

# Research on Status of and Barriers in Enforcing New Environmental Protection Law in China and their Solutions

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**Abstract:** Although remarkable results have been achieved since the enforcement of the new environmental protection law in China, difficulties in enforcement out of obstacles in the legislation, justice and law enforcement have emerged. The countermeasures mainly include the evaluation and revision of related laws for external support for universal enforcement of the environmental law; removal of deep-seated legal obstacles in higher level laws to resolving limitations of legislation and enforcement; improvement of the environmental judiciary and promoting the successful enforcement of the new law.

## 1. Introduction

On April 24, 2014, the Standing Committee of the National People's Congress voted to approve the Amendment of Environmental Protection Law of the People's Republic of China. Environmental Protection Law of the People's Republic of China, known as the “most stringent in history”, officially came into force on January 1, 2015. The revision and enforcement of the new environmental protection law is a significant event in the process of building the law-ruling ecological civilization in China. It is called “another milestone in the history of legislation on environment”. Institutional innovations have provided reforms opportunities for long-criticized issues on environmental protection. However, the law can only sustain itself through enforcement. Whether refined textual expressions of the new environmental protection law can be smoothly put into institutional practice with desirable enforcement results is the most striking practical issue and the core element of building a ruling order of laws on geology. Therefore, this paper intends to systematically analyze the status of and barriers in enforcing new environmental protection law in China and their solutions to measure the enforcement process of the rule of law in ecological civilization in China.

## 2. Overview of the Enforcement of the new environmental protection law

In addition to abandonment and innovation of old environmental protection laws and regulations, relevant enforcement rules are especially rolled out when the new law is enforced to help the new system “has a law to comply with.” Therefore, together with the new law, four national supplementary measures have been rolled out, namely, Measures for the Implementation by Competent Environmental Protection Departments of Consecutive Daily Penalties, Measures for the Implementation of Sealing-up and Impounding by Competent Environmental Protection Departments, Measures for the Implementation by Competent Environmental Protection Departments of Limiting and Halting Production for Remediation and Measures for the Disclosure of Environmental Information by Enterprises and Public Institutions. All these have further defined the system and rules of the new law and provided legal basis for the law-based administration of environmental protection departments. For a solid institutional foundation for universal enforcement of the new environmental protection law to be laid, Measures for Public Participation in Environmental Protection and Measures for the Accountability of Party and Government Leaders for

Damage to the Ecological Environment (for Trial Implementation) were successively issued.

Since the enforcement of the new law, Ministry of Ecology and Environment of the People's Republic of China has continuously publicly notified enforcement status of the new environmental protection law and its supplementary measures. As of the end of October 2018, several detailed briefings have been made and timely published "list of achievements" in environmental supervision and law enforcement can be regarded as important indicators for measuring enforcement progress of the new law. For four-year enforcement of the new law, various innovative measures have been taken in most provinces, municipalities and autonomous regions in China. The main demonstrations are as follows: significantly intensified supervision on law enforcement of environmental protection, continuously innovated law enforcement forms, various special actions in terms of local conditions, adopted new methods and "combination blow", closer cooperation with judicial departments to seriously punish various environmental violations and crimes. All these have solved many environmental problems left over from history and created a better public opinion environment for environmental law enforcement. And some companies with illegal sewage have been deterred, which shows the positive role of the new law as a supervisor on environmental law enforcement.

### **3. Obstacles to the Enforcement of the new environmental protection law**

Considerable progress has been made in the new environmental protection law, compared with the previous environmental protection law with "no laws to comply with". However, certain institutional obstacles have emerged from the enforcement of the new environmental protection law, causing a stalemate between current compliance with and violations of environmental laws as well as both opportunities and challenges in supervision on environmental protection law enforcement[1]. In the context, the new law's innovative rule did not be brought into full play in its enforcement process.

#### **3.1 Legislative Barriers**

The legislative obstacles to the new law are mainly illustrated as follows: firstly, this revision of the law focuses pollution prevention with insufficient amendments to ecological protection[2]. So the new law cannot assume a comprehensive and systematic basic legal responsibility for environmental protection. Secondly, the new environmental protection law amended and approved by the Standing Committee of the National People's Congress does not have a higher legal level than other special laws such as Marine Environment Protection Law of the People's Republic of China, Water Law of the People's Republic of China, and Grassland Law of the People's Republic of China. Thirdly, modification of other laws and regulations related to environmental protection is delayed, so that the integration and coordination between the general law and special laws are not close enough, and even the application of the new and the old laws is contradictory. It will take time to for a sound and unified environmental protection legal system to be established. Hence the new environmental protection law with formal characteristics of the environmental basic law is difficult to exert its institutional function of governing all environmental protection legal systems, which in turn leads to many problems like the conflict in application of various special environmental protection laws and the new environmental protection law, and incoordination between ecological protection and environmental pollution prevention and control, difficulty in converting "the textual law" into "the enforced law". This has reduced the new environmental protection law into an embarrassing status of inadequate authority and limited enforcement effects.

#### **3.2 Barriers in law enforcement**

In current supervision on environmental protection law enforcement, there still are many external difficulties, greatly restricting the effectiveness of the new environmental protection law. The obstacles in enforcing new environmental protection law are as follows: firstly, with the "fragmentation" of China's environmental governance structure and overlapping of departmental functions, environmental law enforcement cooperation and internal and external obligation coordination between various government departments have not been clearly stipulated in the new

environmental protection law. Therefore, effects of the unified guidance and supervision by the environmental protection authorities are not remarkable. The overreaching and buckpassing of powers among departments is difficult to eliminate, making it difficult to set up an integrated system for supervising environmental administration. Secondly, Many problems have been revealed on environmental supervision subjects such as low legal status, inadequate law enforcement capability and insufficient allocation of law enforcement forces, so enforcement effects of the new law have been greatly undermined, which reflects drawbacks of the administrative system, such as the imbalance allocation of governmental organizations and their powers, unreasonable division of governmental financial power and responsibilities and uncoordinated internal operation of administrative organizations. Thirdly, there is an imperfect supervision mechanism for environmental protection regulators in current environmental protection field, which in turn makes boundaries of powers and responsibilities of environmental protection departments unclear and frustrates the practice of the supervision and restraint mechanism, affects the effective enforcement of enforcing environmental laws and reflects the lack of supervision and restraint mechanisms for China's administrative powers.

### **3.3 Judicial Obstacles**

Since the enforcement of the new law, environmental public interest litigation has not emerged as much as expected, which shows that environmental justice is still hard to be conducted, universal enforcement of the new law hindered. Main reasons for poor enforcement of environmental justice are as follows: firstly, high qualification threshold for public interest litigation and litigation costs increases the cost of filing environmental public interest lawsuits, weakening the enthusiasm of civil environmental protection organizations to file lawsuits and becoming the primary problem facing public interest litigation; secondly, current procedures, institutions and mechanisms for litigation in China are still unable to respond to all needs of environmental justice, which greatly hampers the function exertion of environmental justice. The imported environmental resources trial court has a short history with lack of experience, so it's difficult for the court to provide sufficient and effective organizational force for environmental justice. Meanwhile, as new types of entities, procedures and rules are required for the complexity and particularity of environmental cases, the lack of rules will pose a huge challenge to existing litigation practices. Thirdly, the administration-led thinking is still upheld in current environmental protection field, which not only makes the tendency for legislation itself to emphasize administrative but ignore justice with insufficient space reserved for the judiciary, but make it even more difficult to check local government's improper intervention in environmental judicial cases when economic development contradicts environmental protection. In addition, as the new law does not clearly stipulate whether environmental public welfare organizations can bring public interest environmental litigation to relevant government and government departments, the current object scope of environmental public interest litigation is too narrow, which undermines fulfillment of governments' responsibilities for the environment[3] and significantly weakens the enforcement efforts of the new law.

## **4. Coping Strategies and Suggestions**

In summary, institutional barriers affecting the enforcement of the new environmental protection law are deep-seated, complex and will last for long time. Therefore, neither can such barriers be simply blamed on the omissions or faults of legislators, nor can reforms be expected to be completed overnight. Instead a rule of law system conforming to the ecological rationality and concept of sustainable development can be established through the across-the-board cooperation and guarantee of relevant systems.

#### **4.1 Relevant legislative evaluations, revision and improvements should be conducted to provide external support for universal enforcement of the new environmental protection law**

Assessment of legislation related to environmental protection should be carried out with the concept of sustainable development as the core idea and the new law gradually enacted or the old law revised, which is an important approach to implementing the basic principles and concepts of the new environmental law and also a rational idea to improve the law system consistent with ecological rationality.

Firstly, post-legislative assessment of laws and regulations in the field of environmental protection and corresponding revision and improvement should be given due attention. With the long-term and arduous nature of pollution control and ecological protection, environmental protection legislation must constantly keep pace with the times in accordance with the economic and social development under the concept of “sustainable development”, and legislation in the field of environmental protection should be regularly assessed and revised. The new environmental protection law should be established as the legal status of the basic law in the field of environmental protection. Based on its basic principles and legislation spirit, institutional assessment and improvement mechanisms should be set up for comprehensively analyzing, comparing, measuring and evaluating the legal institution and system, their operations and reasonability, feasibility and desirable effects of operations in the environmental protection field. In this way, it can be investigated as to whether the legislative design meets actual requirements, whether the functional orientation of the system is scientific and whether the practice model and target orientation are in place, and the enactment of the new law or the revision of the old law can be carried out in a timely manner, laws and regulations inconsistent with the concept of sustainable development abolished and the protection methods and intensity of special laws adjusted and optimized. A comprehensive and unified system of environmental laws and norms featuring coordination, complete structure and strong complementarity would be eventually established.

Secondly, legislative evaluation and revision of other relevant laws and regulations should be conducted. A single environmental protection department law is inadequate to undertake the important task of environmental protection. Therefore, it is an inevitable choice to examine and evaluate the legislative quality of other relevant department laws with value appeals of ecological rationality and to incorporate ecological rationality into relevant legal systems with legislative techniques. In recent years, some newly enacted and revised laws have incorporated environmental protection as an important rule and concept into legal norms, which has abandoned and transcended the past traditional legal concept that stresses the economy and property supremacy. For example, Property Law of the People's Republic of China has improved ownership provisions on natural resources and enhanced the protection of natural resources. Environmental public interest litigation has been added in The Civil Procedure Law of the People's Republic of China provides for “crime against destruction of environmental resources”, which reflects the integration of new environmental protection concepts and criminal legislation. It is necessary to further develop standardized and institutionalized legislative thinking characteristic of sustainable development and a legal evaluation system, to include ecological rationality in formulation procedures of other laws and regulations and their enforcement for realizing the grand goal of constructing a legal system consistent with ecological civilization and natural ethics and values and building a “beautiful China” with the legal system.

#### **4.2 Deep-seated legal obstacles in upper laws should be eliminated and the legislative and enforcement limitations of the new environmental protection law resolved**

For a sound ruling order of ecological laws to be built, not only should bold breakthroughs in legislation in the field of environmental protection be made, but could institutional barriers in upper laws be cleared up intensively.

Firstly, an independent legal status should be given to environmental supervision departments and organizing force of environmental law enforcement strengthened to fully exercise important

functions and powers conferred in the new environmental protection law. The reforms of the giant environmental protection department, of the fiscal and taxation system and of classification of public institutions should be taken advantage of to integrate organizations of the environmental protection supervision department and improve the allocation of functions and powers, and to give the environmental supervision department a legal status as an independent administrative body. The improvement of the budget system for environmental protection should be accelerated and the current situation of multiple constraints imposed by the environmental protection authorities and local governments changed to ensure the independent and complete supervision power of the environmental supervision department on law enforcement and improve the efficiency and intensity of investigating and penalizing environmental violations. In addition, grassroots organizations that strengthen environmental law enforcement may be fostered, professional qualities of law enforcement personnel continuously improved, and the severe punishment spirit of rule of the new environmental protection law practiced through to the end.

Secondly, the supervision and restraint mechanism for environmental regulators should be improved. On the one hand, institutional rules of government's responsibility for environment should be refined. With the lack of exemption from liability, it is urgent to clarify the sphere of powers, exemption standards of local responsible persons and boundaries of powers and responsibilities of environmental protection departments to provide clear codes of conduct for environmental protection departments and improve current supervision and restraint mechanism of environmental protection regulators. On the other hand, the external supervision mechanism of environmental law enforcement could be reinforced. The restraint on and accountability for the local government's behaviors have always been a major issue in many fields, such as law-based governance of the country, exercise of state power and administration of government[4]. In the field of environmental protection, the successful experience of administrative supervision systems in China such as national land supervision, audit supervision should be learnt from. A relatively independent and authoritative external supervision mechanism of environmental protection law enforcement can be set up through integration based on supervision functions of current environmental supervision agency and regional environmental supervision centers. The policy intention of building an "administrative operation mechanism in which the decision-making power, executive power, and supervisory power constrain and coordinate each other" could be put into action to set an example for perfecting China's supervision system of administrative law enforcement.

#### **4.3 The environmental judicial mechanism should be Improved and the new environmental protection law promoted**

Only by further improving the environmental judicial mechanism, can the process of building rule of ecological laws be effectively accelerated. For example, Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations issued by the Supreme People's Court has directed the specific operational direction for judicial practices and complemented the new environmental protection law.

Firstly, the threshold for public interest litigants should be further lowered and the scope of eligible litigants expanded. Meanwhile, more national supporting support policies should be rolled out to encourage the government to purchase services from social organizations. And the cost of public participation in environmental justice could be reduced and the confidence and enthusiasm of social organizations' participation in environmental public interest litigation enhanced. In so doing, a thinking and behavioral model of solving environmental problems through judicial approaches can be gradually developed.

Secondly, how to establish a sound jurisdiction and trial system for environmental cases could be studied on the basis of existing special environmental resources trial court. It is advisable to integrate the cross-regional jurisdiction and trial system of environmental cases based on local conditions through progressive promotion and the inclusion of establishment of the Supreme Court Circuit Court in the current reform plan of judicial system, increase the input in environmental judicial trial resources and to refine the application of environmental justice trial practice. Relevant interpretation

rules, the construction of a professional environmental trial and execution team, to enhance the function of environmental justice.

Thirdly, institutions and mechanisms for converge environmental administrative law enforcement and environmental justice should be improved with coordination among departments enhanced, the mechanism of joint conference and liaison implemented [5]and the collaborative work mechanism for case transfer for the promotion of coordinated development of environmental administration and justice. In addition, on the environmental protection public interest litigation not clarified in the new environmental protection law, its feasibility and necessity should be further studied with consideration of modification in administrative litigation law to effectively promote government oversight and fully fulfill the government's responsibility for environment.

## **5. Conclusion**

In summary, since the new environmental protection law was enacted with ironfisted determination on pollution control four years ago, satisfactory outcomes have been given to the public. Nevertheless, obstacles in many aspects such as legislation, law enforcement and justice have been revealed. For all problems in enforcing the new environmental protection law to be solved, methods should not be confined to the new environmental protection law itself or the field of environmental protection. Instead, comprehensive efforts should be made to build a new environmental improvement mechanism with co-governance by justice, legislation and law enforcement and to make progress in developing ecological civilization.

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