

**Research on Legal Issues Concerning the Exploitation
and Phase Out of China's Mercury Mines under the
Minamata Convention on Mercury**

December 2018

BEIJING RAINMAKER LAW FIRM

SUPPORTED BY NATURAL RESOURCES DEFENSE COUNCIL

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ABOUT BEIJING RAINMAKER LAW FIRM

Beijing Rainmaker Law Firm is a comprehensive law firm with natural resources, financial & securities and criminal compliance as its main business areas. Since its establishment in 2006, Rainmaker has adhered to the philosophy of "Professional, Persistent, Proactive and win-win" and sticks to the "Outspoken Mechanism", builds up the "Ten-second State of Mind". Rainmaker has its headquarters in Beijing with four branches in Shanghai, Shenzhen, Yangzhou and Chengde, and seven foreign offices in Toronto, Vancouver, Phnom Penh, Sydney, Calgary and Bucharest.

ABOUT NATURAL RESOURCES DEFENSE COUNCIL

The Natural Resources Defense Council (NRDC) is an international nonprofit environmental organization with more than 3 million members and online supporters. NRDC works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. Since 1970, our environmental lawyers, scientists, and experts have worked across the globe to ensure the rights of all people to clean air, clean water, and healthy communities. We use scientific, economic, and policy expertise to spearhead comprehensive environmental improvement with a broad range of local partners in Asia, Europe, Latin America, and North America.

Executive Summary

Beijing Rainmaker Law Firm was entrusted by the Natural Resources Defense Council (NRDC) to collect and sort out the relevant data of China's representative mercury mining enterprises obtained through public channels, and then perform further analysis according to the current policies and laws in China. The purpose of this research is to provide referencing recommendations for the phase out of China's mercury mines under the Minamata Convention.

From August 16, 2017, Minamata Convention on mercury officially entered into force for China. China and related industries are facing industrial transformation pressure and challenges. In fact, as one of the first countries to sign the Convention, China has begun active preparation for its implementation before signing of the Convention. After the Convention's entry into force, China has actively promoted the application and promotion of mercury free as well as low mercury technology, realized the reduction of mercury pollution and the substitution of mercury products, and carried out a number of initiatives to promote the prevention and control of mercury pollution, which are all aiming for convention implementation of the national strategy and action plan.

According to China's major mercury mining company information as determined by the 2015 China Nonferrous Metals Association meeting report and other online information sources as complementary references, the report covered ten major Chinese mercury mining companies that currently hold one exploration right and seven mining rights. Among these, 3 mining rights have already expired, and the valid rights include one exploration right and 4 mining rights. The longest mining right is valid until May 19, 2023. Among those, there are 1 exploration right and 3 mining rights that are currently in normal production and operation.

The Convention specifies a maximum of 15 years for the phase-out of primary mercury mining. The termination of primary mercury mining may occur earlier when the mercury is no longer needed for domestic purposes.

At present, there is no clear legal provision in China to prohibit the transfer of mercury exploration rights to mining rights, nor to restrict the continuation of mining rights. The compensation mechanism for the cancellation or closure of the mercury mining rights has not yet been established. In view of joining the Minamata Convention, and to provide the legal basis for policies already

announced, regulations should be issued to prohibit new exploration and mining rights, and strictly control the renewal of existing mercury exploration and mining rights. Compensation for non-renewal of exploration and mining rights should be clarified and incorporated into applicable laws and regulations.

The Chinese government is actively fulfilling its obligations under the Minamata Convention and taking multiple measures to promote the prevention and control of mercury pollution. We recommend various authorities to shut down primary mercury mines, improve the management policy of mercury mining rights, establish and improve the mercury mining development exit mechanism, and strengthen law enforcement to ensure compliance and other specific measures for effective promotion of the closure of mercury mines:

1. Issue national regulations prohibiting the renewal of existing exploration rights, including transferred or sold exploration rights.
2. Prohibition by national regulation issuance of new exploration or mining rights.
3. Explicitly put the development and utilization of mercury mines in the prohibited category of the Guidance Catalogue for Industrial Structure Adjustment and put it in the Negative List of Market Access Administration to ensure the complete prohibition of the use of mercury in industries and industrial chains that may be involved in mercury.
4. Prohibit all primary mercury mining, effective August 17, 2032, and require the termination of all existing mining rights no later than August 17, 2032.
5. Prohibit by national regulation the renewal of mining rights where no mercury production is actually occurring.
6. By national regulation, limit the duration of mining rights renewals issued to a maximum of three years, or the life of the remaining reserves, whichever is less. Authorize denial of mining rights renewals when mercury is no longer needed for domestic purposes. This will facilitate management of phase down prior to 2032.
7. By national regulation, strengthen financial responsibility requirements for existing mercury mines by requiring liability insurance for health risks and environmental contamination, increasing deposit for remediation at closure, and regulations governing environmental restoration and management.

8. Consider market mechanisms to discourage mercury production and promote non-mercury technologies, such as a tax on mercury production as the principal source of funds for compensation to mining companies to be closed and to support research/deployment of non-mercury PVC catalysts.
9. By national regulation, establish a statistic system for mercury mining, require companies to provide detailed production input-output inventory and destination tracking information. Promote increased supervision at local level to discourage illegal mercury mines.
10. Clarify scope of applicable compensation where exploration and/or mining rights are not renewed.
11. Intensify financial transfer payment, give appropriate subsidies or compensation, encourage the alternative development of existing mercury mines, increase employment training, entrepreneurship assistance, and social security, properly resettlement for workers at closed mining enterprises, ensure regional economic development and social stability.
12. Properly carry out mineral rights administration, mine closure, environmental restoration and land reclamation, etc. from the perspective of resource administration and ecological and environmental protection: Do a good job in policy publicity, publicize the interpretation of the Minamata Convention and domestic supporting policies to enterprises and the public, in order to obtain understanding and support, actively listen to the voices of enterprises and employees, and respond to social concerns to ensure timely, smooth and stable social performance.
13. Strictly enforce the law to ensure compliance.
14. Encourage the development and utilization of alternative products to ensure the healthy development of related industries.

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