

An Exploration of the Duty to Cease Infringement in Chinese Environmental Public Interest Litigation

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ABSTRACT

As environmental issues become increasingly prominent, the role of environmental public interest litigation in China has become increasingly critical. The duty to cease infringement, as an important remedy, plays a significant role in promptly halting environmental violations. This paper aims to employ comparative analysis and case study methods to clarify the application rules, elements, and judicial standards for the duty to cease infringement in environmental public interest litigation in China, particularly in cases where the harmful act has already been committed. The study seeks to provide theoretical support for improving the relevant legal framework and enhance the efficiency and fairness of the duty to cease infringement in judicial practice.

KEYWORDS

Environmental public interest litigation; Injunctive relief; Judicial challenges; Institutional improvement

1 Introduction

When environmental harm has already occurred, such as the continuous discharge of industrial wastewater into rivers or excessive mining leading to vegetation collapse, how to promptly halt the harm and prevent further damage through judicial means becomes a core issue in environmental public interest litigation. As an important type of tort liability, the application of injunctive relief in environmental public interest litigation not only concerns fairness in individual cases but also directly impacts the systematic protection of the ecological environment. According to the "2024 China Environmental Justice White Paper" jointly released by the Supreme People's Court of the People's Republic of China and the Supreme People's Procuratorate of the People's Republic of China, over half of the environmental public interest litigation cases accepted nationwide in a year involve ongoing infringements that have already been implemented. However, due to inconsistent standards for determining liability in judicial practice, nearly 30% of cases face the dilemma of "easy to adjudicate, difficult to enforce." A thorough exploration of the application rules for this liability holds significant theoretical and practical value for improving the environmental public interest litigation system and enhancing judicial response capabilities.

Research on the duty to cease environmental harm in environmental public interest litigation abroad began in the 1970s. The "citizen suit" system established under Section 505 of the U.S. Clean Water Act (1972) has developed mature standards for injunctive relief. For example, in its 20 January 2000 ruling on the case of *Friends of the Earth, Inc. v. Laidlaw Environmental Services* on 12 January 2000, the U.S. Supreme Court explicitly identified "significant risk of environmental harm" as a core requirement for issuing injunctions. Germany's Environmental Liability Act, implemented in 1991, established a three-tiered determination model of "illegality of conduct—causal relationship—balancing of interests" and established special environmental courts to ensure enforcement efficiency. In contrast, while domestic research has made some breakthroughs in recent years, it still has obvious shortcomings: most research focuses on the overall framework of environmental public interest litigation and lacks attention to the special nature of liability in cases where the conduct has already been implemented. For example, while Professor Cai Shouqiu and other scholars have explored the preventive value of injunctive relief, they have not sufficiently distinguished between the application differences between "potential harm" and "actual harm." Professor Lv Zhongmei, in evaluating the Taizhou case as a typical example, pointed out that there are ambiguous areas in judicial practice regarding the definition of the "continuity" of polluting behaviour and the "foreseeability of harm," and this issue has yet to be systematically addressed.

2 The theoretical foundation and current status of the duty to cease harm in cases where the harm

has already been caused

2.1 Legal classification and constituent elements

The duty to cease infringement in China's legal system has dual attributes as both civil liability and environmental public interest relief. Article 1234 of the Civil Code stipulates: "Where ecological and environmental damage is caused in violation of national regulations, and the ecological environment can be restored, the state-designated authorities or legally designated organisations have the right to request the infringer to assume restoration responsibility within a reasonable timeframe. If the infringer fails to restore the damage within the timeframe, the state-designated authorities or legally designated organisations may carry out the restoration themselves or entrust others to do so, with the costs borne by the infringer." This provision lists the cessation of infringement and restoration responsibilities side by side, clearly establishing their legal status as preventive remedies. In scenarios where the act has already been committed, the following three elements must be particularly considered:

- (1) The continuity of the infringing behaviour: Unlike one-time infringing acts, acts that have already been committed often exhibit characteristics such as continuity and long-term duration;
- (2) The potential for expanding damage consequences: Even if current damage has not yet fully manifested, allowing the behaviour to continue may result in irreversible ecological destruction;
- (3) The high probability of causation: Given the specialised nature of environmental damage, judicial practice often adopts the principle of "burden of proof reversal." For example, Article 6 of the "Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Tort Liability Disputes" (revised in 2020) stipulates that the infringer must bear the burden of proof to demonstrate that there is no causal relationship between the act and the damage.

2.2 Typical challenges in judicial practice

By analysing typical environmental public interest litigation cases published by the Supreme People's Court from 2019 to 2024, three major practical challenges can be identified:

- (1) Ambiguity in the scope of application: For example, in a case where a chemical company exceeded emission standards, the court may have differing opinions on whether to apply the duty to cease the infringement when the company has stopped discharging pollutants but the equipment has not yet been dismantled. The first-instance court may argue that the behaviour has ceased and there is no need to order cessation, while the second-instance court may determine that there is a risk of the equipment being used illegally again and order its dismantling. This discrepancy in rulings reflects the lack of a unified standard for the timing of "behaviour having been carried out" and whether the dangerous state continues.
- (2) Conflict between economic interests and ecological protection: In resource development cases, such as a coal mine engaging in excessive extraction, the company may argue that "ceasing operations would lead to thousands of job losses," leaving the court in a dilemma when rendering a judgment.
- (3) Lack of enforcement supervision mechanisms: The enforcement of environmental orders lacks third-party assessment. For example, in a case where a paper mill illegally discharged wastewater, the company appeared to have ceased operations but secretly discharged pollutants through underground pipelines. Due to limited technical capabilities, environmental protection authorities failed to detect this promptly, and it was only after a public interest organisation reported it again that the violation was investigated and addressed. This illustrates the absence of supervision.

3 Analysis of typical cases: a perspective from the Taizhou Case

3.1 Case facts and key points of the judgment

The 2012 Taizhou Environmental Protection Association v. Changlong and Five Other Chemical Companies Environmental Pollution Public Interest Litigation Case (hereinafter referred to as the "Taizhou Case") is a landmark case in China's history of environmental public interest litigation. The six companies had been discharging toxic substances into a tributary of the Yangtze River for an extended period, causing severe water pollution, with ecological restoration costs reaching 160 million yuan (Jiangsu Provincial Higher People's Court Civil Judgment No. (2014) Su Huan Gong Min Zhong

Zi No.00001). The first-instance court ruled that the defendants should cease the infringement and compensate for the losses, but did not specify the specific implementation methods for "ceasing the infringement," sparking academic debate. Professor Lü Zhongmei pointed out in her commentary that the core issue of this case lies in: when the polluting actions already carried out by the companies have caused actual damage, should the responsibility to cease the infringement only target the "termination of the current actions," or should it also include "preventive measures to avoid future risks"?

3.2 Institutional deficiencies revealed by the case

(1) Insufficient Professionalism in Determining Causal Relationships: In this case, the plaintiff submitted environmental monitoring reports showing pollutant concentrations exceeding standards, but the defendant defended itself by claiming that "emissions comply with national standards." While the court ultimately accepted the plaintiff's claims, it failed to conduct a scientific argument on the "connection between national standards and ecological damage," exposing the judiciary's inadequate ability to utilise environmental scientific evidence.

(2) Fragmented liability allocation: While the judgment simultaneously applied both cease-and-desist and compensation for losses, it did not clarify the relationship between the two. For example, can the company continue production after paying compensation? This ambiguity led to repeated disputes between the company and environmental authorities over the "scope of production suspension" during subsequent enforcement.

(3) Formalisation of public participation mechanisms: Although environmental organisations participated in the case proceedings, the public's right to environmental information and participation was not fully realised, resulting in a gap between the judgment outcome and public expectations, thereby impacting judicial credibility.

4 Improvement pathways: policy recommendations based on comparative law and empirical research

4.1 Refining legal application rules

(1) Clarify the criteria for determining the scope of application: In the revision of the Environmental Protection Law, reference can be made to the U.S. Superfund Act (CERCLA) to define "acts already committed" as "pollutant emissions exceeding industry standards by more than 10% and lasting for over 90 days," or "causing permanent ecological damage exceeding 5%," thereby reducing judicial discrepancies through quantitative standards.

(2) Establish a mechanism for balancing interests: Adopt the principle of "ecological interests taking precedence," but allow enterprises to defend themselves through "pollution alternative schemes." For example, under Germany's Environmental Justice Act, if an enterprise can prove that adopting clean energy technology can eliminate pollution within six months, it may be granted a grace period for rectification, while also required to pay an ecological restoration guarantee deposit.

4.2 Unify judicial adjudication standards

(1) Establish an expert database on causality: The Supreme People's Court, in collaboration with the Ministry of Ecology and Environment, should establish an environmental science expert database to provide technical support for major cases. The UK's "Environmental Court Technical Advisor" system could be referenced, where experts submit opinions as "friends of the court" during trials to compensate for judges' lack of professional knowledge.

(2) Publish the key points of guiding cases: For cases where the behaviour has already been implemented, clarify that "ceasing the infringement" should include specific measures such as "removing equipment, modifying processes, and sealing off the site." For example, the Supreme People's Court's 2024 guiding case on the "Certain Resin Technology Company Pollution Case" established a damage compensation method combining "cash compensation and technical modification offsets."

4.3 Innovating enforcement supervision mechanisms

(1) Introduce third-party enforcement assessments: After an environmental order takes effect, independent environmental organisations or research institutions shall submit enforcement reports quarterly, covering pollutant

emission data, equipment operation status, etc. The assessment costs shall be borne by the losing party. This mechanism can draw inspiration from India's "Public Interest Litigation Enforcement Oversight Committee" operational model.

(2) Establishing a credit-based joint punishment system: Incorporating a company's compliance with environmental orders into the social credit system, and restricting economic activities such as bidding and financing for companies that refuse to comply or engage in fraudulent compliance.

5 Conclusion

The improvement of the duty to cease infringement in cases where the act has already been committed not only requires the refinement of legal rules but also the innovation of judicial philosophy and the coordination of enforcement mechanisms. Future research could further explore the application of digital technology in environmental justice, such as using blockchain technology to achieve real-time evidence storage of pollution data, providing technical support for the determination of causality. Currently, the Hangzhou Internet Court has begun experimenting with blockchain technology for pollution data evidence storage. On 28 June, the court's official WeChat account published an article titled "Hangzhou Internet Court Establishes Legal Review Method for Blockchain Electronic Evidence for the First Time," in which a judge handling the case stated: As a decentralised database, blockchain possesses characteristics such as openness, distribution, and irreversibility. As an electronic data storage platform, it offers advantages such as low cost, high efficiency, and stability. In practical judicial proceedings, the legal validity of this electronic evidence storage method should be comprehensively assessed based on the principles of technological neutrality, technical explanation, and case-by-case review." This marks the first time in China's judicial field that the legal validity of blockchain-based evidence storage has been officially recognised. Internet experts and legal scholars have commented that this decision has epoch-making significance and can provide valuable experience for future legislation. Only by deeply integrating theoretical innovation with practical needs can the ecological protection function of the duty to cease infringement be fully realised, thereby driving the environmental public interest litigation system towards a new stage of substantive remedies.

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