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Comparative Study on the Definition Standard of "Interest" in the Determination of Plaintiffs Qualification in Environmental Assessment Administrative Litigation between China and the United States.

-- Feasibility of Incorporating Environmental Supervision Power into "Interest"

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Abstract

Chinas environmental impact assessment (EIA) administrative litigation narrowly confines "stakeholder interest" to substantive rights infringement, reducing the procedural environmental supervision rights granted to the public under Article 53 of the Environmental Protection Law to a mere "reflected interest." This fundamentally negates the independent legal value of procedural rights. Such judicial suppression conflicts sharply with the "enhanced effectiveness of public participation" mandate in the CPC Central Committees Implementation Outline for Building a Law-based Government (2021-2025), and contradicts the environmental supervision rights advocated by Article 53 of the Environmental Protection Law. Environmental administrative public interest litigation, compared with civil public interest litigation, places greater emphasis on preventing environmental damage from the source. It is a more effective way to supervise and restrain administrative power, and it attaches more importance to pre-emptive prevention than to post-event relief. By deconstructing the "procedural harm" standard and institutional constraints in U.S. case law, this paper explores a doctrinal path and collaborative framework for incorporating Chinas environmental supervision rights into the scope of stakeholder interest. This approach aims to steer EIA litigation toward governance transformation that balances substantive compliance with procedural justice.

Keywords

Environmental Assessment Litigation; Environmental Supervision Power; Procedural Rights.

1. Dependence on Substantive Rights: The Institutional Dilemma of Plaintiff Qualification in Chinas Environmental Assessment Litigation

1.1. The Lack of Public Legal Procedural Power

Article 25 of Chinas Administrative Procedure Law, which previously required "direct interest" as a prerequisite for procedural rights under judicial interpretation, has been narrowed to "subjective public rights explicitly stipulated in substantive law." However, the Environmental Impact Assessment Law (EIA) does not directly grant procedural rights to the public, resulting in procedural violations (such as non-disclosure or fabricated public participation) being categorized as "technical flaws." In his article "How to Determine the Qualification of Third-Party Plaintiffs in EIA Administrative Litigation: -- International Reference and Domestic

Selection," Zhang Chujia argues that this interpretation forces the public to prove that procedural violations have infringed upon public law-protected rights-such as health or property rights [1]. Yet the complexity of pollutant migration and the latent nature of damage (e.g., cancer exposure leading to disease onset after 10-20 years) creates substantial evidentiary gaps.

Taking spatial distance as an example, judicial practice requires plaintiffs to be located within environmental protection zones of projects (such as a 3-kilometer radius around waste incineration plants), and pollutants must exceed standards by at least 30%. This completely ignores the ecological risks of chronic exposure to low-concentration pollutants and the procedural violations that deprive the public of decision-making participation rights. The more fundamental contradiction lies in the current system: environmental administrative public interest litigation only grants plaintiff status to procuratorial organs, social organizations can only participate indirectly through civil public interest litigation, while individual citizens are entirely excluded from the procedural violation remedy framework. Wu Yu criticized this situation, stating that the current system restricts the identification criteria of stakeholders in environmental impact assessment to "adjacent rights", while ignoring its essence, which should be "environmental interests"[2]. Environmental interests are independent interests derived from the constitution and the state's obligation to protect the environment, manifested as good environmental quality. They are neither property rights nor personal rights, nor are they reflective interests. The more fundamental contradiction lies in that the current system only grants the qualification of plaintiff in environmental administrative public interest litigation to procuratorial organs, and social organizations can only indirectly participate through civil public interest litigation, while individual citizens are completely excluded from the system for remedying procedural violations.

1.2. Consideration of the Risk of Abuse in Judicial Practice

Compared to quantifiable property damage or the well-established health rights assessment criteria, the inclusion of environmental supervision authority as procedural power in the "interested party" standard for plaintiff liability determination has raised concerns about potential abuse of litigation rights. This has become the primary reason for resisting the expansion of the "interested party" scope. In its ruling (2016) Zui Gao Fa Xing Shen No.172, the Supreme Peoples Court established that environmental impact assessment litigation plaintiffs must prioritize "protecting their legitimate rights and interests." This ruling completely separates procedural rights from the "interested party" framework, reaffirming that such rights must center on interests protected by substantive administrative law rather than being validated through indirect or derivative benefits. While this precedent demonstrates the Supreme Courts strict definition of "interested party" in environmental litigation to prevent overgeneralization of the assessment system, it overlooks the inherent risks of environmental risk diffusion and irreversible ecological damage. This approach contradicts the core principle of environmental litigation-predicting and regulating potential future risks.

2. Program Violation Leads to Damage: The Evolution of Legal Principles and Institutional Constraints of Plaintiff Qualification in the United States

2.1. The Expansion of Jurisprudence from Aesthetic Damage to Procedural Damage

The qualification of plaintiffs in environmental litigation in the United States has experienced a breakthrough in jurisprudence:

(1) The Scope of Environmental Damage Revolution: In the 1965 Scenic Hudson case, the Second Circuit Court of Appeals first recognized that "causing landscape damage" constitutes "actual harm" under the Federal Administrative Procedure Act, eliminating the requirement for residents to prove economic or health losses to qualify as plaintiffs. This landmark decision established the principle that "aesthetic and environmental well-being are core elements of quality of life," laying the foundation for procedural rights to be actionable.

(2) Causal Relationship Loosening: In the 1973 SCRAP case, the Supreme Court accepted the presumed causal chain proposed by student groups: "railway fare increase → reduced material recycling → increased waste → landscape degradation." The court confirmed that railway fare hikes could lead to "aesthetic and ecological damage" such as natural resource waste and garbage accumulation, which constituted "specific and identifiable harm," thereby granting citizens standing to sue.

(3) Considerations on the Risk of Abuse: In the landmark case Lujan v. Defenders of Wildlife (1992), conservative Justice Scalia emphasized that plaintiffs must demonstrate "specific, particularized, and non-conjectural harm." He argued that procedural rights violations-such as the denial of the right to information-do not constitute "substantial interest" unless they result in substantive damages like health or property loss. This jurisprudential stance maintains that procedural rights lack independence, and their excessive expansion could lead to frivolous lawsuits

(4) In the landmark Massachusetts v. EPA (2007) case, the U.S. Supreme Court first recognized that rising sea levels caused by government agencies failure to regulate greenhouse gases constitute "actual injury" to state governments "quasi-sovereign interests," even when such harm is widespread and not fully manifested. This decision established that procedural violations (such as failure to fulfill statutory assessment obligations) can be considered actionable damages independently, without requiring proof of substantive rights infringement.

From 1965 to 2007, the plaintiff qualification standards for environmental litigation underwent gradual refinement, starting with safeguarding public rights and progressing toward preventing frivolous lawsuits. The system was ultimately established in 2007 to recognize procedural violations as independent grounds for litigation. While the author acknowledges that treating procedural rights as actionable damages may lead to excessive litigation, it is crucial to proactively address frivolous lawsuits rather than passively limiting plaintiff qualifications as a risk-averse measure. This approach better protects citizens litigation rights and prevents environmental risks. The improvement of the administrative public interest litigation system in our country can appropriately take into account the public trust theory, that is, no organization has the right to exclusively utilize or damage natural resources, which is a national interest[3]. The state shoulders the trust obligation of managing, regulating, utilizing and protecting natural resources, and citizens have the right to sue the government for its violation of the trust obligation. This concept is conducive to dispelling the state's concerns about expanding the scope of litigation subjects and promoting the further improvement of the legal system.

2.2. The Dual Constraint Mechanism of Citizen Litigation Clause

The core of American experience is to balance the expansion of litigation rights and the risk of abuse of litigation through system design:

(1) Pre-litigation filtering mechanism: The Clean Air Act mandates the issuance of compliance notices to administrative agencies 60 days prior to litigation, establishing a self-correction period. Data indicates that approximately 40% of cases achieve voluntary administrative corrections during this notice phase, effectively preventing judicial resource waste. This tiered approach combining "administrative self-review as the primary measure with judicial review

as the safeguard" successfully balances procedural efficiency with respect for administrative discretion.

(2) Hierarchical administrative procedure violation correction system

1) For major procedural violations, Section 706 of the Federal Administrative Procedure Act (APA) clearly stipulates that when an administrative act "fails to comply with the procedures prescribed by law", the court "shall declare it illegal and set it aside".

2) For the correction of technical defects, that is, the procedural error does not affect the substantive correctness of the administrative decision (such as the public notice period is less than one day but the right to defend is not deprived), the court established in Allied-Signal v. NRC (1992) and other cases that the case is sent back to the administrative organ to redo the procedure rather than revoke the original decision.

Key Insight: The United States does not unconditionally recognize the litigability of procedural violations. On one hand, it prevents judicial resource waste and litigation overload through pre-litigation self-correction mechanisms of administrative agencies. On the other hand, it ensures proportionality between fault and penalty through a tiered post-rectification system, thereby maintaining the standard of procedural harm while avoiding frivolous lawsuits.

3. The Rationality of Incorporating Environmental Supervision into "Interests"

3.1. The Independent Value of Procedural Rights: From "Reflective Interests" to "Institutional Interests"

The sole criterion of a program's value lies in whether the program itself possesses certain intrinsic qualities, rather than its usefulness as a means to achieve some external purpose[4]. The right to environmental supervision, as a statutory procedural right granted to the public under Article 53 of the Environmental Protection Law, demonstrates its independence through the fact that it can serve as a basis for judicial relief without requiring actual damage to substantive rights. Current judicial practice often treats procedural rights as "reflected interests" within administrative law, viewing them merely as appendages to substantive rights. However, the democratic and scientific nature of modern environmental governance decisions fundamentally relies on procedural justice and the public participation rights it safeguards. Public participation is not intended to replace expert judgment, but rather to supplement the limitations of the expert system by introducing diverse values and local knowledge, thereby enhancing the legitimacy and acceptability of decision-making[5]. A prime example is the "Shenzhen Bay Waterway Dredging Project Environmental Impact Assessment Plagiarism Case," where the construction entity was exposed by the public and environmental organizations during project disclosure processes for plagiarism, fabrication, and incomplete report content.

U.S. judicial practice has established through the "procedural harm standard" (as exemplified in Sierra Club v. Morton) that administrative violations of statutory procedures - such as failure to disclose information or fabrication of public opinion-constitute infringement on the publics "procedural interests" without requiring proof of substantive harm. This jurisprudential logic also finds normative grounding in China -Article 1 of the Environmental Impact Assessment Public Participation Measures explicitly designates "supervisory authority" as a statutory right, yet current legislation lacks provisions for judicial remedies. Consequently, procedural violations are frequently dismissed by courts on the grounds of "no impact on substantive rights." Therefore, recognizing the independent value of environmental supervision authority essentially treats procedural violations in environmental assessments as infringements on "institutional interests," thereby addressing structural deficiencies in the current legal framework regarding procedural justice safeguards.

3.2. Breaking the Dilemma of Entity Attachment: From "Damage to Entity Rights and Interests" to "Expansion of Environmental Interests"

Chinas environmental impact assessment (EIA) litigation has long been constrained by judicial frameworks that prioritize substantive rights over causal proof. When environmental organizations and citizens file administrative lawsuits against EIA approvals, they must prove the causal link between governmental actions and actual harm. However, this burden is often hindered by data gaps and technical complexities. For instance, plaintiffs must demonstrate a direct correlation between pollution from a chemical plant under construction 25 kilometers away and health damage. Environmental groups, as primary litigants in public interest cases, are similarly limited by the "direct stake" or "substantive harm" requirement, preventing them from fulfilling their professional roles. A notable case is the 2017 Yunnan Green Peacock lawsuit (Yun Min Chu No.2299), where the plaintiff Friends of Nature spent three years gathering evidence and conducting costly technical assessments to prove that the hydropower projects submerged area would threaten green peacock habitats.

In terms of litigation procedures, the qualification of social environmental protection organizations to file environmental administrative public interest lawsuits has never been explicitly supported by law, due to the connection issue between the "Environmental Protection Law of the People's Republic of China" and the "Administrative Litigation Law". Article 58 of the "Environmental Protection Law" grants social environmental protection organizations the right to file environmental public interest lawsuits, but this article does not clearly define the nature of the lawsuit, that is, whether it includes administrative public interest lawsuits. The academic community generally believes that this article only refers to the right to file environmental civil public interest lawsuits and does not grant social organizations the qualification to file environmental administrative public interest lawsuits, resulting in a lack of strong legal basis for the plaintiff qualification of social environmental protection organizations in environmental administrative public interest lawsuits[6].

Incorporating environmental supervision standards into the "stakeholder interest" framework can transcend the constraints of traditional protection norm theory. The legal rationale lies in recognizing environmental interests as both public welfare and private benefits protected by Article 26 of the Constitution and the Environmental Protection Law. These interests are neither traditional personal property rights nor purely subjective claims, but rather legitimate public entitlements regarding environmental quality such as clean water and stable ecosystems. By adopting the principle that "procedural violations constitute harm," environmental organizations could directly sue for flaws in environmental impact assessment procedures (e.g., missing public notices or fraudulent participation), eliminating the need to struggle with proving difficult-to-verify substantive causation. This approach facilitates a functional transformation of environmental justice from "post-facto remediation" to "preventive measures before incidents occur."

4. The System Construction of the Collaborative Mode of "Socialized Right to Appeal + Procuratorial Support"

4.1. The Mechanism of Initiation and Restriction of Social Litigation Right: Balance the Expansion of Litigation Right

The social litigation right grants environmental organizations direct prosecution eligibility for procedural violations in environmental impact assessment (EIA) processes, while implementing a pre-litigation mandatory notification mechanism to prevent frivolous lawsuits.

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Social organizations must serve administrative agencies with a "Procedural Violation Notice" detailing specific violations (e.g., failure to disclose documents or forgery of signatures) before filing a lawsuit, accompanied by a reasonable rectification period (e.g., 60 days). If the administrative agency corrects the issues within the specified timeframe (such as rescheduling hearings or supplementing information), the litigation will be terminated. Should the agency refuse to rectify or respond perfunctorily (e.g., issuing only explanations without substantive corrections), social organizations may file a lawsuit based on the receipt acknowledgment. This mechanism draws inspiration from the U.S. Clean Water Acts citizen suit provisions, establishing both procedural rights for social organizations to seek legal redress and a pre-litigation process. By prioritizing administrative self-correction, it effectively reduces unnecessary judicial resource waste.

4.2. The Strengthening of the Function of Procuratorial Support and the Linkage Mechanism: Make up for the Shortcomings of Public Litigation Capacity

As Chinas statutory administrative authority, the Peoples Procuratorate must fully utilize its statutory investigative powers and serve as a deterrent to other administrative agencies when environmental organizations file lawsuits to protect public environmental supervision rights, thereby establishing a collaborative support mechanism. In U.S. environmental impact assessment (EIA) litigation, when environmental groups sue procedural violations but lack critical evidence like internal approval documents or original monitoring data, they may apply for an Investigative Order under the Fourth Amendment of the U.S. Constitution. Courts may authorize plaintiffs to access unpublished EIA data from pollution sources after reviewing "reasonable suspicion." In Chinas EIA litigation context, however, procedural rights have long lacked independent remedies, with evidence of procedural violations monopolized by administrative agencies or enterprises, leaving citizens and environmental groups powerless to compel evidence collection. From the perspective of interests at stake, as a direct stakeholder in non-administrative violations or omissions, the procuratorial organs have relative independence and can supervise administrative organs more objectively and impartially, safeguarding public interests [7]. From the perspective of judicial efficiency, under Article 45 of the Administrative Litigation Supervision Rules of the Peoples Procuratorate, procuratorial organs can effectively break through evidentiary barriers by exercising their compulsory evidence collection authority. Procuratorial organs should establish regular collaboration mechanisms with social organizations to share case leads and technical resources in EIA litigation.

Environmental groups face challenges in obtaining evidence and demonstrating expertise when confronting administrative agenciesTo address the dual disadvantages, procuratorial organs must strengthen their functions to achieve coordination. According to Article 45 of the "Administrative Litigation Supervision Rules of Peoples Procuratorates", they should obtain critical evidence when administrative agencies refuse to transfer materials, including: environmental assessment agency-construction unit commission contracts and cost vouchers (proving fraudulent motives due to vested interests), unpublished expert review opinions, internal approval records, and original monitoring data from project surroundings (such as air quality and water quality reports). In the enforcement after a successful lawsuit, administrative power has an inherent expansibility. As the plaintiff in administrative public interest litigation, the procuratorial organs, with their professionalism, can cooperate with judicial power to effectively check administrative power and enhance the effectiveness of supervision[8]. For non-cooperative administrative agencies, procuratorial organs as public authorities may take compulsory measures like fines and detention. For instance, in the Anhui Dangshan pollution case, procuratorial organs obtained environmental assessment records showing enterprises commenced operations without approval, compelling environmental protection departments to fulfill their duties. This highlights the core role of procuratorial investigations in breaking through information barriers.

5. Conclusion

The integration of environmental supervision standards with the "stakeholder" criterion constitutes a judicial affirmation of public participation in environmental governance. By establishing adjudicative rules that recognize "procedural violations as independent actionable matters" and implementing a coordinated mechanism combining "socialized litigation initiation with prosecutorial capacity enhancement", Chinas environmental impact assessment litigation has transitioned from substantive rights reliance to prioritizing procedural remedies. This evolution ultimately transforms public participation rights from declaratory entitlements to enforceable judicial remedies. The Supreme Peoples Courts 2025 "Opinions on Serving and Safeguarding the Ecological Environment of the Yangtze River Basin" explicitly emphasizes "strengthening public participation in environmental decision-making supervision". Future environmental code compilation should institutionalize this paradigm through dedicated chapters on "Public Participation and Public Interest Litigation", thereby advancing the modernization of environmental governance.

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