

Research on Prevention and Control of Rural Environmental Pollution from the Perspective of Administrative Law

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Abstract

At present, China's rural environment is facing serious problems. Based on China's rural revitalization and green sustainable development strategy, rural environmental pollution control has risen to the height of national development and construction. China has made some achievements in its governance and research, but there are still a series of problems such as legislation, law enforcement, single governance subject and farmers' rights and interests are not guaranteed. Through literature review and field investigation, this paper analyzes the situation and existing problems of rural environmental pollution control, based on the perspective of administrative law, deeply studies the current situation at home and abroad and related policies, finds out targeted methods that can improve rural environmental pollution problems on the basis of administrative law, and advocates learning from and adopting the pluralistic governance model, adopting the mixed legislative model of "basic law+single law", implementing the protection of farmers' environmental rights and interests, and realizing the role of administrative law in governance, perfecting the legal system of rural environmental pollution prevention and control, and enhancing environmental protection.

Keywords

Administrative law; Urban-rural dual system; Pluralistic governance; Environmental right; Basic law+one-way law.

1. Research background

After the reform and opening up, China's economy has entered a stage of rapid development. Economic growth has also brought environmental pollution, especially the deteriorating rural environment needs extensive attention from the government and society. There are many sources of environmental pollution in rural areas, and the problem is more serious. Although the rural environmental pollution control has been promoted to the national level, it is currently affected by the urban-rural dual system, and the environmental governance and protection in China are affected by the differences between urban and rural economic development, which makes rural environmental governance encounter difficulties, from rural governance and planning.

In legislation, although China promulgated the first comprehensive environmental protection "People's Republic of China (PRC) Environmental Protection Law (Trial)" to provide support for environmental protection, the state has successively promulgated or revised some regulations to improve the legal system of environmental protection. Moreover, in law enforcement, China has also continuously increased its emphasis on rural environmental protection, striving to improve law enforcement means and enhance the level of law enforcement. However, the relevant legal system of environmental pollution control is still not perfect, and there are gaps in the laws on rural environmental pollution control and protection, and environmental pollution lacks legal protection and basis; At present, the enforcement of

environmental pollution measures is not enough, and there are defects in legislative enforcement; The legal status of non-governmental environmental protection organizations is low, environmental governance depends on the government, and the enthusiasm of multiple subjects is not strong. In order to further protect the rural environment, we can improve the current environmental protection system from the perspective of administrative law, provide reasonable administrative legal support for rural environmental pollution control, ensure the administrative control effect of rural environmental pollution prevention and control, highlight the role of administrative law in environmental pollution prevention and control, improve the legal awareness in rural environmental pollution prevention and control, ensure the improvement of prevention and control effect and actual control efforts, and promote pollution prevention and control.

In the research of domestic scholars, the general view of scholars is also that administrative law has advantages in rural environmental pollution control, and that administrative law can provide legal support for governance and meet the needs of environmental governance. For example, it is pointed out that the prevention and control of rural environmental pollution from the perspective of administrative law can provide administrative support and administrative basis for the work, ensure the effectiveness of rural prevention and control work, and make relevant laws and regulations be applied and improved in governance, and promote the improvement of relevant laws and regulations; The improvement of administrative punishment for duty crimes committed by environmental administrative law enforcement personnel can effectively prevent other environmental administrative law enforcement personnel from neglecting their duties and abusing their powers. Choosing the perspective of administrative law to improve environmental protection laws and regulations can meet the needs of the principle of rule of law. For example, based on the theory of administration according to law and the theory of environmental justice, choosing administrative law to control environmental pollution can realize the infiltration of the principle of rule of law into administrative law; Following the principle of superior law and drawing lessons from administrative regulations can give full play to the role of administrative law and enhance social consciousness.

In terms of foreign scholars' research, foreign countries have studied the treatment of rural environmental pollution from the administrative perspective earlier, and both common law countries and civil law countries have formulated relevant written laws, such as the United States adopting a series of legal measures and implementing multiple governance policies such as "green procurement" and "environmental protection tax". Japan attaches importance to protecting farmers' rights and interests in environmental protection and management, and encourages suggestions. German scholars put forward a diversified governance plan, and put forward to actively formulate environmental protection regulations and laws based on environmental protection and other laws, plus a single law.

2. The research significance

The prevention and control of rural environmental pollution from the perspective of administrative law plays an important role, mainly in theoretical and practical significance.

Theoretically, by consulting relevant literature and drawing lessons from the important research results of foreign scholars, on the one hand, we find that many countries have adopted a pluralistic governance model, advocating changing the previous model of relying solely on the government for environmental management, fully protecting farmers' environmental rights, improving rural environmental responsibilities by using administrative law, attaching importance to the role of non-governmental environmental protection organizations, mobilizing the enthusiasm of social groups, and advocating a pluralistic governance theory; On

the other hand, we have noticed that many scholars innovatively put forward a mixed legislative model that can learn from the "Basic Law+Single Law", based on the Environmental Protection Law and supplemented by administrative law and related administrative regulations, which can properly solve the current situation that the environmental protection system is not perfect and the enforcement is not enough.

In practice, studying the current environmental legislation from the perspective of administrative law deeply analyzes the problems at the legislative level, which can provide reference for environmental protection, provide administrative law support for rural pollution control, contribute to the implementation of prevention and control, and promote pollution prevention and control; Relevant administrative regulations can be used and improved in rural environmental pollution control, which can effectively improve the practical problems of rural environmental pollution prevention and control and improve the legal system of rural environmental pollution prevention and control; From the perspective of administrative law, the prevention and control of rural environmental pollution has a strong judicial attribute, which can play the role and effect of administrative law and environmental protection law; The research on legislation of rural environmental pollution prevention and control by administrative law is helpful to make up for the defects of existing legislation, improve the legal system of rural environmental pollution prevention and control by administrative law, and promote the process of pollution control practice.

3. The current rural environmental pollution control problems and hazards

3.1. Lack of relevant targeted laws, regulations and rules

At present, China mainly implements the "urban-rural dual system". Under the guidance of this system, China is more inclined to cities in both economic and environmental governance, and is more contemptuous of rural legislation. For example, the provisions on urban environment and industry in the Environmental Protection Law are more detailed, and there are no targeted provisions on the prevention and control of rural environmental pollution, which makes the current rural environmental pollution control lack legal support and the problem becomes more serious.

3.2. There are problems in law enforcement in pollution prevention and control

First, in law enforcement awareness, law enforcers in some rural areas lack administrative awareness and do not regard it as a government function, which leads to worsening environmental pollution; Secondly, in terms of law enforcement, because there is no clear and targeted punishment means for the environmental pollution caused by agricultural activities in China's current laws, it is not strong enough to rely only on some non-administrative punishment means and educational guidance; Finally, China's pollution prevention and control implements a multi-sectoral linkage environmental protection mechanism. The law enforcement departments belong to the same level, and there is no competent department. There is a lack of communication and exchange between departments. The environmental protection department is affiliated to the government and led by the government. The local government has a difficult choice between environmental protection and local economy, lacking full-time personnel, and its professionalism is not strong enough. In terms of law enforcement, there is no clear and targeted punishment means for the environmental pollution caused by agricultural activities in China's current laws, and it is not strong enough to rely only on some non-administrative punishment means and educational guidance.

3.3. The governance subject is relatively single, and the current legal awareness of environmental protection is not strong enough

In the past, China only adopted a unitary governance system that only relied on the government to control rural environmental pollution. Governance mainly relied on the government, which failed to drive the masses well. Civil organizations themselves have a good mass base, and due to various conditions, the enthusiasm of the masses and civil organizations has not been well utilized. The single governance subject and weak awareness of environmental protection have led to the failure to implement environmental pollution protection well, increasing the pressure on government responsibilities.

3.4. Farmers' environmental rights have not been effectively guaranteed

With regard to the protection of farmers' environmental rights and interests at present, China is faced with the situation that farmers are in a weak position in consultation and negotiation with the main body of environmental pollution, and the protection of farmers' rights and interests in the current Environmental Protection Law is very weak.

3.5. The current environmental legislation is biased

Different governance strategies are implemented in rural and urban governance in China. For the sake of economic development, we are more inclined to urban development in the governance process, and we are more contemptuous of the governance of rural environment. In the existing environmental legislation, we mainly focus on sudden environmental pollution problems, but there is no targeted provision for general cumulative pollution. However, the rural areas are mainly cumulative provisions, which makes it difficult to hold the direct responsible person accountable when pollution occurs, and the prejudice of existing legislation makes it difficult to implement environmental pollution control.

4. The superiority of environmental pollution prevention and control from the administrative perspective

4.1. Compared with the perspective of civil law

The Civil Code stipulates the green obligation, which guarantees the environment and people's livelihood, and stipulates the "responsibility for environmental pollution and ecological damage" in the special chapter of tort liability, which is stricter in the concept, scope and mode of responsibility, but less coercive than the administrative law. For example, Articles 1232 and 1234 clearly stipulate that the responsibility for repairing intentional damage to the ecological environment is only a fight against the illegal costs of environmental pollution and ecological damage, and there is no specific severity.

4.2. Comparing the perspective of environmental criminal law

Environmental criminal law has the property of restraint and modesty, and the regulations and provisions and punishment measures formulated by environmental criminal law are too strict, too pursuing ecological protection, and very strict environmental standards are formulated, which is not conducive to sustainable economic development. Administrative law can coordinate and link with environmental criminal law in the adjustment scope, and it is more gentle to ease the excessively strict regulations and implementation measures of environmental criminal law.

4.3. Contrasting the Constitution

Administrative law has its flexibility and variability, and the Constitution is the fundamental law of our country, which is stable. The administrative law itself covers a relatively wide range of content fields. Administrative law can be constantly adjusted and improved according to

social needs in social progress and economic development, which is convenient to modify and apply. Compared with the constitutional perspective, it is more variable and adaptable.

4.4. Administrative law itself

In the past, laws and regulations did not do enough to control rural environmental pollution. Compared with the Environmental Protection Law and scattered regulations on environmental pollution control, the prevention and control of rural environmental pollution from the perspective of administrative law has a strong judicial attribute, and prevention and control from the perspective of administrative law can provide certain legal support for the smooth development of environmental pollution prevention and control, and administrative power can ensure the improvement of the implementation effect and actual control of rural environmental pollution; It can improve the judicial system of rural environmental pollution prevention and control. In the past, rural environmental pollution control regulations and laws relied on government governance, and the regulations were scattered, the punishment intensity and system were not perfect, and the relevant governance system could not be improved and established. The implementation of rural environmental pollution prevention and control based on administrative law has high requirements for the judicial system, which promoted the perfection of the judicial system when fully implementing various judicial regulations; Administrative law has strong variability, and its content fields are relatively wide. Administrative law can be constantly adjusted and improved according to the symbolic needs of current social needs in social progress and economic development. Compared with the previous regulations of Environmental Protection Law and other related regulations, the regulations based on the variability of administrative law are more suitable for the current social development and convenient to modify and apply.

5. Feasible suggestions on promoting rural environmental pollution control in the field of administrative law

5.1. Adaptation to local condition

Based on the perspective of administrative law, improve the current environmental protection laws based on administrative law, strengthen local and rural environmental legislation on the basis of drawing lessons from relevant regulations of administrative law, improve the gaps and deficiencies in current environmental legislation, and put forward targeted solutions in light of different situations in different regions and local conditions.

5.2. Strengthen law enforcement efforts

Strengthen the enforcement of environmental pollution control, use the administrative power of administrative law to improve the enforcement of pollution control, and change the current phenomenon that although the provisions of environmental laws are harsh, the enforcement is not in place.

5.3. Adopt a pluralistic governance model

Clarify and protect farmers' environmental rights, recognize the status of non-governmental organizations, change the unitary governance system that relied only on the government in the past, and encourage diversified subjects to participate in environmental pollution control together. Improve the legal status of non-governmental organizations, make good use of the good mass base of non-governmental environmental protection organizations, carry out activities more quickly, manage affairs more efficiently, moderately lower the conditions and thresholds for the establishment of environmental protection organizations, and give them financial support and preferential policies.

5.4. Establish a system of environmental legal aid and environmental protection public interest litigation on the basis of administrative law to protect farmers' rights and interests

On the one hand, guarantee citizens' right to bring a lawsuit to the court to safeguard environmental public interest when administrative organs, enterprises, organizations or individuals act inactively or illegally, broaden the scope of plaintiffs in public interest litigation, and lengthen the time allowed to bring a lawsuit, so as to protect the legitimate rights and interests of the parties from infringement; On the other hand, it is necessary to formulate a special Law on Environmental Assistance, which stipulates the object and scope of legal aid in rural areas, the aid procedures and the use of funds according to the specific conditions of rural areas, and set up special aid institutions and environmental legal aid funds in rural areas to help the vulnerable groups in rural environmental protection.

5.5. Based on the basic law, supplemented by a separate law

the implementation of the "Environmental Protection Law" as the basis, supplemented by administrative law; Learn from the foreign "basic law+separate law" governance model, take the "Environmental Protection Law" as the governance basis, and at the same time take various feasible regulations in administrative law as the auxiliary to ensure the implementation of the law.

5.6. Follow the principle of superior law in legislation

According to the actual situation in the region, it should also be advanced to prevent related emergencies.

6. Summary

Rural environmental pollution has a wide range of sources, is difficult to control, has particularity, and is difficult to be constrained by general regulations. Therefore, it is necessary to determine the pollution prevention strategy from the perspective of rural planning and actual legislation, and strengthen the role of administrative law in pollution prevention and control. Rural environmental pollution is closely related to rural construction and social sustainable development, which has a special impact on production and life. In the process of governance, we should pay attention to the whole and will be influenced by the masses and non-governmental environmental organizations. Therefore, it is necessary for multiple subjects to jointly govern and protect farmers' environmental rights. At the same time, it is required that governance should not be limited to environmental governance, but should be combined with society to enhance the dispute literacy and legal opinion of rural environmental pollution prevention and control personnel. It is necessary to compare civil law, environmental criminal law and constitution on the basis of administrative law, and consider that rural environmental pollution control has certain advantages from the perspective of administrative law. Rural environmental pollution control from the perspective of administrative law can effectively combine administrative law with China's current environmental law, improve the legal system of environmental protection, highlight the special role of administrative law in environmental pollution prevention and control, and enhance rural pollution prevention and protection and legal awareness. The research based on the perspective of administrative law can deeply analyze the problems at the legislative level, provide reference for environmental protection, provide administrative law support for rural pollution control, contribute to the implementation of prevention and control, and promote pollution prevention and control.

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