

The Distribution of Burden of Proof in Environmental Civil Public Interest Litigation

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Abstract

Environmental problems, in the current society, have attracted the attention and attention of the society and the public. Relevant laws are applied under the research of legislators and the reference of foreign legal experience. With the development of environmental civil public interest litigation, a series of problems have gradually emerged with judicial practice, and the allocation of the burden of proof is somewhat unreasonable. Through to our country and outside the environment of civil public interest litigation laws and regulations, understand the environment of the characteristics of the burden of proof and analysis its can perfect, points out that should distinguish the application of public welfare and private benefit, refining the causal relationship responsibility distribution, improve the system of proof obstruction, environmental damage appraisal system and environmental information disclosure system and other related measures.

Keywords

Environmental civil public interest litigation, Distribution of burden of proof, Causal relationship, Perfect supporting system.

1. Introduction

At present, China's environmental problems are increasingly serious, and the development trend of ecological damage and environmental pollution continues to increase. In recent years, environmental infringement cases have exploded. In order to protect environmental public welfare, we must give full play to the role of environmental civil public interest litigation. Therefore, the understanding of environmental civil public interest litigation needs to be continuously deepened, clarify the difference between environmental civil public interest litigation and environmental civil private interest litigation, have different types of environmental infringement behavior, and protect environmental public welfare. In the background of China's environmental civil public interest litigation has been basically established, our current task is to investigate the problems in its actual operation, and further improve the details of the system, especially the burden of proof system. The problem of being solved by the burden of proof system is that the subject of the party claims the facts during the trial of the case and the evidence can not bear the adverse consequences. In view of this, the author decided to take this as the research object, analyze the problem and put forward opinions, hoping to cooperate with the comprehensive development of environmental law from the perspective of procedural law.

2. Legal Provisions on The Distribution of Burden of Proof in Environmental Civil Public Interest Litigation

2.1. Legal Provisions of Environmental Civil Public Interest Litigation in China

China's environmental civil public interest litigation system has been recognized by the national laws since the revision of the Civil Procedure Law in 2012. The effective effect of the Environmental Protection Law (2014) defines the basic national policy of environmental protection, which makes China's environmental civil public interest litigation system enter the era of laws to follow. In 2010, article 66, because of environmental pollution disputes, polluter shall be stipulated by law does not assume responsibility or reduce the responsibility and its behavior and damage there is no causal relationship between the burden of proof, the first provision in the form of legislation explicitly stipulated environmental pollution infringement dispute applicable inversion of the burden of proof. Then the laws and regulations on the environment of civil public interest litigation liability distribution method, article 1230, because of the environmental pollution, damage the ecological disputes, the actor shall not liable by law or reduce the responsibility and its behavior and damage there is no causal relationship between the burden of proof. Article 8 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Law to the Trial of Environmental Civil Public Interest Litigation Cases (2020) stipulates that when filing an environmental civil public interest lawsuit, it shall submit preliminary proof materials that the defendant's act has harmed the social public interest or has a major risk of harming the social public interest. Article 6 of the Provisions of the Supreme People's Court on the Trial of Compensation Cases for Ecological Environment Damage (Trial Implementation) stipulates that the plaintiff shall bear the burden of proof for the correlation between the defendant's environmental pollution and ecological destruction and the ecological environment damage. The Provisions of the Supreme People's Court on the Civil Action of the Ecological Environment specify the evidence of the defendant and the defendant, and provide the specific application of the evidence and the evidence in articles 9 and 26 to 29.

Civil litigation generally follows the litigation rules of "who claims who provides evidence", with the inversion of the burden of proof (or the reversal of the burden of proof) as a special case, which generally needs to be clarified by legislation[1]. Is the inversion of the burden of proof of causality or the presumption of causality, does the infringed bear the preliminary burden of proof of causality[2]? The proof of relevance is not sufficient to show that the burden of proof in the action for ecological environment damages lies in the plaintiff. Correlation is considered to be a directional connection that can arouse reasonable doubt from the judge. The determination is the premise that the burden of proof shifts to the actor rather than the causal relationship itself[3].

As environmental civil public interest litigation is in the development stage in China, the application of current legislation and judicial interpretation still has shortcomings. This paper intends to put forward perfect suggestions from the distribution of the burden of proof in environmental civil public interest litigation.

2.2. Legal Provisions and Applications of environmental civil public interest litigation outside the Region

2.2.1. Provisions on the burden of proof of the countries and regions

Germany is the first country to reverse the burden of proof in environmental pollution cases, and the rules are established by judges in judicial practice." [4] The German rule of burden of proof inversion only applies to specific cases and is often considered when the general principle of burden of proof fails to meet the needs of society and has poor consequences." " If the infringement in the dangerous field, the perpetrator bears the burden of proof, because the

cause of the damage lies in the dangerous area that the perpetrator can control, and the victim cannot control."The German Federal Supreme Court had a famous judgment on the public injury case —— iron furnace judgment, in this case, the defendant because of the dust exceeding the air pollution index, corroded the plaintiff's vehicle near the factory, causing damage to the plaintiff's property. The Federal Supreme Court of Germany believes that the defendant has a complete grasp of the pollution process, and can explain the pollution process and cause more than the plaintiff, which can be closer to the truth. Therefore, the defendant should bear the obligation to explain the causal relationship in the case.

When Japan constructs the burden of proof in environmental public interest litigation, the guiding ideology is the theory of cover nature, and the focus is also the determination of causal relationship. Japan's environmental infringement litigation, in principle by the plaintiff to prove the existence of causality, but there are exceptions, such as if cannot exclude the causality of the environmental damage behavior, the referee will have reason to determine the existence of causal relationship, namely cover factors, specifically the environmental public interest litigation between the plaintiff successfully proved the environmental violations behavior results may be a causal relationship. This does not mean that the causal relationship does exists. If the defendant submits the evidence to interrupt the causal relationship and proves that the causal relationship is not established, the defendant will not be liable for tort damages. The theoretical foundation of this theory is that in environmental public interest litigation, there are obvious differences in the litigation ability, such as the great gap between the original defendants in the economic basis and information acquisition ability. To sum up, the theory of cover ability balances the unequal litigation status to some extent between the two parties of the defendant due to social factors, and ensures that the strength of the two parties can fight under the same conditions. While reducing the scope and object of the plaintiff's evidence, the defendant is given the corresponding right of defense. By adjusting the rules, the procedural justice. In a word, the cover of Japan can still be summarized as follows: environmental civil public interest litigation also implements inversion, the plaintiff can achieve the cover of the standard of proof of the infringement and the damage results, and the standard of proof is low; the causal relationship of the defendant does not exist.

2.2.2. British and American law is the provision of the national burden of proof

The United States is a case law country, and it has the awareness of environmental protection earlier, so the relevant legislation and cases are relatively rich. Its mainly through separate regulations to regulate the relevant legal relationship, federal laws such as the Marine dumping law the clean air law the safe drinking water law the clean water law the endangered species act, local laws such as the Michigan environmental protection law, together formed the environmental public interest litigation system, litigation form, the United States called the private attorney general litigation or citizens. Accordingly, in a specific case, the judge of the United States court will specifically allocate the burden of proof of the original and the defendant, and there is not a programmatic provision. Therefore, it can be said that in the United States, there is only environmental public interest litigation, and there is no special burden of proof distribution system for environmental public interest litigation."Because in all the different facts of litigation. Fair distribution of risk points to the parties is mainly an empirical matter, so there should be no standard."[5]" The burden of proof in Anglo-American evidence law is divided into multiple theories, and the burden of proof of different parties will vary according to different circumstances."[6]This is reasonable on the whole. Equity, cheap, the distance between the parties and the evidence, the policy, experience, common sense and the cover will all affect the distribution of the burden of proof."The following is the American civil public interest litigation on the identity of the plaintiff leads to different burden of proof, for example: when a natural person as the plaintiff, do not need to prove the defendant caused the damage size and damage behavior and possible causal relationship between the damage

results, only need to prove that the defendant does exist the actual behavior of the environmental pollution. As for the size of the damage result, we can apply to the court for a professional appraisal institution or provide experts with professional appraisal opinion, which greatly reduces the litigation burden of the plaintiff. The defendant needs to prove that the pollution behavior and the damage result are not established a causal relationship. It can be summarized as follows: the plaintiff only needs to prove that the defendant has harmful behavior, the defendant provides evidence to prove that the causal relationship does not exist, and the damage result is designated by the court to draw the conclusion. When social organizations as the plaintiff, the court will be classified according to the nature of the social groups, ability, if the plaintiff is aimed at social environmental protection cause of social groups, the plaintiff need to bear more burden of proof, not only need to provide the defendant has the pollution of the environment, the damage to environmental public facts and behavior and the causal relationship between the damage, if the plaintiff and repair compensation claims, to prove the actual degree of environmental damage. It can be said that the plaintiff needs to prove all the elements of the tort."If the plaintiff is not a social group aiming at the environmental protection cause, the burden of proof is exempted and placed on the defendant to prove that the causal relationship does not exist.[7]

3. Several Reflections on The Distribution of Burden of Proof in Environmental Civil Public Interest Litigation

3.1. Distinguishes the burden of proof between environmental civil public interest litigation and environmental private interest litigation

Environmental tort relief can be divided into environmental civil public interest litigation and environmental infringement litigation, both have in common, in principle can apply the same burden of proof inversion rules, but due to the particularity of environmental infringement, convergence of environmental civil public interest litigation and environmental litigation rules of the burden of proof is still wrong. In the litigation of environmental private interests, the plaintiff is generally a natural person, and his ability to prove evidence does not have the equal position of the confrontation with the infringer. Therefore, the inversion of the burden of proof is conducive to the correction of the litigation structure and the realization of litigation justice. The plaintiffs (procuratorial organs or social organizations) in environmental civil public interest litigation usually have a high proof ability, such as professional technical knowledge, legal application level, financial strength or technical support and other superior conditions. If the inversion of the burden of proof is applied, it is not conducive to the protection of the legitimate rights and interests of the defendant. With the transition of procuratorial civil public interest litigation to "criminalization", the investigation results of the public security organs can directly provide evidence support for the procuratorial organs to file environmental civil public interest litigation, and even lead to the plaintiff's evidence collection ability is stronger than that of the defendant. It can be seen that, compared with environmental private interest litigation, the inversion of the burden of proof in environmental civil public interest litigation is not only unnecessary but also not conducive to the protection of the legitimate rights and interests of the defendant.[8]

Law is inherent with a lag and can only be solved when the problem is stable and cannot be easily changed for a period of time. Judicial interpretation, because of its special subject and lower effectiveness, can adjust the new situations temporarily. The two judicial interpretations in 2015 filled the loophole that the burden of proof for environmental public interest litigation cannot be based due to the lack of law. However, after all, the judicial interpretation is only a judicial interpretation and cannot replace the law. The law cannot be broken through in certain special powers, such as the scope of application in such cases. The parties can defend with

higher legal effect to hinder the occurrence of the right of claim."At the same time, according to the principle of 'no refusal of judgment', even if the authenticity of the case is unclear, the judge must make a judgment, which is the value of the rule of burden of proof."Therefore, it is very necessary to speed up the formulation of the law of burden of proof with its own characteristics, so that environmental private interest litigation and public interest litigation need not be mixed in the application of law.

3.2. The rule of causality proof is missing

The provisions of the tort liability law on the burden of proof in environmental tort cases are recognized as the confirmation of the inversion rule of the burden of proof. However, with the introduction of the judicial interpretation of environmental tort, some scholars believe that they jointly constitute the presumption of causality of environmental tort liability. As far as the law is concerned, the text interpretation directly stipulates whether the environmental polluter needs to bear the obligation of proof to prove that there is no causal relationship between the implementation behavior and the environmental pollution, that is, the environmental polluter needs to bear the obligation of proof, which does not reflect the presumption content. Article 12 of the draft of the Interpretation of Environmental Public Interest Litigation published in 2015 was deleted in the subsequent formal interpretation, which made the distribution rules of the burden of proof of causality chaotic, difficult to judge the causality, and brought obstacles to the fair trial of environmental civil public interest litigation[9]. According to Article 6 of the Judicial Interpretation of Environmental Tort, the pollution victim should provide evidence to the court to prove that the behavior of the environmental polluter has a correlation with the environmental pollution. The explanation will "pollution victims in litigation should first prove that pollution behavior and damage results" as the premise of environmental polluters prove causality is not established, seems to have some elements of the presumption of causality, but the concept of relevance is not release refers to the basic facts, normal relationship or both. Based on the current unclear norms, how the people's court should judge the relevance, and how the judges adopt the appraisal opinions, these relevant theories need to be explored by the academic community and interpreted and made a conclusion through legislative improvement.

3.3. The supporting system of ecological environment damage needs to be improved urgently

At present, there are no special laws and regulations in China that stipulate the supporting system of ecological environment infringement, only scattered in a single law. Taking the environmental information disclosure system as an example, paragraph 2 of Article 9 of the Environmental Protection Law stipulates that any unit or individual engaged in activities affecting the Marine environment should disclose its pollutant discharge information in accordance with the law. In terms of enterprises, our country adopts the combination of voluntary and compulsory environmental information disclosure principle, the key units by the districts of the municipal people's government department of environmental protection in their respective administrative areas according to the environmental capacity, the requirements of the key pollutant discharge total emission control index, and enterprises discharge pollutants type, quantity and concentration factors. However, China's current domestic relevant laws and regulations do not specify the amount of regional environmental capacity, so there is no clear standard to judge the pollutant discharge status of enterprises. [10]Although the provisions of the law on the environmental information disclosure system reflect the importance of China, it shows that the problems such as the standard is difficult to be unified, the scope of the information disclosure subject is not wide enough, and the narrow content and so on still need to summarize the nature of the system in judicial practice for legislative improvement.

China still has a long way to explore the prevention of environmental damage, and in the face of the environmental infringement litigation that has occurred, the environmental damage

appraisal system that affects the judge's judgment is also facing the pressure of rapid improvement. At present, some appraisal institutions often lack interdisciplinary professionals, [11]which makes it difficult to conduct a comprehensive and in-depth evaluation and analysis of complex environmental problems. The accuracy and authority of the results also affect the judges' determination of facts. There are also some problems of procedural opacity in the process of environmental damage forensic identification and inconsistent identification standards in China. This may lead to the parties' distrust of the results of the appraisal and affect the judicial process. The inconsistency of identification standards is reflected in that different appraisal institutions may adopt different evaluation methods and calculation models when dealing with similar environmental damage cases to draw far different identification conclusions. The lack of unified identification standards will lead to obvious differences in the identification results of the same environmental event in different regions and in different institutions, which not only damages the consistency of judicial judgment, but also poses a threat to the fairness and sense of justice of environmental protection.

4. Specification and Route Improvement of the Distribution of Liability of Evidence in Environmental Civil Public Interest Litigation

4.1. Clarifies the relationship between different plaintiff subjects and the distribution of the burden of proof

According to the characteristics of different prosecution subjects, the relationship between them and the burden of proof is analyzed, and the specific problems are analyzed so as to determine the intensity of the burden of proof applied to different types of subjects, so as to not only guarantee the fairness of the case trial but also improve the efficiency. So as to establish a comprehensive classification system of burden of proof.

4.1.1. Environmental group for the plaintiff

Compared with other countries, the development of China's environmental protection organizations has the following characteristics: First of all, started late but the development speed is rapid, China's environmental protection awareness is far behind other countries, so other countries have established environmental protection organizations when China's environmental protection organizations did not keep up with the trend. So far, China has thousands of environmental organizations registered. Second, the regional distribution of environmental organizations and strength imbalance, environmental pollution areas and the distribution of environmental organization region do not match, economic strength area relatively more people pay attention to environmental protection, environmental protection organization is more, and staffing, professional, strong, economic development backward regional environmental awareness, many places even does not exist qualified with environmental civil public interest litigation of the plaintiff's environmental organizations. Finally, the actual role of environmental organizations in environmental civil public interest litigation is limited. Although they are faced with increasingly severe domestic environmental problems, many environmental organizations still position them as environmental organizations with publicity functions, and they have no strength or ability to play a role in the practice of environmental civil public interest litigation. But it is not to say that China's environmental protection organizations have nothing: on the one hand, with the improvement of education level, more environmental science experts have joined the environmental protection organizations, greatly improving the professional foundation, and have the ability to collect evidence; on the other hand, most environmental protection organizations have their own stable financing channels. More importantly, even if the environmental group eventually loses the lawsuit, the court also supports the defendant to bear the necessary expenses of the plaintiff. It should be emphasized here that in many of the cases mentioned above, even if the

environmental organization loses, most courts still support the defendant to bear the attorney's fees and travel expenses incurred by the plaintiff.

Unfortunately, environmental protection organization is only looks strong, in the process of practice, is not really equal status with the other party, the complicated relationship between enterprises and the local government, and the core highly confidential information about pollution, makes the environmental organization forensics difficult exception, more pollution enterprises indirect control environmental organizations, through a shareholder to pay certain membership fee to join and control the environmental organizations. After controlling environmental organizations, enterprises may revoke the prosecution of environmental organizations through internal meetings. In addition, ecological destruction and environmental pollution are not the result of a day, and its concealment and complexity determine that it is difficult to easily find the damage behavior and results, and the professional field also put forward higher requirements.

Therefore, although environmental organizations have stronger strength than the previous victims, they still have no strength to compete with the defendants. Moreover, because of the difficult damage, environmental organizations have no effective methods and channels in evidence collection, and the plaintiffs are still trapped in the difficult situation of evidence collection. Therefore, the unanimous recognition of the academic circle and the academic and practical circles, compared with the defendant of the enterprise, the environmental protection organization as the plaintiff has no advantage in strength, and even can be said to be still at a disadvantage. In the author's opinion, in the context of environmental organizations increasingly participating in environmental civil litigation, to improve the rules of burden of proof, we must consider the current predicament of environmental organizations, the burden of proof of causality should not be demanding, and the rule of inverted burden of proof can be fully applied.

4.1.2. The public authority acts as the plaintiff

Whether in legislation or judicial practice, the procuratorial organs and the environmental protection organs have indeed participated in the environmental civil public interest litigation, and they are either the plaintiffs or the support prosecutors of the environmental protection organizations. With the investigation of the public security organ as the pre-procedure, the procuratorial organs have no pressure on the collection of case evidence, coupled with their accumulated litigation experience as the public prosecution organ, they can be said to have the crushing advantage in environmental civil public interest litigation, which can be said to be completely similar to the status of the public prosecutor in criminal proceedings. Therefore, people have a big difference on how to define the procuratorial organs in environmental public interest litigation, including specifically "the civil public prosecutor said" and "the plaintiff said". In the view of the state public prosecutor: in the civil action of the procuratorial organ as the plaintiff, the procuratorial organ is equivalent to the status of the civil public prosecutor. This view holds that there is no difference between the prosecution, whether in civil or criminal proceedings. Although one is the criminal responsibility of the defendant, the other is the civil liability of the defendant, but no matter what kind of proceedings, all is the way of prosecution to investigate the responsibility of the defendant. Moreover, whether in civil or criminal proceedings, the procuratorial organs represent the interests of the state and society, so they should give the legal status of the procuratorial organs. In "the plaintiff said" view: the procuratorial organ as the plaintiff's civil litigation, the procuratorial organs and the plaintiff in the same, have the plaintiff litigation status, the corresponding litigation rights of ordinary plaintiff, fulfill the obligations of the plaintiff, such as proof to prove their claims, and bear the risk of losing. The core idea of this view is that it supports the granting of procuratorial organs the right to file civil proceedings, but opposes the procuratorial organs the litigation rights more than the plaintiffs of ordinary civil proceedings because of their own identity and the nature of

the case. Of course, the above two theories both demonstrate the rationality of the procuratorial organ's participation in environmental civil public interest litigation.

As another major administrative department with the same qualification as the plaintiff, it naturally has more professional technology and excellent knowledge of environmental protection, and has more advantages when suing: first, it has a general grasp of the local environmental resources and natural, and can grasp the local information resources in real time; second, it has the environmental approval power, the production status, the detailed data of pollutant discharge and the use of pollutant equipment. In this absolute advantage, environmental protection agencies do not need to reverse the burden of proof of the elements of causality to balance the status of the two parties in litigation. To sum up, "if an environmental civil public interest lawsuit is filed by an environmental protection department or a procuratorate, the general distribution principle of the burden of proof is suitable for civil litigation because of its special status, status, authority and conditions".[12]

4.2. Constructs the burden of proof distribution system with the presumption of causality as the core

A unique point in environmental public interest litigation is that the determination of causality breaks people's stereotype of environmental infringement litigation and overthrew people's understanding of the distribution of burden of proof in such litigation in the past. Environmental public interest litigation want to use independent of the private litigation of special rules, there must be sufficient argument that it does not have the burden of proof rules applicable soil, further need to analyze where the foundation of the private litigation, and public interest litigation is different, its applicable foundation and where, and the foundation of the private litigation what are different. First, analyze the foundation of the inversion of the burden of proof in environmental private interest litigation, In practice, most environmental private interest lawsuits are infringement cases of citizens' personal rights and interests, In terms of the infringement process, Polluting enterprises first pollute the environment and then further take the environment as a guide to slowly permeate into the people's life and harm its health, In areas with severe air pollution, Surrounding people have a significantly higher probability of feeling respiratory disease, Areas with severe water pollution, Nearby residents also had significantly higher odds of contracting cancer, May even be harmful to the next generation, The onset of these diseases is mostly chronic, The harm of the environment to people is also gradually permeated, And the causes of progressive penetration disease are very complex, So for the general public, Not ability to investigate, let alone in court. In terms of infringement of legal interests, citizens' personal rights and interests of interest belong to the highest level of rights and interests, which should be protected whenever possible. The application of proof rules with higher requirements for enterprises can arouse the attention of operators, promote them to pay more attention to the requirements of environmental protection, and dare not infringe on the personal rights and interests of citizens. As far as the subject of prosecution is concerned, the subject of private interest litigation is the individual citizen, and the ability of proof is insignificant compared with the enterprise. Compared with environmental private interest litigation, environmental public interest litigation is obviously different. As far as the infringement process is concerned, environmental public interest litigation directly infringes on environmental public interest, without any intermediate transmission link. In terms of infringement of legal interests, although environmental public interest litigation infringes on public interests and can also infringe on an individual's person and property because of the environment, it is not so urgent compared with personal health. As far as the subject is concerned, it is obviously stronger than the individual citizens. It can be said that environmental public interest litigation has completely lost the legislative foundation of environmental private interest litigation. In practice, the strong proof ability of the public

authorities and environmental protection organizations makes the inversion rule of the burden of proof completely become empty talk and damages the majesty of the law. In addition, it is necessary to point out a special kind of case, Marine environmental civil public interest litigation. There are serious inconsistency between theory, legislation and practice in such cases. The Marine Environmental Protection Law stipulates that only public authorities are the subject of prosecution, which means that environmental organizations cannot participate in such lawsuits. In practice, this kind of cases basically all take the trial of criminal cases as the pre-procedure, and then in the form of criminal incidental civil litigation, so there is no need to reverse the burden of proof. The promulgation of any law cannot solve all the problems in this field, but it should not be a certain class of cases from theory to practice to the law. The lag of causal relationship in environmental public interest litigation is quite obvious here. Therefore, the inversion rule of the burden of proof cannot be applied to the causality in environmental public interest litigation, but should be proved by the claimant.

4.3. Supporting system for the distribution of the burden of proof

4.3.1. Improve the certification and obstruction system

Evidence obstruction refers to the parties of the burden of proof, intentionally or negligent as or inaction, make the burden of proof of the parties can not put forward evidence, make no evidence to prove, form the facts whether unknown state, so on the fact, has the burden of proof of the facts of the claim, make favorable adjustment to the person. In judicial practice, the two sides of the lawsuit do not have the evidence, and the side of the dominant evidence of course will hide and destroy the evidence that is not conducive to itself. In order to prevent the occurrence of such behavior and cooperate with the implementation of the burden of proof distribution system, China has set up the proof obstruction system. However, in environmental civil public interest litigation: first, the subjective actor should have intentional or gross negligence; second, the subject should exclude the third party to apply the evidence obstruction system, only for the original parties; third, according to different proof of obstruction of different relief methods, and the legal sanctions, such as detention and fine. In addition, in view of the particularity of environmental infringement litigation and the professionalism of accountability, the important environmental monitoring data obtained by environmental protection departments and enterprises should be made public in accordance with the law and timely cooperate with the court in obtaining evidence collection and use.

4.3.2. We will improve the environmental damage identification system

The professional and complex characteristics of environmental civil public interest litigation are relatively obvious, and they are more complex than ordinary civil litigation cases in terms of evidence collection and fact determination of case facts. Appraisal opinions have largely become the decisive factor for judges to decide cases. In view of the professional technology, many environmental damage assessment agencies have been established in China, which play a positive role in many cases of environmental pollution and ecological damage.[13] In 2005, the Ministry of Agriculture established the forensic appraisal center of agricultural ecological environment and agricultural product quality and safety; in 2006, the National Marine Environment Monitoring Center established the judicial appraisal institute to carry out the appraisal of Marine environmental pollution and ecological damage; in 2010, Kunming established the environmental pollution damage appraisal center; in 2011, Shandong, Henan, Jiangsu and other places established corresponding judicial appraisal institutions. However, the level of environmental damage judicial appraisal institutions is uneven, and there is no standard standard system, leading to problems such as non-standard appraisal procedures and inconsistent appraisal results, which bring some difficulties for the court to determine the facts. At present, it is urgent to establish a complete set of environmental damage forensic appraisal system, which inevitably involves the coordination and cooperation of judicial and

environmental protection departments, and makes unified guidance on the working process, methods and standards of environmental damage forensic appraisal, as well as the content and format of the appraisal report. In practice, attention should also be paid to the judge's excessive reliance on the results of judicial appraisal, which leads to the malicious collusion between the parties and the appraisal institutions to influence the results of the appraisal. Judges still need to do a good job in the examination and exercise the judicial power, and make a judgment at will not due to the professionalism of environmental infringement litigation.

4.3.3. We will improve the environmental information disclosure system

The environmental information disclosure system was established as early as 2008 through the Measures for The Disclosure of Environmental Information promulgated by the State Environmental Protection Administration. In addition, the Environmental Protection Law provides a detailed explanation of the environmental information disclosure system. In general, all government organizations, enterprises and public institutions that can have an environmental impact shall publish their own environmental information. In terms of the content, the purchase and use of pollutant discharge equipment and the status of the discharge of pollutants shall be announced. This system has a great help for the plaintiff to Sue the defendant for the public interest litigation of environmental pollution and ecological destruction, and is also very beneficial to the development of environmental public interest litigation. The plaintiff can easily use the published information of the defendant to provide evidence, improve the efficiency of finding the facts, clarifying the truth, and maintain the litigation balance between the original defendant. However, the establishment of the system is not easy, as the infringer defendant must try to conceal the information infringing on environmental public welfare. To this end, the author has the following suggestions: First of all, to establish a comprehensive environmental information disclosure system, whether the subject, content or channel of information disclosure should be expanded as far as possible, make full use of the advantages of the current financial media, flexible and accurate release of environmental information and investigation reports. Secondly, the environmental protection department may regularly review, regular sampling, attention to key enterprises, key areas, to achieve a target. Finally, do a good job in the supervision of the information disclosure system. The enterprises and institutions that intentionally do not disclose shall be punished according to law, and the public awareness of the public subjects shall be improved and their legal responsibilities shall be clarified.

5. Conclusion

With the improvement of people's awareness of environmental protection, the whole society is also paying more and more attention to environmental public interests. It is under this background that environmental civil public interest litigation is gradually established. At the present stage, to investigate the participation of various subjects in public interest litigation, the strength of procuratorial organs and environmental protection organs is significantly stronger than that of enterprises. It is impossible to reverse the burden of proof of causality, rather of making the law become a dead letter, it is better to change the rules of the burden of proof and give appropriate protection to enterprises. Given that the development of environmental organizations is still in a weak state and the low frequency of participation in litigation in practice, the inversion rule of burden of proof can still be applied. Therefore, according to the different subjects of the presumption of causality, the establishment of the diversified burden of proof is system at this stage.

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