

# The research on the Alication of Environmental Administrative Public interest Litigation

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**Abstract:** *In the new era of comprehensively promoting the construction of ecological civilization, the environmental administrative public interest litigation system has played an important role in supervising administrative power and protecting public interests. However, there are many defects in the operation process that restrict its development. Through the summary of the theory of environmental administrative public interest litigation, the tracing of the system and the analysis of the problems, this paper explores the solution from the aspects of the scope of accepting cases, the qualifications of plaintiffs, the pre-litigation procedure, and the connection between the pre-litigation procedure and the litigation procedure. It is expected to be beneficial to the development of environmental protection in our country.*

**Keywords:** *public interest litigation, pre-litigation procedure, procuratorial suggestion, litigation procedure*

## 1. Basic theory of public interest litigation

### 1.1 Theory of private attorney general

The theory of private attorney general is not a specific legal system stipulated by American law, but is gradually developed and formed in the judicial practice of judges (Federal Communications Commission vs. National Broadcasting.Co.Inc <sup>[1]</sup>). In the mid-1960s, the theory of private attorney general became the main basis for citizens to provide private relief. In 1970, the Clean Air Act made the private attorney general's theory widely alied to the work of judges and the study of scholars <sup>[2]</sup>. As the theoretical basis of civil litigation, the theory of private attorney general is of great significance to the protection of public welfare in the United States.

The subjects of public interest litigation in China mainly include people's procuratorates and social organizations. As a national public prosecution organ, the people's Procuratorate brings lawsuits on behalf of the state to safeguard and realize social and public interests. In the United States, anyone can bring a public interest lawsuit as a private attorney general, which is closely related to their law enforcement resources. The United States government does not have sufficient law enforcement resources to monitor the country, and citizens near pollution sources are the most effective supervisors. The theory of private attorney general provides a theoretical basis and relevant examples for the expansion of the subject of public interest litigation in our country.

### 1.2 Theory of environmental rights

The occurrence of eight public hazards makes people realize that it is urgent to protect the environment. In 1960, a citizen outside the region proposed that the dumping of radioactive waste into the North Sea violated the relevant provisions of the European Human Rights Treaty<sup>[3]</sup>, which then triggered the discussion on "environmental rights".In the 1960s, the Stockholm Conference on Human Environment officially opened the discussion on "environmental rights". In March 1970, the Tokyo Declaration explicitly stated the right to the environment <sup>[4]</sup>. Nowadays, many countries have written the right to the environment as a fundamental right into their constitutions. For example, the Constitution of Korea stipulates that citizens have the right to live in a healthy and pleasant environment, and the state and citizens have the obligation to cooperate to protect the environment.

The theory of environmental rights reflects that citizens have substantive and procedural rights such as the right to know, the right to supervise and the right to participate in environmental issues. The

development of public interest litigation is conducive to the implementation of the environmental rights of citizens in the theory of environmental rights, and also helps to urge relevant governments to actively perform the responsibility of ecological and environmental protection, participate in public interest litigation through the behavior of ecological and environmental reporting with rewards, and practice the environmental protection obligations of citizens.

### ***1.3 The theory of environmental public trust***

The theory of public trust was developed in the United States through precedent. In 1821, the Supreme Court of New Jersey approved the public trust theory in the *Arnold v. Mundy* case<sup>[5]</sup>. In the *Martin v. Waddell* case in 1842, the U.S. Supreme Court clarified the public trust theory. In 1970, the American scholar Sachs published an article entitled "Public Trust Theory in Natural Resource Law: Effective Judicial Intervention" published in the "Michigan Law Review" and allied the theory of public trust in the field of environmental protection<sup>[6]</sup>. Sachs's view not only led to the revival of the common law public trust theory aimed at protecting natural resources and the environment, but also promoted the writing of the public trust theory into the constitution of the states in the United States.

Citizens deliver environmental resources to a certain authoritative country out of trust, making them the trustee of environmental resources<sup>[7]</sup>. Through this behavior, the public has the right to supervise government administrative agencies in accordance with the law, restrict the rights of administrative departments, enable the government to make correct decisions in the management of natural resources that are beneficial to the public interest, and better protect the public's natural environment through the power of law. To make the theory of public trust better ally in our country, the improvement of the administrative public interest litigation system is indispensable.

## **2. Current situation of policy and implementation**

### ***2.1 Status of law and policy***

The amendments to the civil procedure Law and the Administrative procedure Law have increased the system of public interest litigation, stipulating that relevant organs and social organizations may bring lawsuits to the courts for acts harmful to public interests. In 2015, the standing Committee of the National people's Congress decided to carry out pilot public interest litigation in 13 provinces and cities, including Beijing and Inner Mongolia. In 2017, the public interest litigation system of procuratorial organs established and issued "notice on issues related to the Comprehensive Development of Public interest Litigation" and other relevant policy documents. In 2018, Lianggao issued the interpretation of several issues concerning the Application of Law in Procuratorial Public interest Litigation cases, which enriched and improved the socialist procuratorial public interest litigation system with Chinese characteristics and provided a legal basis for procuratorial organs to handle public interest litigation cases. In addition to the legal and policy documents at the national level, local pilot provinces and cities have also promulgated many normative legal documents, among which the provisions of Ecological and Environmental Public interest Litigation in Shenzhen Special Economic Zone, as the local laws and regulations for the first time, is the most prominent.

A few days ago, the Supreme Procuratorate released the main case data of procuratorial organs across the country from January to June 2021. In terms of public interest litigation, there are about 80,000 clues to accept cases. Among them, about 70,000 administrative public interest litigation cases were filed, accounting for 90% of the total number of cases; in addition, the number of pre-litigation procedures reached 60,000, and about 200 administrative public interest litigation cases were filed. In the same period, the court made about 2,000 decisions of first instance, of which about 100 were administrative public interest lawsuits and about 2,000 were sorted by judgments.

### ***2.2 Alicable status quo***

At the national level, in 2020, the Supreme Court issued ten typical cases of environmental resources, of which environmental administrative public interest litigation accounted for 1/2, on a par with civil public interest litigation. At the local level, take the effect of the implementation of public interest litigation in Yunnan Province as an example: from 2019 to 2020, procuratorial organs at all levels in Yunnan Province accepted more than 5,000 cases and filed more than 4,000 cases, greatly increasing the proportion of public interest litigation cases in the expanded field.

Green water and green mountains is Jinshan and Yinshan. From the alication of the system of public interest litigation in various pilot provinces and cities, the development and improvement of public interest litigation is very conducive to the improvement of the ecological environment of our country. It can create good, comfortable and healthy living conditions and natural resources for the public.

### **3. Review of the difficulties in the alication of environmental administrative public interest litigation**

#### ***3.1 The scope of accepting cases is relatively narrow***

With regard to the scope of accepting cases of administrative public interest litigation, it is clearly stipulated in the measures for the pilot implementation of Public interest Litigation initiated by the people's Procuratorate that the people's Procuratorate has the right to initiate administrative public interest litigation in such areas as the protection of the ecological environment and resources, the protection of state-owned assets, and the transfer of the right to the use of.

The state brings the protection of ecological environment and resources into the scope of accepting cases in order to protect the health and safety of citizens, workers and consumers, and to supervise and protect the natural environment and ecological resources. For the protection of state-owned assets, the transfer of the right to the use of state-owned land, the state is to prevent administrative organs from dealing with national interests in the form of private law, resulting in damage to national interests, administrative public interest litigation system can effectively prevent damage to public interests. Therefore, environmental administrative public interest litigation plays a role in supervision and management in three aspects: health, environment and national interests. In addition, the "etc" still needs to be extended, such as drinking water safety regulation, finance and taxation, and the field of historic buildings.

In addition, the newly revised Administrative procedure Law shows that only when the actions of administrative organs have led to the infringement of national interests or social and public interests, the procuratorial organs can initiate administrative public interest litigation. This obviously ignores administrative acts that may harm national interests or social and public interests. If we only pay attention to the objective facts of the harm to the environment that have occurred, and there is no awareness of prevention, then the procuratorial organs can only be "indifferent" to the actions that are about to cause environmental damage, and then allow the damage results to be further expanded. Only by bringing the administrative acts that may harm the national interest or social public interest into the scope of accepting cases, can we essentially safeguard the public interest and better protect the environment.

#### ***3.2 The subject of litigation is relatively single***

The main body of environmental administrative public interest litigation in our country is only the people's Procuratorate, and the subject is relatively single. The people's Procuratorate brings a lawsuit on behalf of the public interest. In the case of public interest litigation, it has a certain effect on correcting the omission or illegal act of the administrative organ, and can better protect the public interest.

In the current environment, can citizens become the subject of environmental administrative public interest litigation? Citizens, as the most direct impact of the destruction of the ecological environment, have a congenital actionable orientation. However, the issue of citizens' right of action is denied in both the previous pilot project and the follow-up relevant national policy documents.

In addition, does the administrative organ have the subject qualification of environmental administrative public interest litigation? In the environmental administrative public interest litigation, the environmental organ is undoubtedly the core subject. Under the background of not considering the ownership of administrative power, in view of the self-subject error correction function of administrative organs and the operational attribute of administrative power, it is feasible to give administrative organs the qualification of the subject of litigation right. There is also some heated discussion about this view in academic circles, but it has not been adopted by the judiciary.

#### ***3.3 Inconsistent pre-litigation and litigation procedures***

The pre-litigation procedure is a necessary procedure for procuratorial organs to initiate environmental administrative public interest litigation. Before initiating environmental administrative

public interest litigation, procuratorial organs make procuratorial suggestions to administrative organs to urge them to perform their duties. The procuratorial recommendations of the pre-litigation procedures reflect respect for the administrative organs and maintain the humility of the procuratorial organs. In addition, the response time limit in the procuratorial proposal does not match all ecological restoration, and the serious damage to the public welfare cannot be repaired in a short time. Finally, the standards for the completion of procuratorial proposals are not the same, which also leads to the initiation of subsequent litigation procedures or aggravating the supervision of administrative agencies.

The pre-litigation procedure is closely connected with the litigation procedure. The administrative agency did not adopt the procuratorial suggestion to correct the illegal behavior, and the procuratorial agency filed a lawsuit and entered the litigation procedure. The procuratorial organs resolved most of the potential administrative public interest litigation cases with the help of procuratorial recommendations, and the proportion of cases that entered the litigation procedure was very small. However, judging from the existing administrative public interest litigation cases, the procuratorial organs have not lost in all court trials. The courts have played a relatively passive role in them, and more simply echo the litigation requests of the procuratorial organs. In judicial cases Lack of refined judicial argumentation.

#### **4. Ways to improve Environmental Administrative Public interest Litigation**

##### ***4.1 Expand the field of environmental administrative public interest litigation cases***

The scope of public interest litigation brought by procuratorial organs should not be limited to the four major areas prescribed by law. At present, the relevant types of "other" fields should be expanded to make environmental administrative public interest litigation applicable to more types of public interest cases. Expanding the field of environmental administrative public interest litigation should be closely related to "national interest or social public interest", such as drinking water safety supervision related to citizens' life and health, property safety and so on.<sup>[8]</sup>

In judicial practice, procuratorial organs conduct social investigations, extensively solicit public opinions, and solicit the opinions of NPC deputies and CCC members. It is considered that the "harassment phone calls" of "ten typical cases of procuratorial public interest litigation" to rectify public interest litigation cases infringing on public interests are in line with the scope of the "etc." field. To expand the field of administrative public interest litigation, administrative litigation can be initiated according to the characteristics and specific content of the case, which plays an important role in protecting national interests or social public interests and the development of administrative public interest litigation.

##### ***4.2 Expand the scope of the subject of environmental administrative public interest litigation***

Expand the subject qualification of environmental administrative public interest litigation, lower the threshold of prosecution conditions, so as to strengthen the supervision of administrative organs, so that acts that infringe upon national interests or public interests can be regulated in time.<sup>[9]</sup> Expanding the qualification of the subject of environmental public interest litigation is helpful to the realistic development of public interest litigation.

Social environmental protection groups have the nature of public welfare, and it has natural advantages to bring social public welfare groups into the subject qualification of administrative public interest litigation. The public welfare, professionalism and capital advantages of social organizations can better protect the social and public interests, and can extensively solicit the opinions of the masses to represent the public interests, avoid excessive litigation, and effectively save judicial resources. At the same time, grass-roots autonomous organizations can also be included in the subject qualification of administrative public interest litigation, they are also more familiar with the local situation, and can find environmental problems earlier.<sup>[10]</sup>

From the perspective of the civil rights stipulated in China's Constitution and the development of foreign administrative public interest litigation, it is a development trend that citizens enjoy the right of action to bring public interest litigation, and citizens become the main body of administrative public interest litigation. The procuratorial organ brings a lawsuit as a public interest litigant, which has no direct interest with the infringed public interest. However, citizens are most likely to find illegal acts that harm public interests, which are conducive to the supervision of environmental pollution and the supervision of administrative organs to perform their duties, which is more in line with the original

intention of filing administrative public interest litigation system. China can also learn from the theory of the private attorney general to give citizens the right to sue and guide citizens to actively safeguard the environmental public welfare.

### ***4.3 Optimize the pre-lawsuit procedure and litigation procedure***

First of all, the purpose of pre-litigation procedure is that administrative agencies can solve environmental problems through self-correction and save judicial resources at the same time. In this process, the role of procuratorial recommendations can not be underestimated, timely follow-up response will make procuratorial recommendations better implementation. Procuratorial organs and administrative organs use the network big data and other platforms to share the evidence of environmental infringement synchronously, which can solve the problem timely and effectively and improve judicial efficiency.<sup>[11]</sup>

Secondly, procuratorial organs should respect and suort the ability of administrative organs to perform their duties, and the time limit of pre-litigation procedure should be adjusted according to the complexity of the case, the limitation of natural conditions, and the reasonable time limit for performance. In addition, the content of the procuratorial proposal should not be too detailed, should respect the functions and powers of administrative organs, maintain modesty, and put forward specific ways to deal with it in accordance with the relevant administrative laws and regulations. However, for the acts of dereliction of duty of administrative organs that lead to serious damage to public interests or social public interests can not be effectively repaired during the prescribed period, the scope of influence is huge, the procuratorial organs can directly bring administrative public interest litigation.

Finally, the relevant contents of the procuratorial proposal should be unified with the litigation request. If the administrative organ has fulfilled some of the procuratorial recommendations or the public interest has been partially improved, the litigation request can be consistent with the part of the procuratorial recommendation, and the completed procuratorial recommendation can be deleted from the litigation request.<sup>[12]</sup> When an administrative organ commits a new illegal act, its behavior is of the same type as that of the previous procuratorial proposal, then the procuratorial organ does not need to raise the procuratorial proposal again and directly enter the proceedings. If the new illegal act has nothing to do with the previous procuratorial recommendations, it is necessary to put forward procuratorial recommendations to urge the administrative organs to perform their duties again through the pre-litigation procedure.

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