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Research about the Regulation of Environmental Administrative Penalty Discretion

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Abstract

With the rapid development of China's social economy, environmental problems have become increasingly prominent. The construction of ecological civilization has become the focus of China's socialist modernization construction. In the face of increasing environmental risks, it is difficult to regulate the exercise of environmental administrative penalty discretion and increase the difficulty of implementing environmental administrative penalty decisions due to the limitations of legislative regulation, negative judicial regulation and weak administrative regulation. Based on the basic theory of discretion in environmental administrative punishment, this paper analyzes the function of discretion in environmental administrative punishment, clarifies the necessity and principle of discretion in environmental administrative punishment, and puts forward the regulation path.

Keywords

environmental administrative punishment, discretionary regulation, modernization of ecological environment governance system

1. Introduction

With the accelerated development of urbanization, the ecological and environmental problems are characterized by rapid development and diversification. Environmental legislation is gradually put on the agenda, and the legal system of environmental administrative punishment is gradually improving. However, due to the diversity and professionalism of environmental issues, the legislature usually only clarifies the tasks and objectives that need to be completed, and cannot cover the specific details of environmental administrative penalties. With the revision of the "Environmental Protection Law" in 2014 and the revision of other environmental separate laws, the administrative law enforcement authority of the ecological environment administrative organs has greatly expanded, the amount of fines and punishment measures have increased significantly, and the ecological environment

administrative organs enjoy a relatively large amount of administrative penalty discretion space. On May 22, 2019, the Ministry of Ecology and Environment issued the "Guiding Opinions on Further Regulating the Application of Discretionary Power of Environmental Administrative Punishment" to regulate the application and supervision of the discretionary power of ecological environment administrative punishment and prevent law enforcement risks. The opinion clarifies the applicable principles and systems of administrative penalty discretion, the general requirements and procedures for the formulation of discretionary rules and benchmarks, and the application of discretionary rules and benchmarks. The document requires "refining the discretion standard and compressing the discretion space". Therefore, each region needs to formulate administrative normative documents according to the current situation of environmental law enforcement, and further refine relevant laws and regulations. In March 2020, the two offices of the central government issued the "Guiding Opinions on Building a Modern Environmental Governance System", proposing that "strengthening the leading role of the government is the key, deepening the role of the main body of the enterprise is the fundamental, and better mobilizing social organizations and the public participation is the support to achieve the positive interaction between government governance and social regulation and enterprise autonomy". The ternary subject framework of the modernization of the ecological environment governance system provides a new way of thinking for the regulation of environmental administrative penalty discretion. Therefore, under the background of the modernization of the ecological environment governance system, it is necessary for us to re-examine the shortcomings of the traditional discretionary regulation of environmental administrative punishment and explore more effective discretionary regulation methods.

2. The Bottleneck of the Traditional Regulation Mode of Environmental Administrative Penalty Discretion

With the development of society and the transformation of national administrative tasks, the traditional administrative discretion regulation mode is not enough to cope with the expansion of environmental administrative discretion in risk society. At the beginning of the emergence of administrative discretion, it tried to "completely limit administrative discretion to a certain range, so as not to be separated from the perspective of judicial review, in order to achieve the purpose of effective control of administrative discretion". The theory of administrative discretion regulation has been developing continuously, forming traditional regulation methods such as legislative regulation, judicial regulation and self-regulation. In free countries with administrative intervention as the main administrative task, administrative discretion is regulated by legislative improvement and judicial review. With the emergence of the welfare state, the administration of payment has become the core of administrative tasks, the strength of the legislature has been weakened, and the executive has been given broad discretion. In order to limit the increasingly extensive discretion, Davis, an American scholar, proposed in 1969 to limit, construct and restrict administrative discretion through the self-restraint of

administrative organs. With the development of society, the welfare state has entered a risk society. National administrative tasks are no longer limited to payment administration, more importantly, risk administration. Risk administration requires the state, especially the government, to take the initiative to prevent risks. In this context, the administrative discretion space of administrative organs is broader, especially in the current surge of environmental risks, the space of environmental administrative discretion is expanding, and the traditional legislative, law enforcement and judicial regulation models have shown fatigue. It is difficult to effectively regulate the discretion of environmental administrative punishment by relying solely on traditional regulation methods.

2.1 Theoretical Issues on the Regulation of Discretion of Environmental Administrative Punishment

The legislative regulation of administrative discretion is generally realized by legislators through law. Due to the limitations of legislators' ability and the language expression of the law itself, legislation also has limitations on the discretionary regulation of environmental administrative punishment. Due to the ambiguity of semantics, the complexity of reality, and the professionalism of administration, legislators cannot make precise specifications for every detail in the face of a wide variety of administrative acts that almost pervade all areas of social life. As a legal expert, legislators cannot foresee all aspects of social development. Legislation can only regulate problems that have emerged or are determined to emerge. However, with the development of social science and technology, environmental problems emerge in an endless stream. It is impossible to predict and regulate these problems by relying solely on legislators to amend the law in time. Therefore, it is not expected that legislators can achieve the effect of regulating social problems without omission and with strict logic through legal provisions. Administrative organs must be given relevant rights to find problems and make up for loopholes in the process of law enforcement. Therefore, no matter how hard the legislators try to accurately define the legal text and narrow the discretionary space, the discretionary space still exists due to the abstraction and ambiguity of the language, and it is difficult for the legislature to accurately locate and carefully regulate the discretion. Especially in environmental legislation, due to the professionalism, complexity and public welfare of environmental issues, environmental legislation is full of uncertain legal concepts, which cannot be correctly applied only by the language of legal norms.

2.2 Environmental Administrative Penalty Discretion Judicial Regulation Negative

The lag of environmental administrative justice makes it play a limited role in the regulation of environmental administrative penalty discretion. Environmental justice has different attitudes towards the review of environmental administrative penalty discretion, which also makes the judiciary show a negative trend towards the contraction of environmental power. First of all, environmental justice is generally a more modest attitude towards administrative power. As the last barrier of power, justice also has a lag in the regulation of environmental administrative penalty discretion. Judicial regulation of administrative discretion is generally achieved through administrative litigation. However, based on the principle of "no trial", the vast majority of administrative acts will not enter the judicial

proceedings. The administrative counterpart does not file an administrative lawsuit based on various factors, or resolves administrative disputes through other means. “The court can only delve into a very small number of cases it accepts”, and the scope of judicial regulation on power contraction and discretion is extremely limited. Even if the case related to administrative discretion enters the judicial process, the judicial organ or the case review judge will generally respect the judgment of the administrative organ, not easily deny the decision-making of the administrative organ, and “emphasize the need to fully respect the judgment of the administrative organ, especially the first-time judgment right of the administrative organ”.

Secondly, the judiciary is lagging behind and cannot fill the environmental damage caused by the abuse of environmental discretion. “Judicature is an after-the-fact control, which is not synchronized with the administrative act, and its significant defect is that it cannot restore the damage caused by the administrative act”. Ecological (environmental) damage is irreversible, and the repair cost of ecological (environmental) damage is much higher than its prevention cost. When the exercise of environmental power causes damage to the environmental rights and interests of the administrative counterpart or may cause damage, even through the time-consuming administrative litigation, it is impossible to prevent and prevent the occurrence of (environmental) damage in time.

Finally, the judicial practice of administrative discretion regulation function is weak. According to Zhou Haoren’s search, collection and analysis of administrative litigation judgment documents from January 1,2015 to June 10,2018, it can be seen that there are only 134 judgment documents involving “obvious improper”, which can be described as “few as morning stars”. It can be seen that in the process of judicial trial, judges rarely exercise judicial regulation on administrative power on the grounds of “abuse of power”, “obvious injustice” or “obvious misconduct”. In China’s administrative justice, “the judicial concept of emphasizing legality review and neglecting rationality review prevails”, “academic research and judicial practice often appear far apart from each other”, “the judge’s economic man thinking makes it a cheap choice to avoid the application of abuse of power standards” and other factors, resulting in the weak function of justice in discretionary regulation.

2.3 Self-regulation of Environmental Administrative Penalty Discretion Is Weak

The environmental legal authorization is broad and unclear, which makes the government’s regulation of environmental administrative penalty discretion have congenital defects. The environmental law grants the government greater environmental administrative authority and gives the environmental protection administrative organ greater discretion space. However, the imperfect authorization of environmental laws and the unclear scope of authorization have aggravated the possibility of legal but unreasonable situations when the environmental protection administrative organs carry out environmental administrative punishment discretion.

The lack of regulatory awareness of environmental power exercisers makes the government lack of motivation for the regulation of environmental administrative penalty discretion. The exerciser of environmental administrative punishment power is the staff of administrative organs, and the

administrative regulation of environmental administrative discretion also needs to be realized through the staff of administrative organs. However, when the administrative staff exercise the power of environmental administrative punishment, it is impossible to avoid the influence of subjective factors. The judgment of illegal acts, the analysis of illegal situations, the choice of applicable legal provisions, and the determination of the type and magnitude of punishment all require subjective consideration by the administrative staff. With the introduction and implementation of the new "Environmental Protection Law", in order to combat environmental violations and control environmental pollution and other environmental problems, environmental administrative law enforcement is strictly carried out. Therefore, when environmental administrative law enforcement personnel exercise the power of environmental administrative punishment, they often choose the most severe punishment methods and punishment contents, and the situation of arbitrary exercise of discretion occurs from time to time.

The new exploration of administrative regulation of environmental administrative penalty discretion is still not enough to form an effective regulation of environmental administrative penalty discretion. In 2019, the Ministry of Ecology and Environment issued new guidance on standardizing the application of discretion in environmental administrative penalties, updating the discretionary regulatory documents issued 10 years ago. It can be seen that the central government tries to guide local governments to formulate environmental administrative penalty discretion benchmarks or rules through standardized environmental administrative penalty discretion benchmarks, rule-making processes, and institutional norms, and uniformly regulate environmental administrative penalty discretion. However, in theory, there is no conclusion on the subject of the formulation of the discretion standard, the scope of the effectiveness, the technical problems of the formulation, and how to deal with the conflicts of the discretion standard between the localities or the superiors and subordinates. In practice, whether the administrative discretion benchmark system will lead to the rigidity of law enforcement is increasingly questioned by scholars and law enforcers. For administrative organs, the formulation of discretionary benchmarks requires scarce resources and is technically difficult; the requirements of information disclosure will make the low-quality discretionary benchmarks invite the public's ruthless criticism and ridicule.

Therefore, it can be seen that legislation can not limit the space of environmental administrative penalty discretion. The judiciary has a modest attitude towards the discretion behavior and discretion standard of environmental administrative penalty. It is difficult to achieve a comprehensive regulation of the unprecedented expansion of environmental penalty discretion only by relying on the administrative self-regulation method of environmental administrative penalty discretion standard or discretion rules.

3. The Development of Environmental Administrative Penalty Discretion Regulation under the Framework of Modernization of Ecological Environment Governance System

3.1 Administrative Self-Restraint Based on Self-Restraint

Under the government-led modern ecological environment governance system, the government, as the main body of environmental power, regulates the discretion of environmental administrative punishment through its own behavior, which can maximize the realization of reasonable discretion and case justice, and is also the requirement of administrative self-restraint. Self-restraint emphasizes the "voluntariness" of administrative organs in self-restraint. If the law clearly stipulates that the administrative organ must formulate rules to limit the discretion, the limited discretion of the administrative organ is not autonomous, spontaneous and voluntary, it is not the embodiment of self-restraint. Therefore, the self-restraint of administrative discretion refers to the voluntary, spontaneous and autonomous self-limiting behavior of administrative organs. There are generally no laws and regulations, administrative orders, court judgments and other mandatory requirements and regulations.

Based on self-restraint, environmental administrative organs voluntarily carry out discretionary regulation, which can promote the realization of case justice. The discretion of environmental administrative punishment is the way and means to realize case justice. There are various ways of environmental administrative punishment and a large range of fines. It is necessary to determine the final punishment method and fine amount according to the specific case situation. Because of this, the environmental administrative penalty is prone to the injustice of "different penalties for the same case". According to the statistics of Zhejiang Province, in 2008, the average fine of environmental administrative penalty cases in Zhejiang Province was 37485 yuan. Among them, the average fine of some areas was as high as 80,000 yuan, while the average fine of some areas was only 24,000 yuan. The realization of the justice of environmental administrative punishment cases cannot be achieved by legislation or justice because of the different illegal situations, illegal subjects, environmental conditions, social and economic levels and other factors involved in each case. It is necessary to promote the realization of case justice through self-regulation of environmental administrative punishment discretion. The discretion of environmental administrative penalty is made by environmental administrative organs and their staff. They have rich experience in law enforcement and the most understanding of illegal acts. Therefore, they are also the most aware of what behaviors need to be regulated and how to regulate in the process of penalty discretion. Discretionary rules and procedures designed based on self-restraint can also "effectively achieve the purpose of granting administrative discretion by laws and regulations, and effectively prevent the abuse of administrative discretion".

3.2 Negotiation Regulation Based on Deliberative Democracy

In environmental administrative punishment, enterprises, as administrative counterparts, are generally in a passive position and are difficult to participate in the discretion of environmental administrative

punishment. In the modern ecological environment governance system, enterprises are in the dominant position, which also provides an opportunity for enterprises to participate in environmental administrative law enforcement as the main body. In theory, “deliberative democracy” also provides a basis for enterprises to participate in the regulation of environmental administrative penalty discretion as the main body. Deliberative democracy is conducive to the realization of the substantive justice of the case of environmental administrative penalty discretion, and provides a new idea of consultation for the regulation of environmental administrative penalty discretion. Habermas pointed out: “A norm is obviously effective, only means that it has been fairly demonstrated; only the fair application of this norm can lead to a valid judgment in a case”. The law gives the environmental administrative organs discretion space rooted in the pursuit of case justice. The discretion of environmental administrative punishment and the self-regulation of discretion can only ensure the realization of procedural justice in individual cases, while substantive case justice cannot be judged by the behavior of the administrative organ.

Consultative democracy requires consultation to run through the whole process of environmental administrative penalty discretion. The traditional administrative law is only a “point” in the study of the administrative behavior system, without considering the study of the administrative process. The study of administrative process not only decomposes an administrative act into different links and stages, but also studies the relationship between several related administrative acts, as well as the interaction between the subject of administrative act and the administrative counterpart. In modern risk administration, it is necessary to consider the risks in the whole process of administrative behavior from the perspective of administrative process theory, so as to truly realize risk regulation. On the one hand, enterprises should participate in the negotiation of environmental administrative penalty discretion related policies. Based on the deliberative democracy system, the deliberative administrative regulation model can “directly absorb the relative person to participate in the formulation process of the regulatory policy, with the help of the relative person’s knowledge, and the relative person together to form the conditions and benchmarks for the specific operation of the administrative discretion in the case, so as to limit the exercise of the administrative discretion individually, win the cooperation of the administrative relative person, and achieve the goal of benign administration”. On the other hand, enterprises should participate in the process of environmental administrative penalty discretion. Deliberative democracy is not limited to the democracy of policy making, but should be reflected in the democracy of the process and results of administrative law enforcement. Therefore, enterprises should also have the right to participate in environmental administrative punishment, participate in the decision-making process, negotiate the decision-making results, and fully participate in the administrative discretion process to achieve regulation.

3.3 Social Regulation Based on Administrative Legitimacy

In the modern ecological environment governance system, social organizations and the public are widely involved in environmental governance, which also provides an opportunity for social

organizations and the public to participate in environmental administrative punishment and social regulation of environmental administrative punishment discretion. Under the ternary main framework of the modern ecological environment governance system, the government, enterprises and the public interact with each other, and the restriction of the punishment discretion of the environmental administrative organs also needs to be carried out at the same time. The self-regulation of environmental administrative organs is an internal restriction mechanism, and there may also be abuse of power. The restriction of enterprises on the punishment and discretion of environmental administrative organs is carried out through participation in consultation, which is an external mechanism. However, due to the imperfect rules of government-enterprise consultation in China, it is impossible to provide a perfect guarantee mechanism for enterprises to participate in consultation, so that there is a grey area in the restriction of enterprises on the punishment and discretion of environmental administrative organs through consultation. This requires another most important subject in social co-governance, the public, to fill the restriction gap, form a complete regulatory mechanism under the modern ecological environment governance system, and achieve mutual balance. The introduction of public participation in the modern ecological environment governance system is in line with administrative justice and democratic administration.

The principle of administrative legitimacy and democratic administration also provide a theoretical basis for the social regulation of environmental administrative penalty discretion. The principle of administrative justice originated from the natural justice in British law and developed in the due process of law inherited by American law. As the operation of administrative power, the principle of administrative legitimacy must meet the minimum standard of procedural justice, including avoiding partiality, fair hearing and administrative openness. The essence of social regulation is the exercise of public rights, the core is the public participation in the process of administrative penalty discretion, is the extension and supplement of political democracy in the administrative field, is an important basis for the realization of administrative justice. Participation is the cornerstone of democratic politics. Political democracy and administrative democracy together constitute the main content of modern democracy and the core concept of modern constitutional system. In modern democratic countries, the institutionalization and proceduralization of civil rights, especially the right of participation and supervision, is the basis for citizens to participate in the administrative process and compete with administrative power. Through social sanctions, it is necessary to “establish and improve the concept and system of participatory administration, supervise and restrict the correct exercise of administrative discretion”. In the modern ecological environment governance system, the public is an important subject. It is an inevitable requirement of administrative democracy to consider the public interest and the democratic value of the public concern in the discretion of environmental administrative penalties.

Under the requirements of the principle of administrative legitimacy, environmental administrative punishment should introduce public participation. The public supervises the discretion of the environmental administrative organs, obtains the information about environmental administrative

penalties disclosed by the environmental administrative organs, and participates in the hearing of environmental administrative penalties, regulates the discretion of environmental administrative penalties, and ensures the legitimacy of the penalty discretion. The social regulation of environmental administrative penalty discretion is the final guarantee set under the modern ecological environment governance system. The regulation of environmental administrative penalty is realized by social regulation, and the regulation of self-regulation of administrative organs and enterprise negotiation regulation is realized at the same time, so as to ensure that the ternary regulation system can play a real regulatory effect.

4. Renewal of Environmental Administrative Penalty Discretion Regulation Mode under the Framework of Modernization of Ecological Environment Governance System

4.1 The Way of Self-Regulation of Environmental Administrative Punishment Process by Administrative Organs

Based on the theory of administrative restraint, the self-regulation of environmental administrative penalty discretion is not the regulation between the staff of environmental administrative organs, nor the leadership's control over subordinates. The self-regulation of environmental administrative penalty discretion is endogenous, which is generated from the administrative organs and administrative personnel themselves, and is realized through a series of mechanisms within the administrative system. The environmental administrative organs regulate the discretion of punishment through the formulation of administrative rules and the standardization of administrative procedures, and regulate the discretionary behavior of the staff of the environmental administrative organs through the internal supervision and accountability mechanism of the environmental administrative organs; based on the principle of self-restraint, the staff of environmental administrative organs improve their professional and legal quality, regulate their discretionary behavior of environmental administrative penalties through internal regulation, and conduct environmental administrative penalties in accordance with the rules and procedures formulated by environmental administrative organs. Specifically, the self-regulation of environmental administrative penalty discretion under the framework of modern ecological environment governance system is a regulatory behavior with environmental administrative organs as the main body and self-control and self-restraint related entities and procedural rules as the means.

The administrative organs should formulate relevant discretionary benchmark documents, procedures for the formulation of discretionary benchmarks, and publicize relevant documents. In the process of formulating relevant discretionary documents, we should attract the participation of enterprises and the public, listen to their opinions and suggestions, make the discretionary benchmark document easy to implement, and truly limit the discretionary space. After the occurrence of environmental violations, the environmental administrative organs exercise the right of environmental administrative punishment, carry out environmental administrative law enforcement activities, and enjoy a large discretionary

space. For the discretionary regulation of environmental administrative punishment, the administrative organs should formulate clear procedural rules, establish a sound law enforcement record system, discretionary review system and collective review system.

After the implementation of environmental administrative penalty discretion, environmental administrative organs can still realize the self-regulation of environmental administrative penalty discretion through internal supervision such as environmental supervision, environmental supervision, environmental administrative reconsideration, accountability and post-assessment procedure of environmental administrative penalty discretion benchmark. Environmental supervision and environmental supervision are the active supervision of environmental administrative organs. It is the supervision of environmental administrative supervision organs on the daily law enforcement of environmental administrative organs and the exercise of environmental administrative penalty discretion. Environmental reconsideration is the passive supervision of environmental administrative organs. After the administrative counterpart files an administrative reconsideration, the reconsideration organ reviews the discretionary behavior. The post-assessment of the discretionary benchmark can comprehensively examine the implementation of the discretionary benchmark, improve the discretionary benchmark itself, make it more rationalized, and more in line with practical needs.

4.2 The Way of Negotiation Regulation for Enterprises to Participate in the Process of Environmental Administrative Punishment

Based on democratic consultation, the regulation of environmental administrative penalty discretion requires consultation between environmental administrative organs and environmental administrative counterparts in the whole process of formulation, implementation and implementation of environmental administrative penalty discretion documents. That is, through the negotiation system, enterprises participate in the negotiation of environmental administrative punishment before, during and after the event, and form a regulation on the whole process of environmental administrative punishment.

First of all, the pre-negotiation regulation of enterprises, that is, through administrative contracts, set up environmental protection facilities standards, emission standards, etc. in line with the actual situation of each enterprise, as well as penalties for breach of contract and violation of law, to encourage enterprises to abide by the law. The agreement on breach of contract and illegal punishment in the environmental administrative contract negotiated by both parties forms a constraint on the subsequent environmental administrative punishment discretion.

Secondly, through the participation of enterprises in environmental administrative punishment, the discretion is regulated. On the one hand, through the explanation system and the hearing system, it is ensured that the opinions and suggestions of the administrative counterpart can be expressed and involved in the process of environmental administrative punishment. On the other hand, through the reconciliation system, enterprises and environmental administrative organs conduct consultations in environmental administrative punishment, which is conducive to reaching an agreement on environmental administrative punishment in informal occasions and conditions, reducing the

contradiction between “government and enterprises”, resolving the difficulty of implementation, and realizing the social benefits of environmental administrative punishment. Because the agreement reached through consultation between enterprises and environmental protection agencies has the nature of administrative contract, it has de facto binding force. In the process of environmental administrative punishment, the environmental administrative organ can choose to negotiate with the counterpart through the exercise of discretion, and reach an agreement on the punishment measures and the amount of punishment.

Finally, after the decision of environmental administrative punishment is made, enterprises should also be given a certain opportunity to negotiate with the environmental administrative organs on the implementation mode and time of environmental administrative punishment, and the environmental administrative organs should make discretion on the implementation mode and time limit proposed by enterprises. Through the negotiation of the way of performance, the implementation of the decision of environmental administrative punishment is realized.

4.3 The Social Regulation Mode of Public Participation and Supervision of Environmental Administrative Punishment Process

Social regulation is the supervision and restriction of the government’s environmental administrative behavior through social subjects, including the public, including experts, media, and social organizations and so on. Social control generally includes two important forces: one is to counterbalance power with rights; the other is the power of supervision by public opinion. In summary, its essence is still to regulate and limit the power of administrative organs by the rights of various subjects in society. The social regulation of environmental administrative behavior is realized through the public’s right to know, participation and relief.

First of all, social regulation is premised on public knowledge. Through the right to know, the public knows the “environmental administrative penalty discretion”, “environmental administrative penalty discretion benchmark”, “environmental administrative organs and administrative counterparts on the administrative penalty to carry out the consultation process and the final result”, etc., to achieve the environmental administrative penalty discretion and its self-regulation and consultation regulation supervision and restriction.

Secondly, the public evaluation system is introduced into the environmental administrative punishment, “the public participation mechanism is introduced into the review process of environmental administrative punishment, and the public evaluation panel is formed to hold the public evaluation meeting of the case to evaluate the discretion of the original law only to the administrative organ”. Public review can be recruited by government agencies to the society according to certain conditions, and a public review database can be established. The public review meeting is held 1 to 2 times a month, and each meeting is attended by 5 public reviewers. The public reviewers are randomly selected from the public review pool. The public reviewers make public comments on the preliminary opinions of the case materials and punishments to form public opinions. The administrative organ takes the

public opinion as an important basis for the final administrative penalty decision. The public review system absorbs the public to truly participate in the process of environmental administrative penalty discretion, and realizes the regulation of environmental administrative penalty discretion. At the same time, the public, as the supervisor and participant, supervises the procedure of environmental administrative punishment of administrative organs, participates in the hearing and reconciliation in the process of environmental administrative punishment, and regulates the administrative self-control and negotiation regulation.

Finally, the public's right to environmental relief. On the one hand, the public supervises the performance of environmental administrative organs. If it is found that the discretionary behavior of environmental administrative organs is illegal or unreasonable, which may damage the public interest, public interest litigation can be brought to the court according to law. On the other hand, the public supervises the negotiation process and negotiation results between the enterprise and the environmental administrative organ. If it is found that the government and the enterprise's "collusion" in the negotiation process, or the enterprise does not act in accordance with the contract, it can be regulated by reporting or litigation.

5. Conclusion

Under the influence of the modernization of the ecological environment governance system on China's environmental governance, the modern governance system has introduced a multi-party co-governance framework of the government, enterprises and the public. With the revision of environmental laws, the space for environmental administrative authority and administrative penalty discretion has expanded. In order to achieve case justice, the environmental administrative organs have issued new discretionary benchmarks and procedural provisions to limit the space for self-discretion. Regulating the exercise of discretion, urging administrative organs to exercise public power according to law, protecting the legitimate rights and interests of administrative counterparts, improving the rationality of the exercise of discretion, and preventing the abuse of public power are of great significance to China's environmental protection cause and the construction of a government ruled by law.

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