

# The Internal Construction of the Environmental Criminal Compliance System for Chinese Companies

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## ABSTRACT

Considering the predicament of insufficient legislative basis and limited practical attempts for environmental criminal compliance of Chinese enterprises, the green governance concept can be tried to provide new ideas for its institutional construction, so as to promote the improvement of environmental criminal compliance of enterprises in terms of top-level institutional design and coordination of mechanisms and instruments. From the perspective of internal governance, according to the target requirements of environmental criminal compliance risk prevention and control, this essay explores the basic rules design, organization building, and supervision mechanisms that should be included in an enterprise's environmental criminal compliance system, in order to help enterprises establish and operate an efficient and feasible environmental criminal compliance system internally.

**Keywords:** *Environmental criminal compliance, Internal management, Green legal governance.*

## 1. INTRODUCTION

Corporate environmental crimes are characterized by their scale, causing not only huge property losses, but also life-threatening personal damage and ultimately far-reaching and difficult-to-recover ecological damage. Based on this, in recent years, China has increased the regulation of corporate environmental crimes. For example, the term "major environmental pollution crime" has been changed to "environmental pollution crime", and the legislative fence has been firmly established[1]. Moreover, the number of verdicts on environmental pollution cases has increased significantly, which indicates that the prosecution of environmental crimes against enterprises has been greatly enhanced.

However, it is worth noting that due to the latent nature of the harmful consequences of corporate environmental crimes and the difficulty of determining pollution losses, it is unlikely that the harsh penalties alone will solve the environmentally related crimes of corporations. In addition, the cost of restoring the ecological environment is often greater than the cost of

sanctions against criminal enterprises. It is thus clear that the importance of ex post facto recourse for corporate environmental crimes is much less than the importance of ex ante prevention and control of risks. The construction of an effective mechanism suitable for corporate environmental crime governance not only helps to build a corporate compliance culture, but also helps to realize the prevention and control of environmental crime risks, and is of great significance for the exploration of corporate criminal compliance development.

## 2. PRACTICAL DIFFICULTIES OF ENVIRONMENTAL CRIMINAL COMPLIANCE FACED BY CHINESE COMPANIES

Corporate compliance has been practised in the U.S. since the 1970s, when it was transformed from an industry self-regulatory initiative to an internal control mechanism focused on deterring and preventing criminal violations. The 1991 Federal Sentencing Guidelines formally introduced corporate compliance into legal practice and

influenced the way it was structured within companies. Since then, a series of legal norms represented by the Sarbanes-Oxley Act, the Dodd-Frank Act, and the New Compliance Guide: An Assessment of Corporate Compliance Programs have fueled the development of corporate compliance in the United States and the international community [2].

Under the influence of this international background, coupled with domestic factors such as environmental pollution gradually becoming a high-risk area for enterprise production and operation, and the increasing prominence of enterprise environmental crimes, Chinese enterprises' criminal compliance has begun to be applied in the environmental field. The implementation of environmental criminal compliance means not only aims to give full play to the deterrent function of criminal law beforehand, but also intends to force enterprises to establish their own compliance mechanisms. The introduction of the incentives and constraints of criminal law serves to prevent and effectively address environmental crimes, and greatly saves judicial resources.

However, although corporate compliance has entered the mainstream vision in China and started to be taken seriously, the development of environmental criminal compliance has just started, and there are three main difficulties under the complicated practice as follows.

First, the notion of corporate environmental criminal compliance is not deeply rooted. At present, the research on corporate environmental criminal compliance in China is still scarce, and the related theoretical research is weak and lacks a lot of theoretical support, which leads to the concept not being fully established and generally accepted. Due to objective reasons such as the relatively short time that corporate compliance has entered China and the small number of practical attempts of criminal compliance in recent years, the important value and impact of corporate environmental criminal compliance have not yet been widely recognized. In the absence of profound recognition, it will be difficult to give full play to the role of environmental criminal compliance in the development of companies and the construction of environmental regulations. The relevant concept has not been fully established, and even though corporate environmental criminal compliance has obvious cross-disciplinary characteristics, the lack of specialized research in this field in

environmental law, commercial law and criminal law has shackled the development of the corporate environmental compliance system [3].

The second obstacle is that there are few relevant legislative bases. The existing effective normative texts on corporate compliance in China have a low level of effectiveness, mainly soft law norms such as normative documents, and national or industry standards. In codified countries, the establishment and development of a system must be supported by a legislative basis, otherwise, it can only be improved in reverse through a lot of practice, which is often costly [4]. Furthermore, the current legislation has a low degree of fit with corporate environmental criminal compliance. Most of the existing legislative norms are aimed at administrative supervision and civil and commercial compliance requirements, and there is only one provision for the third-party supervision and assessment mechanism of compliance for enterprises involved in criminal compliance in order to promote the pilot reform of criminal compliance. This indicates that China has not yet paid sufficient attention to corporate environmental criminal compliance at the legislative level, and the legislative basis needs to be expanded.

The third major issue is the failure to form a systematic set of institutional rules. Due to the lack of relevant legislative basis, the existing institutional design of corporate environmental criminal compliance in China is not systematic enough, and is relatively coarse and scattered, with relatively isolated and fragmented problems. The content of corporate environmental criminal compliance generally covers two levels: corporate subjects and judicial subjects. At the level of environmental criminal compliance of corporate subjects, it includes environmental crime risk identification, improvement of the compliance plan, refinement of compliance standards, construction of compliance organization and internal sanctions[5]. At the level of judicial subjects, the main content is the review and supervision procedures related to environmental crime prosecution and sentencing. The small number of enterprises that have applied corporate environmental criminal compliance on their own, and the even rarer number of cases that have been included in the pilot reform of the prosecution, indicating that the current mechanism of corporate environmental criminal compliance fails to link corporate governance, administrative management and court case adjudication, and cannot form an integrated and coordinated compliance system.

### **3. INTRODUCTION OF GREEN LEGAL GOVERNANCE AND INTERNAL SYSTEM CONSTRUCTION FOR ENVIRONMENTAL CRIMINAL COMPLIANCE OF CHINESE ENTERPRISES**

#### ***3.1 Green Legal Governance***

In order to promote the development and perfection of corporate environmental criminal compliance as a whole, green governance has become a powerful assistant for the systematization of the national governance system and the modernization of capacity in the context of China's advocacy of ecological civilization construction. Green governance refers to the principle of mutual trust and reliance based on multiple governance subjects, through equal and voluntary coordination and cooperation, to jointly govern public affairs activities, advocate green values and promote the realization of green governance goals. Green legal governance can effectively combine prevention, supervision and remediation, and take into account the cooperative development of the three systems of "ecology, society and economy"[6].

Green legal governance has a number of advantages. First of all, it has a plurality of subjects, with enterprises, government and the public as typical representatives of each subject having its own specialized rights and obligations, which is conducive to the full play of their own strengths. Secondly, green legal governance measures feature abundance. One is the "incentive-type" governance methods triggered by the internal drive of enterprises, another is the "command-type" governance acts led by the government, and the third is the "social cooperation-type" governance measures with the full participation of other subjects in society. The three main bodies jointly participate in the governance to form a comprehensive three-dimensional governance system, which jointly escorts the green legal governance to achieve the optimal effect. Furthermore, the green legal governance mechanism has integration. The various measures mentioned above take green development as the common goal, complement each other, integrate with each other and improve each other to promote the formation of an organic and coordinated governance mechanism.

Corporate environmental governance can be regarded as a systematic requirement for the transformation of corporate governance from structure to behaviour. It is the main manifestation of corporate responsibility for environmental protection and an important mechanism for internal control of corporate environmental criminal compliance risks, and it is the main expression of the green governance concept at the corporate level. In order to comply with laws and regulations and other regulatory requirements, corporate compliance requires two-way interaction with the external environment and subjects, and effective compliance results are achieved by constructing a diversified participation model. Unlike the compliance management approach in the past, which generally transferred corporate governance matters to the company's board of directors for handling, the current compliance management is a requirement imposed by law enforcement agencies on the internal governance of the company from the outside. Especially in recent years, the criminalization of corporate compliance has become obvious, making it not only belong to the scope of corporate governance, but also the demand of both national and social regulation.

#### ***3.2 Internal System Construction of Environmental Criminal Compliance for Chinese Enterprises***

Based on the various advantages of green legal governance mentioned above, it provides new ideas to break the development dilemma of environmental criminal compliance for Chinese enterprises. Regardless of the changes in external factors, the core of environmental criminal compliance ultimately points to the enterprise itself. The ability of an enterprise to establish and operate a feasible and efficient environmental criminal compliance system within itself plays a crucial role in the development of environmental criminal compliance of the enterprise. Therefore, regarding how to use the green legal governance system to protect the development of corporate environmental criminal compliance, the following is to discuss the response from three major aspects of internal governance: rule design, team building and supervision mechanism[7].

First, in the rule design of corporate environmental criminal compliance, it is necessary to identify, assess and rank the environmental crime risks of corporate business activities, and build an effective environmental risk management

framework system. Then the construction of the supporting legal system of environmental criminal law should be further improved to clarify the environmental criminal compliance obligations of enterprise decision makers, managers and other related subjects. The awareness of each subject in terms of compliance ought to be strengthened, and they are required to make lawful and reasonable commitments in order to prompt enterprises to take the initiative to fulfil their environmental responsibilities. In addition to this, an internal reward, reporting and sanction system needs to be implemented. It is imperative to establish a reasonable and feasible internal reporting mechanism for environmental crimes and to respond to them in a timely manner. Once a report is proven to be true, the whistleblower should be rewarded and protected, and penalties should be promptly imposed on the guilty enterprise as well as the person in charge. For enterprises that voluntarily report their non-compliant environmental crimes to the judicial authorities, a discretionary sentencing circumstance should be applied.

Second, the construction of compliance teams should be strengthened. To guarantee the effective operation of the environmental criminal compliance system, an environmental compliance team is also needed within the enterprise to implement it. Specifically, the internal mechanism of the board of directors should be improved, and an environmental compliance committee or sustainability committee should be formed by independent directors with professional knowledge. It is necessary to establish a strict and clear internal environmental compliance management system, set up a compliance department, and organize full-time staff to engage in compliance management training. Also, research on the environmental criminal compliance system should be emphasized, and enterprises should strengthen the training of employees' awareness and behaviour in environmental protection, and carry out study and education on environmental criminal legal norms and training on corporate compliance.

Finally, a corresponding compliance monitoring system should be supported [8]. From a practical point of view, since many enterprises do not yet have the objective qualifications to voluntarily carry out environmental criminal compliance tasks, some professional social intermediaries can be appropriately introduced to provide supervision support. For example, environmental impact assessment agencies, law firms and other intermediate bodies can be in the process of

enterprise operation to carry out risk tips and help enterprises develop and improve compliance plans through external supervision means to achieve better results of environmental criminal compliance. In addition, environmental audit supervision mechanisms can be introduced, external investigation and information disclosure systems for environmental crime cases can be improved, and reports on the environmental management of enterprises can be provided to the public through the media[9]. The above-mentioned series of compliance supervision measures would facilitate the deeper development of environmental crime prevention and management in China, and promote the joint and coordinated development of ecological civilization and economic construction.

#### **4. CONCLUSION**

To sum up, the combination of prevention and supervision guided by the concept of green values can help promote the development and improvement of corporate environmental criminal compliance. Green governance, with its advantages of "proactiveness, initiative and defensiveness", helps to provide a new perspective and approach for the development of environmental criminal compliance in Chinese enterprises, making full use of the public goods properties of natural resources and ecological environment, and promoting the joint progress of economic and ecological civilization construction. The above study shows that there is a significant positive relationship between environmental criminal compliance and internal governance. For the construction of internal governance, the three aspects of rule design, team building and supervision system should be launched to coordinate and form a synergy. It is of certain theoretical and practical significance to safeguard environmental criminal compliance by improving the relevant legal and regulatory system, and it is also conducive to the process of accelerating the implementation of green development and the construction of ecological civilization in China.

#### **AUTHORS' CONTRIBUTIONS**

This paper is independently completed by Xiangyu Chen.

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