⁵ *Id.*

⁶ *e.g.*, Shandong regulations, Article 10.

⁷ LIMITS OF LAW, *supra* note 1, at 407.

.	ministries and commissions
8	Interpretations issued by the State Council, national ministries and commissions, the Supreme People's Court and the Supreme People's Procuracy
9	Regulations issued by subnational level people's congresses and their standing committees (<i>difang fagui</i>) (the Shandong, Zhejiang, and Shanghai regulations are examples of these)
10	Regulations and legal orders issued by the executive branch of subnational level people's governments (<i>difang zhengfu guizhang</i>)
11	Individual cases decided by the Supreme People's Court and courts at lower levels

Central - Subnational Conflicts of Law

The relationship between subnational regulations and national laws in China is a bit different than in a federal system like the United States. Since China is organized as a unitary state, lower level regulations promulgated by provincial and lower level governments are only valid if they are consistent with central regulations and enactments.⁸ In practice, it is not clear how conflicts of law would be resolved. Chinese law does not provide a mechanism for resolving such conflicts.⁹ It does not have a framework such as the United States' *Erie Doctrine* for resolving vertical conflicts of law.

Enforcement

Another difficulty lies in the implementation and enforcement of laws. Vertical structural tensions in the organization of the Chinese government - from national all the way down to local level - allow for great disparity between how the central (and provincial) governments expect firms and local government bodies to behave and how they in fact do behave.¹⁰ The source of the tension is that local officials theoretically must follow the central government; however, because funding and career support is typically controlled locally, local government bureaus, agencies, and officials are, in practice, much more influenced by the people's government at their own level than the central government.¹¹ Local authorities are typically responsible for enforcement of the national and subnational regulations; at the same time, however, local authorities and governments often have financial stakes in companies that might be affected by environmental regulations. To the extent that environmental regulations are seen as in conflict with economic development, enforcement/implementation may be difficult.

⁸ See *id.* at 407.

⁹ See *id.*

¹⁰ See *id.* at 414.

¹¹ See *id.* at 415.

Environmental or Economic Law

The national Energy Conservation Law is not primarily an environmental law, nor is it primarily an economic statute. Ostensibly it is meant to further both goals. Indeed, Article 1 of the ECL states that the law is formulated to “achieve economic benefits, protect the environment, secure national economic and social development and meet the everyday requirements of people’s lives.” Whether those who implement the law see it as primarily an economic or environmental law will likely affect the manner in which it is implemented.

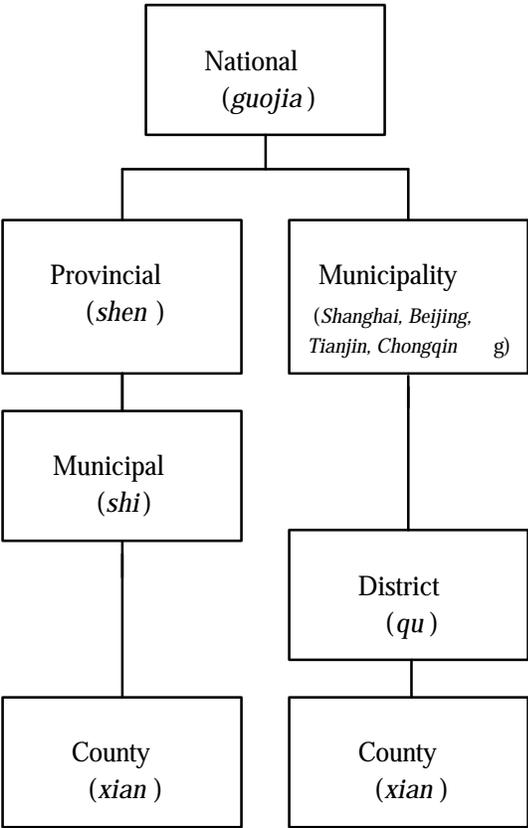
A number of signs point to the law being designed first and foremost to enhance the economy and only secondarily as an environmental statute. The placement of “achieve economic benefit” before “protect the environment” is a preliminary indication. More telling is an article released by Vice-Premier Wu Bangguo on December 30, 1997, only days before the ECL’s effectiveness date. The article, entitled “Conscientiously Study and Implement the Energy Conservation Law and Earnestly Change the Method of Economic Growth,”¹² focuses for the most part on the ECL as a tool for economic growth - the importance of a reliable energy supply to economic development and the role of energy conservation in improving enterprise efficiency. Environmental concerns are mentioned only briefly in one paragraph. The article concludes with the following sentence: “The promulgation of this law will surely play a great promotional role to the development of China’s economy.” If the law is officially recognized as mainly to enhance economic growth, then it seems likely (given the vague, loose language) that energy conservation will be given short shrift to the extent that it serves environmental aims at the expense of economic growth. If the law was formulated primarily to overcome electricity shortages common in China a few years ago, then the present electricity surplus in China may be an indication that the ECL will be given “back-burner” status.

Subnational Government Structure

As background to the references in the regulations to various levels of government, the chart below shows the multi-tiered structure of the Chinese governmental structure. Below national level, China is organized by provinces with the exception of four municipalities (Shanghai, Beijing, Tianjin, Chongqing) that sit at the same organizational level as provinces. These municipalities should not be confused with the municipal governments just below provincial level.

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XINHUA NEWS AGENCY DOMESTIC SERVICE, December 30, 1997 (translated from Chinese in *Vice-Premier Wu Bangguo Calls for Energy Conservation*, BBC SUMMARY OF WORLD BROADCASTS, January 10, 1998).



STRUCTURE OF THE REGULATIONS

The subnational regulations basically track the organizational structure of the national law. The Shandong and Zhejiang regulations exactly copy the chapter structure of the ECL. The Shanghai regulations are organized a bit differently, but cover the same substance as the other regulations. The regulations address five basic areas:

- **General Policy Statements** (“General Provisions” in ECL)
- **Government Duties and Responsibilities** (“Energy Conservation Management” in ECL)
- **Limits on Energy-Users** (“Rational Utilization of Energy” in ECL)
 - behavior of key-energy consuming organizations
 - standards for energy-using products
 - standards for high energy-consuming manufacturing processes
 - guidelines for residential and commercial energy use
- **Technological Research and Innovation** (“Technological Progress of Energy Conservation” in ECL)
- **Enforcement Powers and Penalties for Violations** (“Legal Liability” in ECL)

The Shanghai regulations place in one chapter (Chapter Two) provisions for both (1) government management of energy conservation and (2) energy utilization of energy-using entities and energy-using products. Furthermore, the Shanghai regulations place all provisions aimed at promoting the implementation of energy conservation (which are scattered throughout the other regulations) into one chapter (Chapter Four, “Measures of Guarantee for Energy Conservation”). This chapter includes provisions for funding, awards programs, media cooperation, and so forth. The Shanghai regulation chapters on general policy, technological innovation and legal liability track the national law.

KEY PROVISIONS

a. *Government Responsibility*

The regulations provide some general guidance on government responsibility; however, the language is quite vague as to the specific demarcation of responsibility amongst government bodies. The overarching “administrative department of energy conservation” designated in each regulation set is listed in the table below.

	Administrative Departments of Energy Conservation (at each level above county level)
Shandong	Economic and Trade Commission, or Economic Commission (SDR, Art. 5)
Zhejiang	Planning and Economic Administrative Department, or Economic Administrative Department (ZJR, Art. 5)
Shanghai	Shanghai Municipal Economic Commission (overall supervision and management), and Shanghai Energy Conservation Supervisory Center (day-to-day supervision and penalty assessment) (SHR, Art. 8)

The departments of planning, finance, technical supervision, environmental protection, statistics, science and technology, and sectoral departments (*e.g.*, construction, agriculture, industrial and commercial administration) above county level are instructed to work with the administrative department of energy conservation at the same level to further energy conservation (SDR, Art. 6; ZJR, Art. 5; SHR, Art. 8, 9).

b. *Government Duties*

All of the regulations create a number of concrete duties for applicable government bodies. Below is a summary and discussion of these duties.

Funding

Each set of regulations contains an energy conservation funding provision (SDR, Art. 11; ZJR, Art. 7; SHR, Art. 34). They all require that the provincial/municipality governments allocate a portion of their capital construction (*jiben jianshe*) and technical retrofit (*jishu gaizao*) funds to create a separate energy conservation fund. The Shandong provision requires that governments below provincial/municipality level also draw energy conservation funds *specifically* from capital construction and technical retrofit funds. The Zhejiang and Shanghai provisions require energy conservation funds at subprovincial levels, but do not specify from which specific other funds they are to be drawn.

The Shanghai regulations only require district and county governments to create energy conservation funds “in accordance with actual conditions.” This is an example of the sort of soft legal language that appears throughout the regulations. According to some interviewed for this

report, this language provides governments with a very flexible means to justify minimal funding for energy conservation (for economic or other reasons).¹³ That is, “in accordance with actual conditions” may be legislative-speak for “implement only if economic conditions allow.” This flexible language seems to be implicitly incorporated in the Zhejiang and Shandong regulations anyway because the national regulations at Article 11 use the same “in accordance...” language when referring to the obligations of subprovincial levels of government. The Shanghai provision may simply be reiterating an obligation already created by the national law.

The Shandong regulations also require that funds be drawn from scientific research (*kexue yanjiu*) and technology development (*jishu kaifa yu tuiguang*) funds. The Zhejiang regulations (at Art. 23) require a separate research and development fund to be drawn from the scientific research (*kexue yanjiu*) fund at each governmental level. Mr. Shi and Dr. Xin of BECON were skeptical that the scientific research funding provision had any teeth. They both indicated that local governments could theoretically fulfill the provision by concocting an energy conservation purpose for any research project, whether it has an actual energy conservation project or not.

- *Use of Funds*

All three sets require that the fund be used for energy conservation purposes. The Zhejiang provision is notable in requiring that the fund be used “exclusively” for these purposes. The Zhejiang and Shanghai provisions furthermore require the promulgation of regulations governing the usage of the energy conservation fund. The Shanghai provision is the stronger of the two, requiring that the regulations ensure “rational and effective allocation” of the fund. The Zhejiang provision calls for regulations to govern the fund., but does not designate a specific standard that these regulations must meet.

The Shandong funding provision is the weakest of the three. First, the allocation fund is to be made “in light of the requirements of energy conservation.” The meaning of this language is unclear, but could plausibly mean that no energy conservation funding is needed in times of energy surplus. Second, the Shandong provision does not require the creation of regulations governing the usage of the energy conservation fund. The Zhejiang funding provision, with its “exclusively” language and requirement for fund management regulations, is arguably the strongest of the three.

- *Implementation Status*

According to Dr. Xin of BECON, the national level energy conservation fund (pursuant to ECL, Art. 11) has already been created. It is not clear whether the subnational funds have been yet been created.

Project Approval

All three sets of regulations require that feasibility studies (a required step in government project approval) include information on energy consumption (SDR, Art. 10; ZJR, Art. 8; SHR,

Art. 12). The projects are to be evaluated for compliance with standards of energy usage and energy efficient design. The regulations differ in the following respects:

	Project Approval Provisions
Shandong	Projects exceeding 2,000 tons of standard coal or 2 million kWh of electricity must be referred to a “qualified consulting institution” for energy consumption evaluation.
Zhejiang	Projects with annual energy consumption exceeding 3,000 tons of standard coal “shall be reviewed by energy conservation administrative departments above county level” for compliance with energy conservation standards.
Shanghai	“High energy-consuming projects” are to be referred to consulting agencies for energy consumption evaluation.

Other Government Duties

The regulations set forth a number of other duties for various government bodies. These duties are set forth in the table below. The table below can be used to identify subnational regulations expansions on the national law. Any rows that do not contain an ECL article represent subnational expansions on the national law. Note that there only five such rows in this “government duties” section. Also note that the only duties for which all four sets of law have provisions are those in which the national law specifically calls for action at subnational levels.

Government Duty (government levels given duty in the national law: only national level unless otherwise specified)	ECL	SDR	ZJR	SHR
Formulate energy conservation design and construction standards	12			
Create list of prohibited industrial projects	13	9		
Enforce against operation of prohibited industrial projects			9	
Formulate general energy conservation standards	14	13	12	
Set limits for energy consumption (during manufacture) per physical unit of product (at and above provincial level)	16	14	15	13
Create list of energy-consuming products to be terminated.	17	15		
Energy saving products certification process	18	16		
Energy consumption and utilization statistics and statistical reports (at and above county level)	19	18	14	16
Regulations for key energy consuming institutions (at and above county level)	20, 28, 29	19	17-19	19, 20
Preferential policies for energy conservation		12		

projects and products				
Product energy consumption limits		17	10	
Government commendation and awards system for energy conservation promotion (at and above county level)	7	8	8	37
Management regulations for energy conservation in buildings and municipal utilities		27		
Preferential government policies for investment in energy efficient products development				35

Zhejiang has a unique provision that gives the government the right to entrust monitoring of energy utilization to so-called “energy utilization monitoring institutions” (Art. 11). Another unique Zhejiang provision is Article 13, which requires key industrial sectors to adopt energy conservation measures and report energy usage to the technical supervision department. Shanghai regulations contain a unique provision (Art. 23) concerning energy conservation test and verification services. These organizations appear to play a role in enforcement of energy conservation/efficiency standards.¹⁴

The Zhejiang and Shanghai provisions contain provisions addressed to third-parties’ roles in energy conservation. ZJR, Article 13 and SHR, Article 39 contain provisions requiring “relevant industrial [or sectoral] association and social institutions” to provide consulting services to energy-consuming organizations and submit energy conservation suggestions to the government. Both sets of regulations also contain provisions directing the press to support and publicize energy conservation (ZJR, Art. 6; SHR, Art. 40).

- *Implementation Status*

Dr. Xin of BECON provided the following information on the status of implementation at the national level.

- *National standards of energy conservation (general and design):* Some of the standards have been created pursuant to ECL, Articles 12 and 14. The State Bureau of Technical Supervision is responsible for formulating these standards.
- *List of prohibited industrial projects:* This list (pursuant to ECL, Art. 13) has been created by the SETC.
- *Production energy consumption limits per physical unit of product:* These limits (pursuant to ECL, Art. 16) have not yet been set at the national level. The State Bureau of Technical Supervision is responsible for these standards.
- *Statistical gathering and reporting:* The State Bureau of Statistics is responsible for this task (pursuant to ECL, Art. 19) at the national level.

c. *Provisions Affecting Energy Users*

The provisions governing non-government entities are a hodge-podge of measures with variation amongst all three sets of regulations. The Shandong regulations most closely track the national law (often with even identical article numbers), but also expand quite a bit on the national law.¹⁵ The Zhejiang regulations are the most spare of the three. Note that the subnational regulations expand on the national law to a greater degree here than with government duties.

¹⁵ One potential contradiction in the Shandong regulations: The Shandong provision (Art. 24) that fines for exceeding energy quotas go to the provincial energy conservation fund seems to contradict SDR, Article 51, which requires that all fines be “submitted to the national

Duties	ECL	SDR	ZJR	SHR
<i>Energy-Consuming Institutions</i>				
<i>Keep and submit statistics on energy consumption</i>	22	23	16	16
<i>Create or improve “responsibility system of energy conservation”</i>	23	23	16	
<i>Comply with limits and quotas on energy consumption</i>	24	24	10	14
<i>No production or marketing of products prohibited by state and province</i>	25	25		33
<i>Retiring of equipment prohibited by the state and province</i>	25	25		27
<i>Upgrading of equipment not meeting state and provincial standards</i>		25		27
<i>Display energy conservation product specification labels</i>	26			
<i>No use of counterfeit quality certificates of energy conservation</i>	27			22
<i>Voluntarily submit applications for energy-consumption quality certificates</i>	18	16	15	22
<i>Develop energy conservation plans</i>			16	
<i>Company funds for energy conservation</i>		22	16	
<i>Implementation of energy efficiency measures in hotels, retail businesses and other service sectors (ZJR and SHR condition this on the “prerequisite of ensuring functions of service”)</i>		29	20	28
<i>Implementation of energy efficiency measures in “institutions and schools”</i>		29	20	
<i>Strengthen metrological management</i>		23	16	15
<i>Seek approval for installation of “large energy-consuming equipment” or capacity expansion of existing equipment</i>		26		
<i>Comply with building design, construction and decoration standards.</i>		27		30
<i>Imported equipment and production processes must also comply with state energy consumption standards</i>		38		
<i>Awards system for groups and individuals who promote energy conservation</i>				37
<i>Other</i>	<i>ECL</i>	<i>SDR</i>	<i>ZJR</i>	<i>SHR</i>
<i>No fixed payment or free supply for residential energy</i>	30	30		

<i>Energy producers provide energy according to law</i>	<i>31</i>	<i>33</i>		<i>21</i>
<i>Encourage energy producers to manage energy consumption "by economic means"</i>				<i>22</i>
<i>Ships and automobiles must comply with state energy consumption indexes</i>				<i>29</i>

d. *Technical Innovation*

For the most part, these provisions are very general policy pronouncements imploring various institutions to promote, research, and generally advance energy conservation. For example, the Shandong regulations states that the government at all levels “shall adopt measures to improve upon the technical service system of energy conservation” (Art. 34). The Zhejiang and Shanghai regulations expand on the national law to a significant degree in this section, and so the specific provisions of each of these regulations is presented in individual tables following the comparative table below.

Duties/Policy Directives	ECL	SDR	ZJR	SHR
State coordinates energy conservation research, publicizes favored technology, aids in implementation	33			
State encourages import of advanced foreign technology; prohibits import of outdated technology	34			
Scientific research fund allocation	35	11	23	
Development of improved thermal and insulating performance in buildings (heating, cooling, lighting)	37	28	28	17
Encouragement of new and renewable energies	38,39	29	27	31
Formulation of sectoral policies to encourage energy conservation	40			
Peak load management		31		
Promotion of energy efficient lighting		32		
Prohibition on new and existing coal-based boilers.				18
Boilers only installed with government approval			28	
Research institutions, universities, enterprises, and individuals “encouraged” to research and promote energy efficiency projects		36	22	25
Energy conservation administrative departments shall organize demonstration projects and promote energy conservation		34, 37	21	

The Zhejiang regulations contain a number of more specific technological innovation provisions not found in the other regulations. These provisions are summarized in the table below.

Zhejiang Regulations for Technological Innovation	Article
Provincial Planning and Economic Administrative Department duties (in coordination with relevant departments): <ul style="list-style-type: none"> • identifying and “routinely” announcing energy efficiency priorities • organizing demonstration projects • propose projects for promotion of energy efficiency • “routinely” release provincial lists of energy efficient products 	21
Preferential policies shall be created for: <ul style="list-style-type: none"> • “comprehensive utilization of energy” • certified enterprises involved in development of energy efficient technology and products 	24
Departments of Construction (above county level) shall: <ul style="list-style-type: none"> • adopt measures to encourage new technologies, processes, equipment and materials • promote energy efficient buildings and organize demonstration projects for this purpose 	25, 26
Departments of Agriculture above county level (in conjunction with other departments and township governments) shall: <ul style="list-style-type: none"> • promote rural use of new and renewable energy • develop rural energy construction • expedite rural power grid transformation • develop and utilize rural energy efficient technologies 	27
Provisions for “thorough-utilization technology of thermal energy” <ul style="list-style-type: none"> • no gridding or peak adjustment charges • grid operators shall purchase energy produced in this manner “in preference as per relevant state and provincial stipulations” 	29
Energy produced from “renewables or trash, surplus heat or pressure, diffused flammable gas, etc.” shall be purchased “in preference as per relevant state and provincial stipulations”	29

Similarly, the Shanghai regulations also contain a number of more detailed provisions not found in other regulations. These provisions are summarized in the table below.

Shanghai Regulations for Technological Innovation	Article
Energy conservation shall be incorporated into the governmental development plan of science and technology and high-tech industrialization at all levels of government	24
Energy producers and users shall adopt proven energy efficiency technologies	26
The Municipality shall strengthen rural energy development and comprehensive utilization of resources through development and use of new and renewable energies.	31
Preferential policies for investments in: <ul style="list-style-type: none"> • qualified “hi-tech conversion[s] for energy conservation” • development of new energy-saving products listed by the Municipal Economic Commission and the Municipal Science and Technology Commission” 	35

e. *Legal Liabilities*

The legal liabilities sections only serve to highlight the provisions that are meant to have some teeth. The table below provides a summary comparison of the legal liabilities highlighted in the national law and each of the three subnational regulation sets.

Violation	ECL	SDR	ZJR	SHR
Construction of prohibited industrial projects	42	39	30	
Exceeding energy consumption per unit of production limits	43	42	30	42
Production and sale of prohibited energy-using projects	44	44		49
Operation of prohibited equipment	45	45		50
Transfer of prohibited equipment to others	46			51
Failing to place energy consumption indicators on product literature and labels	47	41		47
Use of forged energy conservation quality certificates	48	40		45
Abuse of power by government civil servants	49	53	37	37
Illegal government approval of prohibited projects		39		
Energy-consuming products exceeding state energy consumption standards		43		
Failure to upgrade equipment not meeting state and provincial standards		46		46
Operation of “large energy-consuming equipment” without prior government approval		47		
Energy suppliers using fixed payment arrangements or supplying for free electricity, coal gas or natural gas		48		
Energy suppliers adulterating the energy supply		49		44
Impeding the duties of energy conservation management personnel		52	36	36
Hindering the work of “energy monitoring institutions”			31	
Submission of false statistical reports or refusal to submit such reports (general)			32	
Submission of false statistical reports or refusal to submit such reports (key energy-consuming organizations)			32	
Incorporation of sifted out products and			33	48

equipment in design documents				
Installation of boilers without prior government approval			34	43
Failure of projects to meet design and construction standards				41
Various violations by test and verification services				52
<ul style="list-style-type: none"> • exceeding business scope of energy conservation • forcing to provide services • forging test and verification certificates • falsifying test and verification documents 				
<i>Procedural Provisions</i>				
Penalty notice requirement			51	53
Penalty appeals procedures			50	54

In this section, note that the Zhejiang regulations again do not tend to track the national law (leaving national regulations to be implicitly incorporated); whereas the Shandong and Shanghai regulations cover most of the territory covered by the national law. Interestingly, all three sets of regulations expand significantly on the national law’s legal liability section, but all expand in difference ways. Very little overlap exists between the three sets when they expand on the national law. A summary of the violations and penalties for each set of regulations is provided in the Appendix.

CONCLUSION

As already mentioned, many of the provisions in the energy conservation regulations are extremely vague or soft; “encouraging” certain actions, “supporting” others, using broad language with multiple possible meanings. Even where more concrete duties are created (*e.g.*, to create a set of standards) very little guidance is provided in the regulations as to how extensive the regulations should be or what goals/values they should achieve. It is unclear, in many cases, what behavior would constitute a violation of the provisions. Mr. Shi and Dr. Gao of BECON suggested that these laws are nonetheless relevant in that they are public pronouncements of practices that the national government looks upon with favor. It gives subnational governments that desire to implement energy conservation practices a tool with which to push the practices forward. The difficulty arises when companies and subnational governments do *not* desire to implement such measures. Vague statutory language, combined with local protectionism, no “citizen suit” type provisions, and weak Chinese courts, could make enforcing the law against intransigents quite difficult indeed.

APPENDIX

SHANDONG

Violation of Shandong Regulations (Violated Article)	Penalty (Government body enforcing)	
Operating prohibited industrial projects (Art. 9, Para. 3)	Government can shut project down	Art. 39
Illegal government approval of prohibited projects (Art. 9, Para. 3)	“Liability according to law” for personnel involved and in charge of implicated department	Art. 39
Fraudulent use of Shandong energy conservation certification logo on uncertified products (Art. 16)	(1) halt illegal use (2) levy fine of RMB 5-100K (ETC)	Art. 40
Failing to include or including incorrect energy efficiency/consumption indexes in product manuals	(1) unspecified penalty (technical supervisory (<i>jishu jiandu</i>) depts.)	Art. 41
Institutions exceeding energy consumption limits (Art. 24, Para. 1)	(1) order institution to shut down (2) fine of RMB 10-100K (ETC)	Art. 42
“Energy-consuming products” exceeding state energy consumption standards	Penalties according to PRC Standardization Law (<i>biaozhunhua fa</i>)	Art. 43
Production and marketing of “sifted out” products (Art. 25, Para. 1)	Penalties according to PRC Product Quality Law (<i>chanpin zhiliang fa</i>)	Art. 44
Failure to halt use of “sifted out” equipment (Art. 25, Para. 2)	Penalties no greater than 50% original value of equipment	Art. 45
Failure to upgrade equipment not meeting state and provincial standards (Art. 25, Para. 3)	(1) order stop on equipment usage (2) levy fine of RMB 1-20K (ETC)	Art. 46
Operating “large energy-consuming equipment” without prior government approval (Art. 26, Para. 1)	(1) order completion of approval procedure (2) fine of RMB 10-100K (ETC)	Art. 47
Fixed payment for or free supply of electricity, coal gas or natural gas (Art. 30)	(1) order to stop (2) fine of RMB 5-20K (ETC)	Art. 48
Adulterating the energy supply (Art. 33)	(1) unspecified penalty (technical supervisory dept.) (2) contract liabilities (3) compensation for “loss” (4) possible criminal liability	Art. 49
Impeding duties of energy conservation management personnel	(1) referral to public security departments (2) possible criminal liability	Art. 52
Abuse of office by government personnel	(1) possible criminal liability	Art.

ZHEJIANG

The Zhejiang regulations do not include many provisions parallel to the national law (as the Shandong and Shanghai regulations do).

The Zhejiang regulations contain an interesting provision for the government to delegate the right to levy penalties to so-called “energy utilization monitoring institutions” in accordance with the PRC Administrative Penalty Law (Art. 35).

Violation of Zhejiang Regulations (Violated article)	Penalty (Government body enforcing)	
Construction or expansion of state prohibited industrial projects (Art. 9)	Penalties according to Art. 42 of the ECL	Art. 30
Exceeding per unit of production energy consumption limits (Art. 10)	Penalties according to Art. 43 of the ECL	Art. 30
Preventing energy monitoring institutions from energy monitoring (Art. 11)	(1) warned and ordered to allow monitoring (Planning and Economic Admin. Dept.)	Art. 31
Submission of false statistical reports or refusal to submit such reports by non “key energy-consuming institution” (Art. 14)	Punishment (statistics administrative depts.)	Art. 32
Submission of false statistical reports or refusal to submit such reports by “key energy-consuming institution” (Art. 17)	(1) ordered to reverse fault (2) fine not less than RMB 10K (Planning and Economic Admin. Dept.)	Art. 32
Incorporating sifted out products and equipment in design documents (Art. 25)	Penalties according to relevant law (Planning and Economic Admin. Dept.)	Art. 33
Installation of boilers without prior government approval	(1) ordered to cease construction (2) dismantle boilers (Planning and Economic Admin. Dept.)	Art. 34
Impeding duties of energy conservation management personnel	(1) referral to public security departments	Art. 36
Abuse of office by government personnel	(1) possible criminal liability (2) possible administrative liability	Art. 37

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Violation of Shanghai Regulations (Violated Article)	Penalty (Government body enforcing)	
Failure of fixed asset investment projects to meet design and construction standards (Art. 12)	(1) order to cure non-compliance (2) possible liability for construction and design institutions in cases of “severe” violations (Municipal Energy Conservation Supervisory Centre “ECSC”)	Art. 41
Exceeding per unit of production energy consumption limits (Art. 14)	(1) possible halting of business (energy conservation administrative dept.)	Art. 42
Construction or installation of coal-based boilers within “Inner Ring Road”	(1) order to halt construction or operation (2) fine of RMB 5K for every ton of capacity (ECSC)	Art. 43
Failure of energy producers to supply energy according to relevant standards (Art. 21, Para. 1)	(1) order to reverse failure (2) possible civil liability for losses caused to businesses (ECSC)	Art. 44
Using of fake or illegal energy conservation quality logos (Art. 22, Para. 1)	(1) order to reverse violation (2) confiscation of illegally earned income (3) fine of 1 to 5 times illegal income (municipal technical supervisory dept.)	Art. 45
Operation of equipment that does not meet stipulated technical standards (Art. 27, Para. 1)	(1) order compliance with standards (2) possible fine of RMB 5-50K (municipal technical supervisory dept.)	Art. 46
Failure to include energy consumption indexes in product manuals and labels	(1) order to reverse failure (2) possible fine of RMB 5-50K (municipal technical supervisory dept.)	Art. 47
Designing projects to include use of sifted out products (Art. 33, Para. 1)	(1) order to reverse failure (ECSC)	Art. 48
Producing and marketing sifted out energy-consuming products (Art. 33, Para. 2)	(1) order to halt activity (2) confiscation of illegal income (3) fine of 1 to 5 times illegal income (4) possible withdrawal of license (technical supervisory dept., industrial and commercial administrative organs)	Art. 49
Use of sifted out energy-consuming products (Art. 33, Para. 2)	(1) order to halt use (2) confiscation of equipment (3) close of business for “severe” violations (energy administrative depts.)	Art. 50
Transferring of sifted out energy-consuming products to others (Art. 33, Para. 2)	(1) confiscation of illegal income (2) fine 1-5 times illegal income (technical supervisory dept.)	Art. 51
Violations of energy conservation test		Art.

and verification services		52
Impeding duties of energy conservation management personnel	(1) referral to public security departments	Art. 36
Abuse of office by government personnel	(1) possible criminal liability (2) possible administrative liability	Art. 37