

LEGAL RISKS AND PREVENTION PATHS OF CORPORATE ENVIRONMENTAL PROTECTION COMPLIANCE UNDER THE CARBON-NEUTRAL VISION

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ABSTRACT

Enterprises' self-environmental protection compliance is a positive strategy to deal with environmental risks. With the continuous implementation of the "dual carbon" goal (*Carbon Peak by 2030 and Carbon Neutrality by 2060*), corporate compliance is not only a moral and environmental protection obligation to undertake, but also an important legal issue involving the legal field. The risks and difficulties of corporate environmental protection compliance are increasing. Strengthening the construction of environmental protection compliance risk prevention mechanisms for Chinese enterprises is the key to Chinese enterprises' identification, prevention and remediation of environmental protection compliance risks. The existing suggestions on enterprise compliance risk prevention are mostly at the theoretical level. There are many legal dilemmas, such as the lack of subject compliance and environmental protection risk management, the legal problems between compliance reform theory and practical operation, and the omissions in the construction of unified and systematic rule of law prevention. In view of this, based on the background of carbon neutrality, we should establish a carbon-neutral environmental protection concept, strengthen ecological monitoring, provide law-abiding incentives to reduce compliance costs, establish a legal mechanism for compliance and environmental protection, and incentivize enterprises to operate in a multi-dimensional manner. Propose the operating rules for corporate compliance and environmental protection risk management and the legal path for risk prevention.

Keywords: carbon neutrality; corporate compliance; environmental risks; the path of the rule of law

INTRODUCTION

Carbon neutrality means that countries and enterprises offset the carbon dioxide or greenhouse gas emissions produced by themselves within a certain period of time through afforestation, energy conservation and emission reduction, so as to realize the positive and negative offset of the earth's carbon storage, and finally achieve the purpose of protecting the entire earth and the human environment. At the general debate of the 75th United Nations General Assembly, China pledged to the world that it will strive to achieve "Carbon Peak by 2030 and Carbon Neutrality by 2060". Integrating the carbon peak goal into the coordinated high-quality development process of China's ecological environment and enterprise operation has far-reaching significance for China to build a modern socialist country. The proposal of this goal has greatly promoted the development strategy of Chinese enterprises to actively transform to green and low-carbon. Based on the needs of sustainable development, enterprises must reasonably evaluate the carbon emission risk in production activities, estimate the greenhouse gas emissions when necessary, and also formulate corresponding countermeasures accordingly.¹

At the same time, as the main body of pollution discharge emissions, enterprises need to take the initiative to undertake the social responsibilities and obligations of environmental protection, and increase investment in environmental protection. However, the environmental protection investment of enterprises also has the characteristics of high cost, long time-consuming and high risk. From the perspective of the enterprises, these environmental protection investments are difficult to produce direct economic benefits in the short term, resulting in the low willingness of many enterprises to participate in environmental compliance risk management. Enterprise compliance is a corporate governance mode established for the illegal behaviors of enterprises. It belongs to an internal governance method implemented by enterprises and industry associations. Although China has promulgated a number of policies and regulations on environmental protection, it still faces many legal problems in the process of judicial enforcement, such as difficult implementation, collusion between government and

enterprises, and imperfect systems. How to strengthen corporate environmental compliance supervision will be directly related to whether China's environmental governance goal can be achieved.ⁱⁱ Based on the new environmental protection concept of carbon neutrality, this paper deeply analyzes the practical difficulties and disputes faced by enterprises' compliance and environmental protection risk management from the aspects of subject, external environment, system and policy, etc., and tries to build a compliance risk management system with Chinese characteristics. The rule of law path is an important theoretical basis for promoting the sustainable development strategy of corporate environmental protection compliance.

VISION OF THE TIMES: CARBON NEUTRALITY IS THE DUE MEANING OF CORPORATE ENVIRONMENTAL COMPLIANCE

The goal of carbon neutrality is a manifestation of corporate social responsibility, and it is also an active measure to reasonably avoid environmental compliance risks. Enterprises use various methods such as improving production technology, skills training, and raw material substitution to reduce carbon dioxide emissions in production activities, which not only adapts to the development of the current market, but also meets the national environmental protection requirements. However, from the nature of behavior, enterprises reduce the impact of their behavior on the environment by improving production technology, reduce the overall carbon emissions as much as possible, and finally create a harmonious symbiosis environment between man and nature.

Legal Significance of Enterprises Implementing Environmental Protection Compliance

First of all, the implementation of environmental protection compliance plays a key role in enterprises' timely and effective avoidance of legal risks. With the implementation of the "dual carbon" goal and the close connection of the global economy, various environmental protection legal systems have been continuously improved, and the cost of environmental violations has increased. Based on market changes and needs, enterprises should change their development concepts, establish a compliant environmental protection risk management system, reasonably avoid legal risks, and actively undertake moral obligations and social responsibilities in environmental protection, so as to achieve sustainable and healthy development of enterprises. At present, the enterprises and the government have established a new relationship of trust and

cooperation in environmental protection, actively accepting government regulation and social supervision, implementing effective compliance plans, enhancing the core competitiveness of enterprises, and gaining a competitive advantage in the same field and industry.

In addition, it is a key strategic advantage for enterprises to establish a compliance and environmental protection risk management system. The traditional management concept believes that establishing an environmental protection compliance system and responding to environmental violations to government departments in a timely manner is against the business purpose of the enterprise. However, in light of the current global economic situation, the positive impact of compliance and environmental protection on the development of enterprises should be paid much close attention. For one thing, formulate compliance plans within the enterprise, guide the employees of the enterprise to understand the current environmental protection laws and regulations and government regulations through training, and form the internal environmental protection compliance culture of the enterprise. Before the illegal operation is punished, curb the development of the situation, block the risk in the “bud”, avoid irreparable losses, and ensure the legal and compliant operation of the enterprise.ⁱⁱⁱ For another, from the perspective of environmental crime governance, enterprises can independently establish an environmental protection compliance management system in advance, which can reduce the probability of being punished in illegal cases. Up to now, China’s civil and criminal litigation incentives to promote corporate compliance have been piloted in some parts of the country.

Legal Significance of Enterprises Implementing Environmental Protection Compliance

Compliance with environmental protection has a positive impact on the development of enterprises. Strengthening enterprise compliance and environmental protection risk management will bring greater economic benefits to enterprises. The continuous and effective implementation of the compliance and environmental protection system is a systematic project that invests a lot of financial, material and human resources, which will inevitably cause certain financial pressures to enterprises. But in the long run, the economic, environmental and social benefits of compliance projects far outweigh the costs involved.^{iv} Integrating the national environmental protection strategy into enterprise environmental management has many development significance: firstly, to improve the social reputation of the enterprise and establish a green image of environmental protection; secondly, to reduce environmental

complaints and legal disputes, and reduce environmental protection risks; thirdly, to improve the technical level and improve product technology, thereby reducing insurance costs. Generally speaking, the implementation of environmental compliance management by enterprises is based on environmental advantages to win the trust of customers, improve their own competitiveness, and ultimately translate into economic benefits for the enterprise and achieve long-term and stable development.

In order to void the negative impact of environmental compliance system on the enterprises. Environmental supervision is gradually incorporated into the national carbon-neutral development strategy, and enterprises should change their extensive production methods to reduce the legal consequences of illegal business operations. At present, Chinese enterprises are faced with increasingly strict environmental protection supervision mechanisms. Once environmental protection violations occur, even if they temporarily evade punishment due to speculative behavior, legal risks will still exist for a long time. With the extension of time and the expansion of the scope of pollution, enterprises will suffer huge economic losses, and at the same time, direct supervisors and relevant responsible personnel will also be punished by law for violations. Also in developed countries, where there are many examples of being ordered to pay high compensation for environmental pollution and to comply with environmental protection regulations.^v Based on the realization of the carbon neutrality goal and the further improvement of the environmental credit evaluation and related illegal punishment systems, enterprises will inevitably face diversified risks, such as adverse effects on enterprise reputation, brand effect, preferential tax policies and bank loans, which directly hinder the sustainable development of enterprises and cause huge losses to enterprises.^{vi}

Carbon Neutrality is a Legal Issue for Corporate Environmental Compliance

The implementation of environmental protection compliance by enterprises is the judicial guarantee to achieve the goal of carbon neutrality. “*Requirements of Regulations and Standards*” is the primary driving factor for enterprises to improve their efforts to deal with climate change.^{vii} In China, if key emission units refuse to perform their greenhouse gas emission reporting obligations or cheat in the process of quota settlement and reporting, the state will order them to make corrections within a time limit, which will be included in the

credit reporting system, and will be punished at different levels according to the severity of the violation.

At the same time, enterprises that fail to comply with environmental protection may also face serious civil and criminal liabilities. Internationally, many countries have issued policies and regulations for “Made in China” products. For example, the EU stipulates that more than 47% of the materials imported from China in textiles, engineering plastics, and industrial products should use bio-based materials.^{viii} All the suppliers need to use bio-based materials and need to show the Presenting a Sustainability Certificate as well. Some industries must use recyclable and reusable materials, and some consumer products must use degradable materials.

The implementation of environmental protection compliance by enterprises is the only way to achieve “dual carbon” neutrality. The realization of “dual carbon” compliance by enterprises is not only the need of environmental challenges, but also the basis for enterprises to establish environmental compliance system. The national environmental protection supervision has been continuously strengthened. Based on the development situation at home and abroad, President Xi as the core has put forward a series of new views and propositions, such as “*lucid waters and lush mountains are invaluable assets*” and “*a good ecological environment is the well-being of people’s livelihood and the fairest public product*”.^{ix} Moreover, according to the new environmental protection concept, the strategy of “carbon neutrality” and “carbon emission” has been fully deployed and implemented. The development path of the enterprise and the strategy of achieving the “dual carbon” standard should be in the same line, both of which are based on the premise of respecting the common living environment, and jointly promote the construction of national ecological civilization.^x A related report of IBM Institute for Business Value (“IBV”), “The Rise of Sustainable Enterprise”,^{xi} found that the top five business risks were all related to environmental challenges: extreme weather, climate action failures, natural disasters, biodiversity loss and man-made disasters. Enterprises began to incorporate environmental compliance into their overall risk management and business continuity planning, and established environmental compliance risk management systems.

MULTI-DIMENSIONAL IDENTIFICATION: CORPORATE COMPLIANCE AND ENVIRONMENTAL PROTECTION RISK IDENTIFICATION AND COMPLIANCE REQUIREMENTS

The implementation of carbon neutrality strategies by enterprises is a key link for China to fulfill its commitment to “Carbon Peak by 2030 and Carbon Neutrality by 2060”. The whole process of promoting corporate environmental protection compliance into carbon neutrality has become the only way to meet corporate compliance needs, avoid risks and achieve long-term sustainable development.

External Factors of Enterprise Environmental Protection

First, Compliance and Environmental Protection Risks and Legal System Construction

The external environment directly or indirectly affects people’s values. It is a lasting and effective influence to speed up the legal construction process of compliance and environmental protection, create the concept of giving priority to environmental protection, and urge enterprises to make appropriate strategic adjustment with legal binding force, so as to carry out compliance operation.^{xii} Throughout the history of environmental protection in China, the government has made great efforts in environmental protection, promulgated 8 environmental protection laws, 47 administrative regulations, 1552 local regulations and departmental regulations, involving international environmental protection issues, and signed 48 multilateral international environmental treaties, thus forming a socialist legal system for ecological environment protection with Chinese characteristics based on the Constitution and branched by the Basic Law, Regulations and Documents. These laws and regulations refine various environmental protection requirements, further clarify the responsibilities and penalties of violations, and increase the country’s enforcement of low-carbon emission reductions. The costs and legal risks borne by enterprises due to environmental violations will far exceed the expected range. Therefore, making corresponding changes according to the requirements of environmental laws and establishing a compliant environmental protection risk management system plays a key role in the long-term and healthy development of enterprises.

Second, Compliance and Environmental Protection Risks and Interest Groups

Changes in interests prompt changes in human behavior. Regardless of whether it is a large multinational enterprise or a small and medium-sized enterprise, the management and decision-making levels are stakeholders with a wide range of power and a stake in the enterprise, and their behavior can directly affect the operation of the enterprise.^{xiii} Since 2007, there have been more than 100,000 civil petition cases due to illegal pollution discharge by enterprises, and relevant departments have handled more than 20,000 cases of illegal environmental operations. When an enterprise commits a violation, it will face various legal risks such as fines, prosecution, suspension of business and rectification, and the interests and rights of interest groups will be greatly damaged. Therefore, in order to safeguard their own interests, interest groups urge enterprises to establish risk management systems and conduct compliance and environmental protection operations. In recent years, the legal principle of “*who advocates, who provides evidence*” has enabled enterprises in violation of regulations to occupy a favorable position in prosecution cases, but this does not affect China’s enforcement of environmental protection. In addition, once the burden of proof is effectively adjusted, the legal risks faced by enterprises due to pollution and environmental damage will increase greatly.

Third, Compliance and Environmental Protection Risk and Organizational Factors

The development of the national environmental protection requires the efforts of many subjects, among which environmental protection organizations are the indispensable main force. As the non-profit third party, they cooperate with the government to promote ecological and environmental protection through various channels such as social supervision, safeguarding rights and interests, and providing advice and suggestions, urging enterprises to conduct compliance and environmental protection operations, and make outstanding contributions to the field of environmental protection.

China’s environmental protection organizations are divided into four categories: one is subordinate to government departments; the other is spontaneously formed by the masses; the third is student groups and federations; and the fourth is international institutions in China. According to relevant statistics, since 2006, the number and employees of China’s NGOs increase at a rate of about 10% every year. After the implementation of the new “*Environmental Protection Law*”, NGOs have become an emerging force with great influence and they are

active in the front line of environmental protection. When an enterprise conducts illegal activities, it will be strongly interfered by the social forces, which will have an irreversible impact on the enterprise's reputation. In severe cases, it will face huge compensation and legal proceedings.^{xiv}

Review of the Status Quo of Environmental Protection Compliance of Enterprises in China

To begin with the National Policy Level

China's environmental protection legislation is based on deterministic damage and predictable danger, establishing a power regulation model with order administration as the core accordingly.^{xv} Set up special environmental protection administrative organs within the government, set specific prohibited acts according to local conditions, supervise enterprises, and impose legal sanctions on violators. This kind of public power procedure can prompt enterprises to pay more attention to environmental management and establish a compliant environmental protection system to deal with legal risks.^{xvi} Chinese "*Environmental Protection Law*" clearly sets the original intention of "comprehensively protecting and improving the natural ecological environment, promoting the construction of socialist ecological civilization, thereby safeguarding the health of the people and promoting sustainable economic and social development". At the same time, after the solemn commitment to the "dual carbon" goal to the world, the Chinese status of environmental protection was pushed to a higher position. Ecological environmental protection work is no longer simple prevention and supervision, but should be considered and deployed in coordination with pollution prevention, ecological environmental protection and climate change, carbon peak, and carbon neutrality. Since then, in the field of environmental protection, the upper and lower vertical power system of "law enforcers and law enforces" of the government and enterprises has been transformed into a common governance partnership of "cooperation".^{xvii}

In addition to the Enterprise Internal Level

Enterprises must transform passive law-abiding behaviors into active law-abiding behaviors, consciously establish a compliance and environmental protection risk management system, internalize compliance requirements into daily code of conduct, carry out self-environmental regulation and avoid environmental protection risks. At present, Chinese enterprises are in a passive position in the management of environmental protection compliance risks, and their

awareness of environmental protection risk prevention is kind of weak. They narrowly believe that corporate environmental protection compliance risk management will only increase costs for enterprises and cannot bring actual benefits. The internal management unilaterally emphasizes the immediate economic benefits of individuals and ignores environmental benefits and social responsibility, resulting in many environmental emergencies in the development of enterprises. According to the requirements of relevant laws, regulations, policies and standards for environmental protection supervision, the enterprises establish a compliance and environmental protection risk management system, which not only meets the actual needs of enterprises' compliance and environmental protection risk supervision, but also responds to the current carbon neutralization governance trend, pointing out the direction for the enterprise to realize environmental protection and safety reform and long-term sustainable development.

THE PROBLEMS PUT FORWARD: LEGAL DILEMMA OF THE OPERATION MECHANISM OF CORPORATE ENVIRONMENTAL PROTECTION COMPLIANCE

The development process of the environmental protection compliance system of Chinese enterprises is short, and there is still a long way to go in the construction of the rule of law by deeply exploring its internal system logic and setting purpose. In addition, still many legal dilemmas in the clarification of management subjects, the legalization of responsibility paths, and the efficient and rationalization of accountability methods.

Insufficiency of Subject Compliance and Environmental Risk Management

First of all, The Concept of Compliance and Environmental Protection Management is Backward

Building an ecological civilization has become China's basic national policy. With the intensive promulgation of current environmental policies, regulations and standards, the proposed "dual carbon" goal requires enterprises to take two-pronged responsibilities for pollution reduction and carbon reduction, resulting in frequent corporate compliance and environmental protection risk factors. From the perspective of current development, most Chinese enterprises have not established the concept of environmental protection compliance

management, and have insufficient understanding of compliance risk management, have insufficient understanding of compliance risk management, put short-term benefits and main interests first, and less consider environmental protection and long-term social interests. For a long time, the business philosophy of Chinese enterprises regards the protection of the ecological environment and economic development as the opposite sides. On the premise of unlimited resources, they believe that enterprise development and environmental protection cannot have both, and adopts the business model of development before governance. In addition, many small and medium-sized enterprises still blindly pursue the increase in the number of products and ignore the quality and the public interests. This kind of extensive business path makes the enterprises unable to develop for a long time, and they have no energy to consider establishing a compliance and environmental protection risk management system.

Furthermore, Low Level of Compliance and Environmental Management

The goal of carbon peak and carbon neutrality has prompted enterprises to use a variety of methods to deal with environmental risks and meet national environmental protection compliance standards. According to relevant empirical studies, up to now, Chinese SMEs (small and medium-sized enterprises) still follow the traditional governance model of “pollution before treatment”. Although this kind of environmental management behavior complies with the national emission requirements, most enterprises are indifferent to the impact of pollutant discharge, which in turn causes irreparable losses to the natural ecology. The management mode that only pays attention to the end-of-life treatment, on the one hand, leads to the uncontrolled pollution of various production links, and on the other hand, ignores the environmental problems afterwards. The level of this environmental management mode is still far behind worldwide. In terms of the level of enterprise environmental management, the environmental protection work of most Chinese enterprises is still in the initial exploratory stage.

Last but not least, the Organizational Structure of the Enterprise is not Reasonable

A well-organized enterprise shall set up a special environmental protection department internally to uniformly manage environmental protection risks; In addition, large and medium-sized enterprises with advanced business concepts will also set up quality safety department

and environmental protection department at the same time to jointly negotiate and formulate and implement environmental protection behavior. However, most Chinese enterprises have practical problems such as vacancies and deficiencies in the establishment of environmental compliance risk management organizations, which makes it difficult to implement environmental management functions, and ultimately can only be held by government-related grassroots units. In particular, corporate decision-makers do not pay attention to environmental management, lack the concept of environmental protection compliance, and only carry out treatment after pollution has been caused, which often makes many environmental protection work of enterprises impossible to carry out normally.

Legal Problems between the Theory and Practice of Compliance Reform

Firstly, Insufficient Government Support for Enterprise Environmental Management

The realization of carbon peak and carbon neutrality requires top-down policy support, which is of great significance to promoting the green and low-carbon transformation and development of China's economy. As a new concept of environmental governance, the importance of environmental compliance risk management in the economic field and ecological environment can not be underestimated, but it requires the continuous promotion from all forces, especially the support and assistance of government departments. A better external social environment and external policy environment are the problems that the government should solve at present. In recent years, the Chinese government has promulgated many regulations and systems on environmental protection, but there is no authoritative organization to carry out relevant unified management, and powers and responsibilities are decentralized, resulting in unsatisfactory results after sporadic environmental protection measures are implemented.

In addition, most environmental protection supervision achieves the purpose of corporate compliance through the formulation of regulations, administrative interventions and public supervision. However, in the actual implementation process, in the face of many phenomena such as ambiguous standards of law enforcement means by relevant government departments, unclear charges, enterprise arrears and refusal to pay fines and many other phenomena, government administrative intervention methods are difficult to adapt to the needs of the market economy.

Secondly, The Existing Legal Documents are Difficult to Break through the Administrative Hierarchy System

With the proposal of the goal of carbon neutrality, China's national environmental protection has been raised to an unprecedented level, and various regulations and policies on environmental protection, restoration and governance have been introduced one after another. At present, the Ministry of Ecological and Environment has issued two important documents, the "*Interim Measures for Comprehensive Supervision Work*" and the "*Key Points of National Environmental Supervision Work*", and the local governments carry out relevant environmental protection supervision work according to the instructions of the documents. Legal status determines its legal effect. First of all, from the perspective of jurisprudence, these two documents are notification documents issued for specific issues, and the legal effect level is low. Secondly, at the legislative level, the "*Interim Measures for Comprehensive Supervision Work*" is also subordinate to the government work document in the party norms, that is, "in the administrative system, it is regarded as an official letter issued by the General Office of the State Council on specific issues and targeted at specific objects class file".^{xviii} To sum up, the effectiveness of government department regulations and administrative normative documents promulgated by China is difficult to break through the existing administrative bureaucracy, and the central government's supervision and execution of local governments is insufficient. The level of effectiveness of normative documents within the party and documents such as administrative letters hinders the inspection team from breaking through the bureaucracy to conduct compulsory investigations.

Thirdly, the Criminal Corporate Compliance Inspection Encounters Bottlenecks

Compliance inspection measures vary according to the many types and sizes of enterprises. The following questions may be encountered when imposing compliance supervision and punishment on the enterprises involved: First, is it necessary to conduct regular compliance supervision on the small enterprises involved in the crime? Second, in what way is the compliance assessment conducted? Third, how to determine whether the punishment is excessive? In developed countries, compliance management plans are mainly aimed at large enterprises with strong economic strength and advanced environmental protection technology. During the implementation of the plan, "*it is difficult for small and medium-sized enterprises*

to bear the high cost investment in formulating and implementing the compliance plan.”^{xix} In China, there is still controversy over whether it is necessary to carry out compliance reform for all enterprises. Scholars who oppose the unified compliance of enterprises point out that the development background and living conditions of small and medium-sized enterprises must be considered. If they blindly follow the general environmental trend and use criminal law to force enterprises to establish a compliance and environmental protection system, the certain complex compliance measures may increase the pressure on enterprise development and even lead to the closure of enterprises. In practice, large enterprises have gained various benefits in litigation activities by establishing criminal compliance in advance, such as reducing subject liability and evading criminal penalties. Therefore, when necessary, “the scope of application of the deferred prosecution agreement system is limited to large-scale enterprises, and other types of organizations and individuals are excluded, to achieve the purpose of saving judicial resources.”^{xx} In addition, it is worth pondering that, if small and medium-sized enterprises are included in the scope of criminal compliance inspection, is the existing unified compliance inspection method applicable to them?

The Omissions in the Unified and Systematic Legal Prevention Construction

In the first place, Environmental Legislation Cross-repeat

With the continuous implementation of the carbon neutrality goal, various government departments have negotiated and issued a number of policies and regulations on environmental supervision, and continuously strengthened law enforcement. The newly promulgated Chinese “*Environmental Administrative Penalty Measures*”, “*Environmental Protection Law*”, “*Environmental Protection Supervision Program (Trial)*”, “*Environmental Protection Tax Law*”, etc., the main contents of these regulations are all pre-regulation to promote corporate environmental compliance, and also includes the basis and punishment measures for the violation of the enterprise after the event. From the perspective of the setting process of environmental protection laws and regulations, so far, although China has formulated and issued a large number of departmental rules and legal norms in environmental protection, there are scattered, repeated and contradictory phenomena in the legislative process. These problems will lead to the overlap of illegal subjects, accountability objects and accountability basis. Therefore, China still needs to make great efforts in the systematic construction of environmental protection legal norms.

In the second place, Conflict of Use of Legal Norms

The subject responsibility is determined according to the rank effect of legal norms. The new “*Environmental Protection Law*” has a higher legal rank than the “*Administrative Measures for Hazardous Waste Business Permits*” and the “*List of Fixed Pollution Source Pollutant Discharge Permits for Classified Management*”. The former is the basic law, while the latter is a normative document. The environmental protection law should be applied preferentially to determine the responsibility. However, the contents of the normative document are richer and more detailed, and the treatment means and punishment measures are diverse, which can better meet the practical needs of environmental protection business accountability of enterprises. According to the principles of jurisprudence, cross-content laws and regulations can make up for legislative loopholes, and the legal effect should be higher than the applicable effect of normative documents. However, in practice, the single responsibility method established by the “*Environmental Protection Law*” makes it difficult to determine environmental accountability. The inconsistency of accountability methods and accountability standards reinforces the public’s subjective impression of “sports-version governance” of environmental protection inspections, and believes that the government can achieve the governance effect in a short time only by relying on administrative authority to vigorously promote environmental protection supervision.^{xxi} Such a working method has problems such as improper responsibility, lack of stamina, and lack of stamina. The deterrent force of the rule of law should be long-term and stable for speculative behaviors with bad motives and using the environment for benefits. Environmental protection laws and regulations have great room for improvement in terms of universality, timeliness and economy.

Moreover, Absence of Continuous and Dynamic Regulatory Procedures

Establishing a compliance program system is a long-term, complex, and continuously advancing huge project. The plan can be divided into the following stages: compliance rectification preparation stage, compliance rectification implementation stage, compliance rectification assessment and acceptance stage. Each stage corresponds to different functional departments and work content. An effective compliance program needs to involve the implementation and supervision of multiple mechanisms, among which the processes of prior training, environmental risk assessment, and management decision-making and third-party

investigation are crucial.^{xxii} Large and medium-sized enterprises, domestic and international enterprises are different in nature, scale, and business fields, resulting in different national implementation of compliance plans, and the lack of continuous and dynamic supervision procedures by relevant environmental protection supervision departments. The “*Procuratorial Suggestions Regulations*” clearly states that after the procuratorial organs cooperate with various units to carry out environmental protection supervision work, they should urge, support and cooperate with the proposed unit to implement the procuratorial suggestions. Only a few procuratorial organs return visits to violating enterprises after making procuratorial suggestions, but this method is still difficult to carry out dynamic, continuous and effective compliance supervision.

CAUSE ANALYSIS: CURRENT SITUATION AND DEFICIENCY OF ENTERPRISE ENVIRONMENTAL PROTECTION COMPLIANCE RISK MANAGEMENT

High Cost of Environmental Compliance

Corporate compliance is a self-innovation initiative within an enterprise, and the establishment of an environmental compliance management system is time-consuming and costly.^{xxiii} The debate on whether to establish a relevant compliance risk management system within the enterprise has lasted for a long time. The establishment of an environmental protection compliance system is often considered as only increasing cost pressures on enterprises and have poor effect ineffective in improving productivity and competitiveness. In practice, the benefits and costs in the early stage of investment show a negative trend, but with the extension of time, the corporate benefits generated by the environmental compliance plan far exceed the cost of environmental management. The famous Porter hypothesis believes that only by continuously improving production technology and related investments can enterprises compensate for the cost of environmental regulation, thereby improving the production efficiency and economic benefits of enterprises.^{xxiv} This is the positive impact of environmental compliance on the development of enterprises. Research shows that whether environmental compliance can have a positive impact on enterprise production depends on whether the innovation compensation effect can offset the cost of compliance. Some Chinese

enterprises have successfully implemented environmental protection compliance operations. The initial cost of independent environmental regulation is large, but the level of enterprise management has been improved, resulting in obvious innovation compensation benefits, which ultimately offset the compliance costs.^{xxv} As a result, the notion that establishing an environmental compliance system is costly and has no positive effects has been shattered. Environmental compliance can improve the productivity of the enterprise by improving the management level of the enterprise, thereby creating a better development environment for the enterprise.

Avoid Compliance and Make High Profits

The theory of China's sustainable development strategy has a long history and is constantly updated and optimized with the development of the times. Today, however, many enterprises still take the pursuit of immediate practical interests as the primary goal and follow the environmental management mode of development before governance. The outdated development concept believes that establishing a compliant environmental protection system consumes a lot of human resources and development opportunities, and then abandons environmental protection compliance. Large-scale enterprises with strong economic strength use localism as the "umbrella" to avoid the supervision of environmental protection departments, constantly touch the red line of environmental protection, and seriously damage the natural ecology. If a large enterprise that seriously pollutes the environment is exposed to the public, it will not only face heavy administrative punishment, but also be investigated for criminal responsibility; at the same time, the ecological environment has been irreparably damaged, which needs to spend a lot of money to repair. It is worth noting that with the implementation of the "dual carbon" goal, the punishment measures for environmental damage, illegal business and criminal acts have become more and more severe, and the space for enterprises to violate laws and regulations has been continuously reduced. The era of enterprises getting huge profits by evading compliance management has ceased to exist. Once beyond the legal boundaries, the enterprises will not only have to bear administrative and civil liabilities, but even more serious criminal liabilities, which will have an irreversible negative impact on the reputation of the enterprise.

Lack of Typical Examples of Environmental Compliance

The so called “Environmental protection compliance risk” refers to the risk of relevant legal liabilities, regulatory penalties, financial and reputation losses and even bankruptcy of enterprises due to environmental protection violations. Whether the enterprise can timely and effectively identify and manage such risks determines if the enterprise has long-term development potential. As early as around 2006, a small number of Chinese enterprises engaged in finance, securities, futures and other businesses had already accepted the concept of corporate compliance. However, due to the concept of economic-first development, the implementation of corporate environmental protection compliance systems has been restricted, making China’s environmental protection risk compliance management left far behind compare with some developed countries. Small and medium-sized enterprises do not organically combine compliance risk management with corporate development strategies. They believe that environmental compliance risk management will greatly increase costs and cannot see short-term benefits in time. As a result, environmental protection compliance risk management is still in the passive acceptance stage. From the perspective of regions, economically developed regions have the characteristics of strong technology, rapid development, high requirements, and good conditions, such as, Guangdong, Shanghai, Beijing, Shandong, Zhejiang and other regions have relatively sound compliance systems, which can deal with various environmental protection risk. However, enterprises in Qinghai, Tibet, Gansu and other economically backward regions in the northwest have low ability to identify compliance and environmental protection risks and lack of management control systems. Different regional policies, economic development, and enterprise scale lead to the lack of universality of corporate compliance and environmental protection systems in developed regions.

Backward Means of Environmental Protection Law Enforcement

Due to practical reasons such as backward technical equipment and insufficient law enforcement personnel, the law enforcement inspections by China’s grass-roots law enforcement agencies on enterprises polluting the environment only stay at the level of daily inspections and regular monitoring, and law enforcement means are single. In the process of investigation and punishment, the means of environmental protection law enforcement are even more stretched for the highly concealed corporate violations. In addition, the management of

some small and medium-sized enterprises do not have a clear understanding of the environmental protection situation and weak awareness of law-abiding, resulting in continuous sewage chaos and frequent environmental accidents. The initial cost of environmental protection compliance operation is large, which affects the scale of enterprise development. Therefore, enterprises are reluctant to achieve pollution reduction through environmental protection compliance. After the implementation of the new “*Environmental Protection Law*”, the response of the eastern and western regions varies greatly. Developed regions face greater environmental governance pressure and assume more environmental governance responsibilities. In order to meet the national environmental protection requirements, the production scale of some products must be reduced, and violations of environmental pollution must be suspended. In contrast, the central and western regions, where the economic development is relatively slow, need to undertake relatively small governance responsibilities, and the changes in the specific implementation of new environmental protection measures are not large.

THE WAY TO COMPLIANCE: THE CONCEPTION OF THE LEGAL PREVENTION SYSTEM FOR COPING WITH RISKS UNDER THE BACKGROUND OF CARBON NEUTRALITY

The implementation of the “dual carbon” strategy requires the joint promotion of state power agencies, the public and various enterprises, negotiation and implementation of carbon peak, carbon neutrality legal governance measures, and ultimately forming a multi-dimensional collaborative governance the model for carbon emission legal entities.^{xxvi} In addition, the “dual carbon” goal is gradually moving towards the management of the rule of law, with clear assessment indicators and realization time for specific objects, and guaranteed by the binding force of the law, which has a key impact on the direction of enterprise compliance path.

Establish a Carbon-neutral Environmental Protection Concept and Strictly Implement Existing Environmental Protection Standards

Based on the background of the goal of “carbon peak and carbon neutrality”, a strict environmental protection review and environmental protection information disclosure system has been established. The enterprises established a good social image through the compliance

environmental protection risk management system, reduce the frequency of environmental accidents, and take compliance green innovation as a new path for the long-term development of enterprises. At present, Chinese enterprises need to continuously strengthen the concept of carbon neutrality and environmental protection, form a corporate environmental protection culture, learn from the successful experience of compliant environmental protection operations in developed countries, and integrate them into their development plans.^{xxvii} In addition, it is necessary to attach importance to the role of environmental protection in undertaking the social image of the company, creating good profits and sustainable development, and integrating the national “dual carbon” goal into the strategic decision-making of comprehensive development of enterprises. Due to the inconsistent development process of environmental protection laws and regulations around the world, some overseas projects of Chinese enterprises follow domestic practices and some use the experience of other resource countries when implementing environmental protection standards. There is no unified standard, which may eventually lead to compliance problems. With the development of various international organizations and the deepening of economic exchanges between countries, the agreements signed by the two parties are conducive to reducing the cost of environmental protection risks. In order to effectively resolve disputes between transnational projects, PetroChina^{xxviii} has successively issued regulations such as “*General Rules for Environmental Protection*” and “*Guiding Opinions on Environmental Protection for Overseas Projects*” since 2014 to accelerate the establishment of environmental protection system standards. However, in order to promote the continuous and effective role of norms, it is necessary to do a good job in supervision and inspection and further strengthen law enforcement.

Strengthen Environmental and Ecological Monitoring and Improve Enterprises’ Awareness of Compliance and Environmental Protection

“Carbon peak and carbon neutrality” has become the theme of our era, which is not only an opportunity, but also an important responsibility entrusted by our era. The “dual carbon” will accelerate the reshuffle of the industry and further promote economic development to accelerate transformation and upgrading. Therefore, enterprises must adhere to the principle of “maximizing the utilization of resources”, reduce resource consumption, and develop towards an environment-friendly development.^{xxix} In terms of administrative management, it emphasizes the main responsibility and law-abiding obligations of enterprises, and conducts

strict assessment and supervision of corporate environmental protection compliance, so as to improve corporate compliance and environmental protection awareness. Therefore, enterprises must strengthen the monitoring of the environment in their actual business activities, deeply integrate the willingness to comply with the development plan, and ensure that the submitted environmental protection information is true, legal and accurate. China has gradually improved the corporate environmental credit evaluation system and blacklist system, and announced a series of closely related loan and credit investigation policies. The production and operation activities and environmental protection obligations of enterprises will be presented in many aspects. In addition, relevant enterprises shall comply in advance and independently, integrate the awareness of compliance and environmental protection into the enterprise project planning and management, avoid losses caused by violations, and ensure the stability of production and operation.

Provide Abiding Incentives for Compliance to Reduce Compliance Costs and Promote the Development of Environmental Protection Technologies

The goal of carbon neutrality is not only an endogenous demand for high-quality economic growth in China, but also an important way to achieve harmonious coexistence between man and nature. Under the same compliance cost, the level of willingness to operate in compliance is determined based on the size of the enterprise. Enterprises with strong economic strength and advanced technology have lower compliance costs due to their scale effect, while for general small and medium-sized enterprises, the compliance cost pressure is higher. Nowadays, under the urgent situation of environmental compliance, China has gradually improved the law-abiding incentive legal system to reduce the environmental compliance pressure of enterprises.

The “*Opinions on Doing a Good Job in Guiding Enterprises’ Environmental Law Compliance (Draft for Comment)*” clearly states the issue of the incentives for compliance with the law: “*Through spiritual encouragement and economic encouragement, we can improve the willingness of enterprises to operate in compliance with environmental protection regulations, and reduce the production process. Pollution of the natural environment, and publicize the comprehensive credit rating of corporate environmental management to the public to protect the public’s right to know and to supervise. According to the needs and characteristics of the enterprises, provide policy guidance, technical consultation and legal publicity according to*

the needs and characteristics of enterprises. In addition, honest and compliant enterprises enjoy the right to quick acceptance and shorten the approval time in terms of environmental protection approval.” The introduction of these systems and policies will promote enterprises to innovate new paths of environmental protection compliance operation, strengthen the main responsibility and law-abiding obligations, and “reduce the burden” for the cost of enterprise compliance. At the same time, enterprises promote industrial transformation through actual burden reduction, strengthen the development of environmental protection technologies, and truly realize compliance operations.

Strengthen the Construction of the Rule of Law in Environmental Protection, and Establish an Environmental Protection Management Mechanism

In the context of carbon neutrality, a new mechanism for compliance and environmental protection management is being formed, and the environmental legal responsibilities are becoming more complete and detailed. The new path of the rule of law in the ecological environment supervision system will constitute a strict system by the completeness of the system, the strictness of law enforcement, the specialization of the judiciary, and the universalization of law-abiding. On November 15, 2018, the Ministry of Ecological Environment released the “*Regulations on the Administration of Pollution Discharge Permits (Draft for Comment)*”. The regulations have undergone new changes compared to the past, adding penalties for corporate behaviors such as violations of information disclosure systems,, account book records, implementation reports and failure to cooperate with relevant inspections. At the same time, in view of the current pollution problems of high-carbon emission enterprises, establish a supervision mode, appropriately expand the scope of emission permits, refine the environmental legal responsibilities of enterprises, and improve relevant environmental management regulations. ^{xxx} In the context of great changes in the external environment, enterprises that rely on high energy consumption and high carbon emissions must reshape their internal environment in exchange for long-term stable development, otherwise the risk of being held legally responsible for environmental protection will greatly increase. Nowadays, as the country pays more and more attention to the institutional development of environmental compliance, the business philosophy of enterprises needs to be changed. Instead of seeking excess profits with low illegal costs, they will spontaneously establish a compliance

and environmental protection management system to deal with various environmental risks and pursue the compliance benefits brought by active compliance with the law.

Use Environmental Credit Evaluation Methods to Force and Motivate Enterprises to Operate in Compliance

“Environmental credit evaluation” is an important supervision method for the government environmental protection department to supervise the compliance and environmental protection operation of the enterprises. Its comprehensive evaluation results are also the necessary basis for the differentiated law enforcement of environmental protection supervision departments. Social reputation represents the image of the enterprises among people. Regularly supervise the environmental protection behavior of the enterprises, and makes the comprehensive credit rating known to the public in an open manner, so as to promote the enterprise to establish a compliant environmental protection risk management system and operate in compliance with laws and regulations. Recently, the Ecological Environment Department issued the “*Guiding Opinions on Strengthening the Management of Positive Lists for Ecological Environmental Supervision and Law Enforcement to Promote Differentiated Law Enforcement Supervision*”, which formally adopted the positive list of corporate environmental credit evaluations as the basis for law enforcement by government regulatory agencies. From a legal point of view, institutionalized coercive force is more conducive to enterprises making compliance plans according to environmental protection requirements. Severe penalties will increase legal risks and cost of noncompliance, forcing enterprises to change their business strategies to improve credit evaluation and establish a green image. In practice, the law enforcement department decides what kind of supervision to carry out on enterprises according to the comprehensive evaluation of environmental credit. The enterprises with high credit ratings and law-abiding businesses have fewer law enforcement inspections; conversely, enterprises with low credit ratings and illegal and dishonest enterprises have a high frequency of law enforcement inspections. Institutionalized administrative measures have raised the cost of breach of contract for offenders, prompting enterprises to take the initiative to conduct compliance and environmental protection operations.^{xxxii} The government concentrates limited law enforcement resources to strengthen management, strictly examines and approves, and does nothing to disturb law-abiding enterprises, encouraging enterprises to strive to be models of law-abiding, compliant and environmental protection operations.

CONCLUSION

Nowadays, green and low-carbon has become a new driving force for China's development. A social transformation to promote the transformation of the industrial structure and promote social and economic development has arrived. On the one hand, based on the realization of the "dual carbon" goal, enterprises strictly control carbon emissions and promote the development of green energy. On the other hand, accelerate the construction of a legal system to promote corporate environmental protection compliance, manage high-carbon emission and high-energy-consuming industries from the perspective of the rule of law, and finally will achieve carbon peak and carbon neutrality goal in the near future. At the same time, China should speed up "the formulation and promulgation of economic and environmental policies that match low-carbon development, and the formation of synergies in different fields to achieve carbon peak and carbon neutrality".^{xxxii} Therefore, from the perspective of corporate environmental compliance management risks, China should refine the uniqueness of corporate carbon neutrality compared with traditional corporate social responsibility, thereby pointing out the practical dilemma of corporate compliance management, and trying to use strategic management and the study of the legal path, so as to lay a theoretical foundation and provide new development ideas for China's future enterprises to carry out compliance environmental protection compliance development and strategic innovation.

ENDNOTES

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