

# Effective Connection between Criminal Law and Administrative Law Protection in Environmental Crimes

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**Abstract:** With the increasing emphasis on ecological environment protection, it has become a consensus of the whole society to use the strictest system and the most rigorous rule of law to protect the ecological environment. Due to its unique severity and deterrence, criminal law is becoming a trend to construct and improve protection for environmental crimes through criminal law. Many countries in the world have environmental crimes in their criminal codes or subsidiary criminal laws, and China is no exception. However, criminal law always relies on administrative law in regulating environmental crimes, and seeking a balance between the application of criminal law and administrative law in order to maximize the environmental protection and punishment functions of criminal law is an urgent problem that needs to be solved. The article analyzes and studies the basic theory of environmental crime and its administrative attributes, pointing out the appropriate mechanism for criminal law intervention in environmental protection, in order to achieve effective connection between administrative law and criminal law in environmental protection issues.

**Keywords:** Environmental Crime; Environmental Protection; Criminal Law; Administrative Law; Administrative Attributes.

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## 1. Overview of Environmental Crimes

Environmental crimes are also known as crimes that harm the environment, damage environmental resource protection, and public pollution. There are objective differences in the legal and historical backgrounds, social development status, and other factors among countries around the world, and the conceptual connotations given to environmental crimes also vary. The definition of environmental crime in common law countries is only based on the requirement of "quality", without the limitation of "quantity". All behaviors that harm the environment to varying degrees are defined as environmental crimes, without the requirement of causing serious consequences or serious circumstances; In civil law countries, there is a requirement for "quantity" in the regulation of environmental crimes. Only behaviors that seriously harm the environment are defined as crimes, and a combination of criminal and administrative penalties are applied for punishment. It is believed that environmental violations with minor harm or circumstances do not constitute crimes [1]. Chinese scholars also have different understandings of environmental crimes: the first viewpoint points out that only damage to the lives, health, and property of others constitutes environmental crimes. This viewpoint only starts from the infringement of human interests and ignores the overall elements that make up the environment, reflecting the traditional legislative concept of "people-oriented", but does not emphasize the independence of environmental legal interests and values. The second viewpoint holds that environmental crimes not only violate human life and health, but also harm the ecological environment. This viewpoint has broken the traditional value of "people-oriented" and has certain comparability. The third viewpoint holds that environmental crime is a damage to the ecosystem and environmental values themselves, and its research perspective has shifted to the protection of

environmental legal interests, clarifying the essential attributes of environmental crime.

As a civil law system, Germany's criminal regulation of environmental crimes is characterized by administrative subordination, with violation of administrative responsibility as a condition, and responds to environmental crimes through a combination of criminal and administrative law, which is generally similar to China. In German criminal law, environmental crimes include waste disposal and various pollution crimes, such as air pollution, land pollution, water pollution, etc. It is obvious from this that these crimes have caused direct damage to the environment, so it is a narrow definition of environmental crimes [2]. In China's Criminal Law, environmental crimes are referred to as the crime of damaging environmental resources protection. According to the specific provisions of the Criminal Law, it refers to the intentional violation of environmental protection laws by individuals or units, polluting or damaging environmental resources, causing or potentially causing serious consequences such as significant losses to public, private, property or personal injury, violating the Criminal Law and subject to criminal punishment. The specific charges include the crime of polluting the environment; Illegal disposal of imported solid waste; Illegal fishing of aquatic products; Illegal hunting and killing of precious and endangered wildlife; Destructive mining crime; Crimes such as illegal logging. Compared to this, the scope of environmental crimes in China is more extensive and can be divided into two types: crimes of damaging the environment and crimes of damaging resources. Although the relationship between environment and resources is usually very close, they are not completely equivalent. Specific charges such as environmental pollution and illegal disposal of imported solid waste are environmental crimes, while crimes committed against aquatic products, forests, farmland, mineral resources, etc. belong to the category of crimes that damage natural resources. Factors

such as atmosphere, water, and soil, which are closely related to the environment, only cause direct environmental crimes and do not possess the nature of property crimes; Natural resources such as forests, minerals, and aquatic products are important components of the environment and have inherent property value. Therefore, crimes against natural resources are both order crimes and property crimes, and are indirect environmental crimes.

Environmental crime is a new type of crime that has emerged with the evolution of human society, and it is a game between economic and social development and environmental protection in human society. There are two types of criminal subjects for environmental crimes: natural persons and legal persons; The object is the national environmental and resource protection management system, as well as citizens' environmental rights, personal rights, and property rights; Subjective aspects mostly belong to negligence, and indirect intent under the requirements of risk criminal law can also constitute a crime; Objectively speaking, it manifests as criminal acts that violate national regulations and pollute and damage the environment, as well as the causal relationship between criminal acts and harmful consequences. In practice, due to the difficulty in proving clear and specific causal relationships, the method of inferring causality is generally adopted to determine causal relationships. The emergence of environmental crimes is a product of human pursuit of economic and development interests in the process of economic and social development. Environmental crimes essentially infringe on human living environment and ecological environment, and are a violation of the most basic human right to living and development environment. They have the attributes of natural crimes and administrative crimes. Environmental crimes infringe upon the basic survival and development environmental rights of all citizens, and the state has no choice but to use punishment to deprive criminals of their basic human rights. On this basis, the concept of environmental criminal law was proposed, which refers to the sum of legal norms that regulate environmental crimes and punishments, excluding criminal law norms related to the environment established for other purposes and the relationship between environmental criminal law and other laws [3]. From the perspective of human rights, the adjustment object of environmental criminal law is the relationship between the basic survival and development rights of all citizens and their individual basic human rights. In recent years, there have been numerous environmental and resource issues in China, and it is urgent to effectively protect the environment through legal means. The dual legal protection system of administrative law and criminal law has been continuously established and improved, which is a manifestation of the increasing attention to environmental crimes. Due to the special nature of the object of environmental crimes, especially the strong administrative subordination of China's environmental criminal law, it is determined that criminal law must seek a reasonable connection with administrative law in the legislative regulation and judicial application of environmental crimes.

## **2. Administrative Attributes of Environmental Crimes**

The term 'subordination' means compliance or subordination, and the administrative subordination of environmental crimes refers to the provisions of

environmental criminal law. The punishability of environmental crimes depends on the Environmental Administrative Law or the administrative sanctions issued based on this law. In fact, the administrative nature of environmental crimes is essentially a relationship between environmental criminal law and administrative law as its predecessor, which are independent and closely related to each other. It is not as traditional theory suggests that the content of environmental criminal law is subject to the provisions of administrative law [4]. And the subordination mentioned here is not only reflected in criminal law and administrative law. There is a problem of subordination between criminal law and other legal departments such as civil law and economic law. However, the article discusses the two main laws involved in environmental crimes - criminal law and administrative law. Environmental criminal law is an important method for national governance of environmental issues and an important component of China's criminal legal system. Therefore, it is necessary to first follow some basic principles, principles, and criminal policies of criminal law, especially the supplementary and protective nature of criminal law. The universality, accumulation, and long-term nature of domestic environmental problems, the by-products of environmental hazards, and the decision-making risks under high technology all determine that administrative measures are the most basic and common means to solve environmental problems. Environmental crimes have obvious administrative subordinate characteristics.

In theory, the administrative subordination of China's environmental criminal law relies on the special legislative technique of "blank criminal law" to achieve. Blank charges are a way for legislators to describe the specific criminal elements determined by referencing relevant norms or systems. The legislative form of blank charges is an important manifestation of the administrative subordination of environmental criminal law. In many articles of environmental crime, blank charges are described as "violating national regulations" or "violating... laws and regulations" (such as violating land management regulations, mineral resources laws, forest laws, etc.). The application of blank charges indicates that violating relevant administrative regulations is a prerequisite for the establishment of environmental crimes. There are two reasons for this provision: firstly, to maintain the stability of criminal law, and not to arbitrarily add, delete or modify existing provisions. By using the legislative technique of "blank charges", it is possible to rely on administrative regulations to measure whether a certain behavior is illegal, thereby maintaining the stability of criminal law to the greatest extent possible. The second is to compensate for the lag of criminal law, and the stability of law also leads to significant deficiencies in legal lag. The rapid development and updating of the environmental field inevitably lead to contradictions with the stability of the law itself. By entrusting the specific constituent elements of environmental crimes to more flexible environmental administrative regulations through "blank charges", it is not only conducive to adapting to changes in the situation but also meets the needs of combating new types of environmental crimes, which largely compensates for the shortcomings of criminal law lagging behind [5].

Specifically, it includes the administrative subordination of concepts and the administrative subordination of constituent elements. The broad applicability of criminal law in regulating social relations determines that criminal law

cannot be meticulous in defining certain charges. Many concepts and terms used in criminal law norms directly refer to administrative norms. For example, as a fundamental term for environmental crimes, "environment" is not clearly explained in the Criminal Law, and the definition of the term "environment" mainly relies on the provisions of the Environmental Protection Law. For example, the concept of "precious and endangered wild animals" involved in the crime of "illegal hunting and killing of precious and endangered wild animals" has not been explained in the Criminal Law. The understanding of these concepts needs to refer to the list of key protected wild animals in China's environmental administrative regulations for determination. The administrative attributes that constitute the elements, such as using violation of environmental administrative law norms as a prerequisite for environmental crimes, and the behavior design in criminal law legislation often appears in the form of "violating... regulations", and the violated laws and regulations mostly belong to the category of administrative law norms. For example, using the violation of administrative actions by administrative agencies as a negative element of environmental crimes, the criminal law's provisions such as "illegal mining" and "unauthorized import of solid waste" require the administrative license of administrative agencies as a prerequisite for the establishment of environmental crimes. In other words, the administrative license of administrative agencies can be used as an illegal obstacle to environmental crimes. Therefore, there is a very close relationship between criminal law and its predecessor administrative law. Both the interpretation and application of criminal law cannot be separated from administrative law. The scope of adjustment and enforcement effect of environmental administrative law directly affect the scope and enforcement effect of environmental criminal law regulation. From a different perspective, the effective application of environmental criminal law can also promote the enforcement effect of environmental administrative law. If the two can achieve organic coordination in terms of regulatory scope, procedures, and application (i.e. administrative law enforcement and criminal justice), they can fully play their respective roles in environmental pollution and ecological destruction issues.

### **3. Effective Connection between Criminal Law and Administrative Law Protection in Environmental Crimes**

The disproportionate incidence and punishment rates of environmental crimes in our country are not conducive to the general preventive function of criminal law against environmental crimes. The reasons for this phenomenon are multifaceted. From a social perspective, there is insufficient policy promotion and a lack of legal awareness; From a criminal perspective, the mentality of profit seeking and the indulgence of government officials; From a legal perspective, factors such as excessively low penalty settings and an uncoordinated legal system are all contributing factors [6]. Environmental administrative law plays a fundamental role in protecting environmental legal interests. The vast majority of cases are handled by administrative departments. However, some local governments and administrative agencies seek short-term local economic benefits and often "substitute punishment for punishment" for environmental violations and

crimes. Environmental cases suspected of crimes are not transferred, resulting in conflicts with criminal law protection. There are problems in the connection mechanism between environmental administrative law enforcement and criminal justice in China, such as poor information communication, irregular cooperation, untimely case transfer, and obstruction of evidence connection, which have resulted in a large number of environmental crime cases not being filed and investigated in a timely manner in practice [7]. It is reported that the environmental administrative department has established an information sharing system that connects the two laws in accordance with relevant regulations and reform policies. However, due to many shortcomings in the system, such as the specific standards for data entry subjects, input content, update frequency of input data, and the use and management of input data, further improvement is needed, resulting in unsatisfactory results in practice.

In fact, the boundary between administrative violations and criminal offenses mainly lies in "quantity", and in the field of environmental crimes, the vast majority of cases are caused by regulatory conflicts due to "quantity". In terms of administrative penalties, by amending and improving relevant administrative laws and regulations, mainly the Administrative Penalty Law, clear provisions are made on the principles, scope of application, and procedures of administrative penalties, providing important basis for environmental administrative law enforcement. Doing a good job in linking the two laws is nothing more than handling the issue of linking administrative and criminal penalties. Therefore, on the basis of improving administrative penalties in the Administrative Penalty Law, relevant content on "linking the two punishments" can be supplemented. The administrative organs shall firmly safeguard the basic law enforcement work, strictly and timely transfer cases suspected of environmental crimes in accordance with the law, and strengthen the effective linkage between the two departments in their work. In terms of criminal punishment, there are deficiencies in the allocation of penalties for environmental crimes, such as the types, intensity, amount of fines, unit crimes, and job-related crimes. Therefore, the amendment of China's environmental criminal law should establish environmental legal interests as the direct protection legal interests of environmental criminal law, appropriately expand the scope of adjustment of environmental criminal law, modify the ways of assuming criminal responsibility, and so on [8]. We can consider drawing on advanced provisions in foreign criminal laws to increase the severity of punishment, add non criminal measures, increase fines, and focus on punishing special subject crimes in a targeted manner. In criminal punishment, we can also adopt labor compensation methods such as tree planting and community cleaning, which are administrative penalties. This is also a good way to improve China's environmental criminal law.

The administrative attribute of environmental crimes requires that the adjustment scope and content of environmental criminal law for environmental cases should be adapted to its predecessor, the Environmental Administrative Law. With the development of economy, society, science and technology, human activities inevitably need to utilize various new elements. The emergence of new pollutants and new ways of harming the environment requires timely revision of environmental administrative laws, which can be regulated by formulating new environmental standards, setting new administrative permits, and other methods.

Environmental crimes are generally based on the premise of not obtaining environmental administrative permits or violating environmental administrative regulations. Only by timely amending and interpreting the Environmental Administrative Law can we avoid the problem of environmental criminal law being unable to regulate new serious crimes that harm the environment due to legislative loopholes in the administrative law. Environmental and resource cases are becoming increasingly complex, involving a wide range of areas and strong professionalism. It is necessary to adhere to the principle of strictest protection, implement the ecological restoration and relief system, properly handle the cross connection issues in execution and trial, coordinate the unity of fact determination, legal application, and responsibility bearing, and further promote cross domain cooperation and diversified governance mechanisms. In cases where the same act of polluting the environment and damaging the ecology committed by the offender violates both administrative law and criminal law, the principle of criminal priority (i.e. criminal first instance) should generally be followed. After correctly handling the criminal case, appropriate handling should be considered for cross disciplinary situations. At the same time, the principle of criminal priority is not absolute, and it is necessary to clarify whether the criminal, administrative, and civil parts of the same case can be distinguished. In practice, some criminal cases cannot be concluded in a short period of time due to objective reasons such as complex circumstances, and failure to handle civil and administrative matters in a timely manner makes it difficult to address environmental damage issues in a timely manner. The connection and application of criminal and administrative measures must clarify the standards of accountability for both, accurately apply laws, and implement the strictest protection of the ecological environment while

adhering to the principle of "equivalent punishment". Only in this way can the three-dimensional protection of environmental crimes be achieved.

## References

- [1] Feng Mingshu Comparative Study on Environmental Crimes between China and Foreign Countries [D]. Shanxi University, 2016.
- [2] Gao Mingxuan, Guo Wei. Investigation and Enlightenment of Criminal Policies for Environmental Crimes in Germany [J]. Foreign Social Sciences, 2020, No. 337 (01): 21-29.
- [3] Du Qi. Analysis of the Administrative Attribute Concept of Environmental Criminal Law in China [J]. Citizens and Law (Law), 2011 (04): 22-24.
- [4] Zhuang Qianlong. Administrative attributes of environmental criminal law qualitative analysis: a review of the "Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Environmental Pollution Crimes" [J]. Journal of China University of Geosciences (Social Sciences Edition), 2015, 15 (04): 53-60.
- [5] Che Jincheng, Song Honglei. Administrative attributes of environmental criminal law [J]. Journal of Shanxi Provincial Political and Legal Management Cadre College, 2014, 27 (03): 19-20+26.
- [6] Feng Yang Improvement of Criminal Law Legislation on Environmental Crimes in China [D]. Central University for Nationalities, 2020.
- [7] Wang Fang On the Connection Path of Execution for Environmental Crimes [D]. East China University of Political Science and Law, 2020.
- [8] Wang Yunzhe, Zhai Ziyu. Punishment Allocation and Improvement of Environmental Crimes [J]. People's Forum, 2013 (05): 122-123.