CASE STUDY

THE OPTIMIZATION PATH OF THE DISCRETIONARY REQUIREMENTS OF CHINA'S ENVIRONMENTAL LITIGATION INJUNCTION

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I. INTRODUCTION

The 19th National Congress of the Communist Party of China pointed out that the construction of ecological civilization is a millennium plan for the sustainable development of the Chinese nation. Constructing ecological civilization and adhering to green development is the basic strategy of adhering to and developing socialism with Chinese characteristics in the new era. In the litigation system of China, it is the behavior preservation system that corresponds to the litigation injunction. In civil litigation, the main legal basis for the preservation of civil action is the part on the preservation of acts in the provisions of article 100 of the *Code of Civil Procedure*, which refers to the obstacles to the performance of future judgments or the further infringement caused to the parties. The court shall, on the application of a party or in accordance with its authority, order the other party to make certain acts or prohibit certain acts. The injunction of environmental litigation is an important preventive measure to give full play to the concept of plain environmental justice. However, because the litigation system of China is too abstract to the discretionary requirements of behavior preservation, and the complexity of the relevant influencing factors involved in environmental litigation itself, the system of environmental litigation injunction has not fully played its function in China. At present, the professional development of environmental resources trial in China needs to further improve the trial mode of environmental litigation program rules design and trial operation mechanism structure design.[1] In order to analyze the present situation of the operation of the injunction system of environmental litigation in China, this paper compares the background of the case, the reasons for adjudication and the judicial system in the examples of environmental litigation injunctions between

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1 Yang Kai, *A Jurisprudential Analysis of the Specialization of Environmental Justice and the Construction of the Trial Mode of 'Three Trials'*, 1 Law of the Rule of Law 245 (2015).

China and the US, in order to draw inspiration for the further improvement of the injunction system of environmental litigation in China.

II. BACKGROUND OF THE TWO INJUNCTION CASE ORDERS

A. The Fourth Branch of Beijing Municipal People's Procuratorate v. Beijing Colorful Lianyi International Steel Structure Engineering Co., Ltd. [2]

On December 9, 2016, Environmental Protection Supervision Branch of Daxing District in Beijing issued the *Environmental Protection Supervision Opinion* identified Beijing Colorful Lianyi International Steel Structure Engineering Co., Ltd (hereinafter referred to as the Colorful Company) has the following environmental violations: 'spray paint exhaust gas untreated direct discharge of the atmosphere environment, welding produced by the welding smoke untreated, direct discharge of the atmospheric environment; production and processing base did not go through the environmental approval procedures'. On the same day, the Environmental Protection Bureau of Daxing District in Beijing decided to close spray paint and welding power switch box of the Colorful Company down. On January 13, 2017, Environmental Protection Bureau of Daxing District in Beijing made No. 206 Daxing Environmental Protection Supervision Penalty Administrative Penalty Decision of 2016, decided to punish the Colorful Company 200,000 yuan. Since then, the Fourth Branch of the Beijing Municipal People's Procuratorate conducted live investigations of the Colorful Company for two times and found that the company's violations are still ongoing. According to the application of the Fourth Branch of the Beijing Municipal People's Procuratorate, the Fourth Branch of the Intermediate People's Court of Beijing took the property preservation measures after filing the case and at the same time informed the Environmental Protection Department of the situation and the community newspaper to announce the acceptance of the case.

B. Sullivan et al. v. Saint-Gobain Performance Plastics [3]

The perfluorooctanoic acid (hereinafter referred to as the PFOA) is a man-made perfluorinated chemical. Because it repels lipids and water, it is used in a variety of manufacturing and industrial processes and commercial applications. According to plaintiffs, inadequate and unsafe practices related to the handling, cleanup, or disposal of PFOA caused Saint-Gobain Performance

2 BEIJING PROCURATORATE FIRST FILED A CIVIL PUBLIC INTEREST LITIGATION AGAINST AIR POLLUTION, at http://www.bj.xinhuanet.com/jzzg/2017-07/27/c_1121391831.htm (Last visited on November 27, 2018).

3 James D. Sullivan, Leslie Addison, Sharyn Jones and Bishop Robin Hood Greene, individually, and on behalf of a Class of persons similarly situated, *Plaintiffs v. Saint-Gobain Performance Plastics Corporation*, 226 F. Supp. 3d 288 (D. Vt. 2016).

Plastics (hereinafter referred to as the Saint-Gobain) to discharge PFOA from its North Bennington facility into the soil and water, causing environmental contamination around the facility, including the contamination of the local groundwater aquifer and numerous private drinking water wells.

In February 2016, after the discovery of PFOA contamination from another Saint-Gobain facility nearby Hoosick Falls, New York, the Vermont Department of Environmental Conservation (hereinafter referred to as the DEC) sampled three private drinking water wells and two commercial wells near the site of the Saint-Gobain plant in North Bennington. All five wells were found to contain PFOA levels above 20 parts per trillion (hereinafter referred to as the ppt). In March 2016, on the recommendation of the Vermont Department of Health (hereinafter referred to as the DOH), DEC designated a Vermont drinking water health advisory limitor interim groundwater enforcement standard for PFOA of 20 ppt.

In March 2016, the DEC developed an initial plan to sample all private drinking water wells and water sources within a 1.5-mile radius of the plant. As part of that initial plan, the DEC sampled approximately 180 private drinking water wells. Approximately 116 of those wells contained some level of PFOA contamination, and approximately 105 were contaminated with PFOA in excess of 20 ppt. The DEC expanded its testing beyond the original 1.5-mile radius, and by late April 2016 it had sampled 232 private drinking wells, of which approximately 126 showed the PFOA levels above 20 ppt. Plaintiffs allege that, as a result of the ground water and soil contamination, they and members of the putative class have suffered diminution of property value.

Plaintiffs define the putative class (with certain exclusions) as: All natural persons, whether minor or adult, including any person claiming by, through or under a class member, who have interests in real property within the zone of contamination, including, but not limited to, those persons whose private water supply wells have been found to be contaminated with the PFOA above 20 ppt.

Plaintiffs filed their complaint on May 6, 2016. For relief, they seek, among other things, an injunction and more than 5,000,000 USD in damages. The injunction that plaintiffs seek would require: first, the connection of each impacted water supply within the zone of contamination onto municipal water; second, the establishment and implementation of remedial measures sufficient to permanently prevent the PFOAs from further contaminating plaintiffs' and class members' drinking water supplies or properties; third, the establishment and implementation of a long-term medical testing protocol for plaintiffs and class members to monitor their health and diagnose at an

early stage any ailments associated with exposure, inhalation or ingestion of the PFOA; and fourth, the establishment of additional steps, to be proven at trial, that are determined necessary to remediate plaintiffs' and all class members' properties and residences to eliminate the presence of PFOA.

Saint-Gobain's State-Court challenges to Vermont PFOA Groundwater Rules. The following additional facts relate to Saint-Gobain's Rule 12(b)(1) Motion to Dismiss or Stay. On May 13, 2016, Saint-Gobain filed suit in the Vermont Superior Court, Washington Unit, challenging the validity of the emergency rules promulgated by the Vermont Agency of Natural Resources (hereinafter referred to as the ANR). In that action, Saint-Gobain alleged that the emergency rules were not adopted in compliance with the *Vermont Administrative Procedure Act* (hereinafter referred to as the APA), and were not supported by science. In May 2016, the US Environmental Protection Agency (hereinafter referred to as the EPA) issued a drinking water health advisory for the PFOA at a recommended level of 70 ppt (not the more stringent 20 ppt level that had appeared in the draft health effects document of 2014).

III. REASONS FOR ADJUDICATION AND THE OUTCOME OF THEIR DECISIONS

A. The Fourth Branch of Beijing Municipal People's Procuratorate v. Beijing Colorful Lianyi International Steel Structure Engineering Co., Ltd.

According to the relevant materials already submitted to the Court, it is preliminarily proved that the Colorful Company is engaged in the manufacturing of steel structures in a production base in Daxing District, Beijing, and the welding smoke exhaust gas produced by spray paint and welding is discharged directly into the atmospheric environment without treatment, and the production and processing base has not handled the environmental approval procedures, and the above behavior of Colorful Company risk harming the public interest of society. At the time of the court's site investigation into the production base of the Colorful Company, although the company had ceased production, there was still the possibility that the resumption of production would continue to pollute the environment, and that it had committed an illegal violation of the environment after receiving administrative penalties. Therefore, the No.4 Intermediate People's Court of Beijing believes that it is necessary for the court to take active preservation measures *ex officio* to prevent the damage from expanding and protect the ecological environment. In accordance with paragraph 1 of articles 100 and 108 and paragraph 4 of article 154 of the *Code of Civil Procedure of the*

People's Republic of China, it is determined that the Colorful Company is located in a production and processing base in Daxing District of Beijing, in handling environmental approval procedures or submitting to the court for continued production in accordance with environmental protection standards, without pollution prior to the destruction of ecological evidence, it was prohibited to engage in production practices involving painting, welding and exhaust emissions at the production and processing base.

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Saint-Gobain asserts that the court should abstain under the Burford abstention doctrine. 'Burford abstention respects the states' specialized and comprehensive regulatory schemes, in the way that Rooker-Feldman respects the judicial processes of the states.'[4] There are two circumstances in which a federal court should apply Burford abstention: Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: first, when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar; or second, where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

The court evaluates three factors to determine whether Burford abstention is appropriate: 'Firstly, the degree of specificity of the state regulatory scheme; secondly, the need to give one or another debatable construction to a state statute; and thirdly, whether the subject matter of the litigation is traditionally one of state concern.'[5]

Saint-Gobain asserts that the first *Bethphage* factor is met because the Vermont state law 'provides a comprehensive statutory framework to formulate policy and decide cases, including opportunities for state court review'.[6] It is true that Vermont has a statutory framework to formulate policies concerning groundwater and drinking water, and there are opportunities for state court review. But that alone is insufficient to satisfy the first factor.[7] Rather, the focus is 'on the extent to which the federal claim requires the federal court to meddle in a complex state scheme'.[8] Nothing about plaintiffs' litigation will require the court to meddle in Vermont's regulatory

4 *Hachamovitch v. DeBuono*, 159 F.3d 687, 697 (2d Cir. 1998).

5 *Bethphage Lutheran Serv., Inc. v. Weicker*, 965 F.2d, at 1239, 1243 (2d Cir. 1992); *Cranley v. Nat'l Life Ins. Co. of Vt.*, 144 F. Supp.2d 291, 299 (D. Vt. 2001).

6 *Id.*, 965 F.2d, at 1243.

7 *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350 (S. Ct.1989) ('While Burford is concerned with protecting complex state administrative processes from undue federal interference, it does not require abstention whenever there exists such a process, or even in all cases where there is a 'potential for conflict' with state regulatory law or policy').

8 *Supra* note 4, 697.

scheme regarding the PFOA.

Saint-Gobain asserts that the plaintiffs' case is based on the state PFOA groundwater rules that Saint-Gobain is challenging in state court, and that plaintiffs are attempting to leverage those rules into common-law tort claims. According to Saint-Gobain, 'if this case proceeds based on ultimately vacated standards and an obviated designation of areas of 'concern', Vermont's treatment of PFOA will be anything but uniform'.

In their complaint, plaintiffs do indeed mention the 20 ppt threshold and the designated areas of concern by the state, but litigating plaintiffs' state-law tort claims will not require interference with those state designations or Saint-Gobain's state-court challenges. No ruling on issues of negligence, nuisance, trespass, or plaintiffs' other common-law theories, will necessarily conflict with Vermont's regulatory scheme or process regarding the PFOA.[9] If there is any lack of uniformity between state regulations and the common law concerning the PFOA, it is because the two bodies of law are simultaneously different and complementary.[10]

Saint-Gobain contends that, because plaintiffs have pled their class definition and their allegations of injury with reference to Vermont's PFOA groundwater rules, this litigation will necessarily require interpretation of state statutes and standards. According to Saint-Gobain, 'the determination of these groundwater standards is within the unique discretion and authority of the Vermont agencies'. For the same reasons discussed above, however, this litigation does not call for the determination of administrative groundwater standards. Those standards may be part of the evidence for plaintiffs' common-law theories, but interpreting the standards will not be necessary to adjudicate plaintiffs' claims.

Saint-Gobain insists that the court will be required to apply Vermont's PFOA groundwater rules 'in order to determine injury, class membership, and alleged entitlement to remediation'. The court does not read the complaint that way. The complaint does not use the 20 ppt threshold as a measure to determine whether any plaintiff has experienced the diminished property values that the plaintiffs allege as an injury. The complaint refers to that threshold in several instances, but the alleged diminution in property values is not strictly tethered to 20 ppt. The 20 ppt threshold also does not define the putative class; the class definition includes, but is explicitly not limited to, those persons whose private water supply wells have PFOA concentrations above 20 ppt. The zone of contamination or designated areas of concern does define the class, but giving plaintiffs the benefit of all reasonable inferences that area is not defined by the 20 ppt threshold.

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9 *Martin v. Shell Oil Co.*, 198 F.R.D. 580, 586 (D. Conn. 2000) ('No ruling as to whether the defendants trespassed on the plaintiffs' property will necessarily conflict with any finding of the state agency.')

10 *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 668, 113 S.Ct. 1732, 123 L.Ed.2d 387 (1993) (negligence liability could complement federal regulations); *see* also *Martin*, 198 F.R.D. at 587 (state agency was charged with protecting the environment for the public's health and safety, but not with vindicating individual property rights such as those asserted by the plaintiffs in this case).

The court's task is not to ascertain which sovereign's interest in these issues might be greater. Instead, the court notes that the subject matter of this litigation primarily concerns private property rights. To the extent that topic overlaps with questions of public health and safety, the court concludes that the overlap is not sufficient to trigger application of the extraordinary Burford exception to the court's obligation to exercise its jurisdiction. For the reasons discussed earlier, although the subject matter of this litigation may relate to significant Vermont state interests, nothing about the litigation will disrupt the Vermont agencies' efforts to establish a coherent policy with respect to those interests.

The doctrine of primary jurisdiction can be another basis for abstention.[11] If the court finds that the doctrine of primary jurisdiction applies, it 'either stays the pending action or dismisses it without prejudice'.[12] Courts apply the doctrine of primary jurisdiction 'whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body'. There is no precise formula for applying the doctrine of primary jurisdiction, but courts typically consider the following four factors: firstly, whether the question at issue is within the conventional expertise of judges or whether it involves technical or policy considerations within the agency's particular field of expertise; secondly, whether the question at issue is particularly within the agency's discretion; thirdly, whether there exists a substantial danger of inconsistent rulings; and fourthly, whether a prior application to the agency has been made.

'The court must also balance the advantages of applying the doctrine against the potential costs resulting from complications and delay in the administrative proceedings.'[13] The questions raised by the plaintiffs' state-law tort claims are all within the conventional expertise of judges. Saint-Gobain asserts that plaintiffs do more than allege state-law tort claims, and instead 'purport to plead such claims based on test results that exceeded a challenged regulatory standard on behalf of a putative class that is defined by and with reference to that challenged regulatory standard'. The selection of an administrative PFOA concentration threshold is an issue that involves technical or policy considerations within the expertise and discretion of the ANR, DEC, and DOH. But for the reasons discussed earlier, plaintiffs' claims and their class definition do not hinge on the 20 ppt standard. The first two factors do not favor abstention.

Saint-Gobain contends that the propriety of Vermont's PFOA groundwater rules is already before the Vermont agencies (and the Vermont state courts). But for the reasons discussed above, the complaint is not coupled to the 20 ppt standard. Saint-Gobain's challenge to the rules setting that standard is not a request that

11 *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 353, 83 S.Ct. 1715, 10 L.Ed.2d 915 (1963) (primary jurisdiction 'requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme').

12 *Johnson v. Nyack Hosp.*, 86 F.3d 8 (2d Cir. 1996).

13 *Nat'l Commc'ns Ass'n, Inc. v. Am. Tel. & Tel. Co.*, 46 F.3d 220, 223 (2d Cir. 1995).

any Vermont agency or state court decide the questions raised by plaintiffs' common-law claims in this court. The prior application is irrelevant to the primary-jurisdiction analysis because the questions presented in this case are not questions that the Vermont agencies or courts handling Saint-Gobain's challenge are expected to decide.

Finally, the costs of applying the primary-jurisdiction doctrine in this case far outweigh the benefits. The final administrative rules regarding groundwater and hazardous waste management have only just been issued. Assuming that Saint-Gobain elects to challenge those final rules in state court, the court process (including appeal to the Vermont Supreme Court) will likely take years. Awaiting resolution of the state administrative and appeals process would cause substantial delay in this case. Moreover, the benefit of abstaining in favor of that process is marginal at best. For the reasons described above, the resolution of the enforcement standard for PFOA concentrations will have little bearing on the resolution of plaintiffs' state-law tort claims.

Based on the above considerations, the result of the decision in this case is as follows: the rejection of Saint-Gobain's application for revocation or suspension of proceedings.

IV. THE DIFFERENCES BETWEEN CHINESE AND AMERICAN LITIGATION SYSTEMS

A. The System of Behavior Preservation in China

In the litigation system of China, it is the system of behavior preservation which corresponds to the litigation injunction. In civil litigation, the main legal basis for the preservation of civil action is the part on the preservation of acts in the provisions of article 100 of the *Code of Civil Procedure*, which refers to the obstacles to the performance of future judgments or the further infringement caused to the parties. The court shall, on the application of a party or in accordance with its authority, order the other party to make certain acts or prohibit certain acts. There is no provision in the law for the preservation of specific review elements and discretion criteria, nor does it specify whether security must be provided, but rather provides for the provision of security. Therefore, it is very inconsistent with the necessity, whether to provide security and the determination of the amount of the guarantee in the litigation practice of China for the discretion of the litigation injunction.

Because of the unclear requirement of litigation injunction, the ruling standard is not uniform, which greatly limits the function of litigation injunction in judicial practice. Although the behavior preservation system of China lacks the criterion norm from the whole construction, but in the individual field has independently established the personal safety protection order and the knowledge production prohibition system.

The evaluation of the independence of a project system must be seen as having an independent character compared to other general systems, such as an independent instrument format, an independent constituent element, a clear scope of application and an object.

Although there are no specific constitutive elements in the *Civil Procedure Law of China*, the judicial interpretation of China has established the order of personal safety protection and the injunction against intellectual property. Litigation lacks the above independent characteristics, which neither has the clear and concrete specification of the discretionary elements, nor does it have the specific independent instrument style. In June 2015, the Supreme People's Court's *Interpretation of Several Issues concerning the Application of Law in Dispute Cases of Environmental Tort Liability* provides that: 'If the respondent has one of the circumstances stipulated in article 63 of the *Environmental Protection Law*, the parties or interested party shall apply for preservation in accordance with the provisions of article 100 or 101 of the *Code of Civil Procedure*, the people's court may decide to order the respondent to stop the infringement immediately or take pollution prevention and control measures.' The preventive measures in environmental civil litigation under this article are mainly protective measures, and the specific protective measures appearing in the trial of environmental cases are not only negative prohibition of certain acts, but also active governance to prevent the expansion of damage. This judicial interpretation provides preventive measures, but there is no specific standard of adjudication, it is difficult to unify the scale in judicial practice.

B. The System of Injunctions in the US

The injunction system of the US is developed on the basis of the writ system of the UK. The injunction in the writ system of the UK is a form of relief developed from equity.[14] The scope of the injunction includes both prohibiting citizens from performing certain acts, as well as prohibiting the executive from implementing the acts prohibited by the court order and the execution of administrative orders. At the same time, the UK and the US do not strictly distinguish between civil and administrative litigation proceedings. The injunction of the US litigation system is divided into interlocutory injunction and permanent injunction. Intermediate injunction is more similar to the function of behavior preservation in China, while permanent injunction is more similar to the relief measures in substantive judgment. In environmental litigation of the US, intermediate injunction and permanent injunction are often applied and disputed continuously in one case, and the two are often in the state of transition. After the trial, 'if the provisional injunction is maintained, it is final and will be converted into a permanent injunction after the judgment'. The final

14 SHEN DAMING, ON EQUITY, at 2 (University of International Business and Economics Press, 1997).

permanent injunction and the general final judgment in China have different scope of *res judicata*.[15] After the permanent injunction is made, it will lead to the violation of the injunction or the claim of lifting the injunction on the basis of satisfying the lifting conditions and so on. In terms of the intensity of examination, permanent injunction and intermediate injunction have some common and some different examination standards. Therefore, permanent injunction and intermediate injunction cannot be understood as the relationship between judgment and ruling in China's litigation procedures in a completely metaphysical way. In the study of litigation system, the review standards of the two kinds of injunction should be combined. American civil lawsuit middle injunction (interlocutory injunction) review of standards to the federal civil procedure is preliminary injunction to review the requirements as prescribed in article 65 of the discretion of the axis, article 65(a) is the preliminary injunction (preparatory injunction), article 65(b) is a temporary restraining order, and specifies four elements: first, the plaintiff has not been fully relieved or does not implement injunction cannot make up for the damage; second, the plaintiff's claim is likely to be supported by the judgment; third, the damage caused by the implementation of the injunction will be less than the damage caused by the non-implementation of the injunction; fourth, the public interest shall not be harmed.[16] But not all cases must satisfy all four requirements. In addition, the criteria for examination of a permanent injunction are different from those of an intermediate injunction. In addition to the above four axis elements of the legal provisions in addition to the relevant environmental laws and regulations in the provision of specific environmental judgment standards. There are great differences in the discretion scale of applying the above review standards in practical cases. In the practice of litigation in the US, sliding scale standard, important issue standard and threshold standard are commonly used.[17]

V. INSPIRATION FOR THE OPTIMIZATION OF JUDICAL REQUIREMENTS IN CHINA'S ENVIRONMENTAL LITIGATION INJUNCTION

A. Disputes over the Effectiveness of Administrative Norms in Civil Litigation

It can be seen from the two cases of injunction of environmental litigation in China and the US that the identification of tort in environmental civil litigation is often affected by the normative effect of administrative environmental evaluation

15 Gong Gu & Chen Yao, *Making up for the Shortage of Civil Liability in Environmental Public Interest Litigation by Restraining Order System: Enlightenment and Reference from American Experience*, 4 Journal of Henan University of Finance and Economics 50 (2017).

16 Article 65 of the *U.S. Federal Rules of Civil Procedure*.

17 Tan Hong & Wang Peng, *A Brief Review of the Criteria for Review of US Environmental Judicial Restraint Order Relief*, People's Court, April 13, 2015, at 008 Edition.

standards. In China's current disputes over the allocation of environmental public interest litigation mode, some pilot areas adopt the mode of integration of three trials, some adopt the mode of integration of administrative and second civil trials, and non-pilot areas are still tried separately. But no matter what kind of trial model is adopted, we cannot avoid the environmental tort cases, it will involve extensive for relevant administrative regulations and the evaluation of environmental regulatory standards, China's current environmental public interest litigation cases, total number of civil cases and the environmental public interest litigation is significantly higher than the administrative public interest cases. In the US, the number of administrative disputes involving environmental regulatory standards is exceptionally large. Among all means of governance, administrative supervision is the first, preventive and judicial sanctions are the second, remedial, once there is a large-scale environmental pollution event is often difficult to completely restore the original ecological appearance. Therefore, there are a lot of judgment rules of environmental standard evaluation in American environmental litigation that are worth China's reference.

B. Introducing the Principle of Proportionality into the Discretion of Civil Procedure

The principle of proportionality is a legal principle that is often used to evaluate the legality of administrative acts in administrative judicial review. ' The principle of proportionality in administrative law means that in addition to the premise that there is a legal basis for the exercise of administrative power, the administrative subject must also choose the way of the least infringement of the people. ' [18] In an environmental pollution accident, the local administrative departments tend to be out of the emergency measures need to release some temporary environmental regulatory standards, these standards may be revised and adjusted with practice development, based on tort liability to the plaintiff filed for and related to apply for a court injunction appeal, if not timely response, and waiting for the settlement of disputes of environmental pollution incidents caused irreversible consequences, the price of the interests of the maintenance program is to further expand the plaintiff entity interests damage, and the two ratio is imbalance between interests damage. In recent years, scholars in China have discussed more about the application of the principle of proportionality in the literature on administrative litigation. Due to the interlaced problems of civil and administrative litigation, as well as the interwoven problems of entity judgment and procedural judgment in environmental public interest litigation, the principle of proportionality has a great potential to play a role in solving the above-mentioned problems in environmental civil litigation.

18 JIANG HONGZHEN, ON THE PRINCIPLE OF PROPORTIONALITY: JUDICIAL EVALUATION OF THE CHOICE OF GOVERNMENTAL REGULATION TOOLS, at 1 (Law Press, 2010).

C. The Value of Procedural Relief in the Environmental Litigation Injunction

Although China has been committed to advocate the reasoning of the judgment documents in recent years, people still pay attention to the judgment part. The value of reasoning in writing and even the value of procedural discretion itself have not been paid enough attention. In addition, the request for issuing injunction in the plaintiff's appeal is based on the prohibition system of the US. Currently, in China, except for a few cases of family protection order and pre-litigation injunction in intellectual property right, only a few pilot areas have tried the injunction in environmental litigation. There is no uniform national norm on the criteria for injunctions and on the format of the injunctions instruments themselves.

In the trial of environmental public interest litigation, due to the complexity of the issues involved in environmental cases, procedural disputes also involve interest measurement and value judgment. The injunctive order degree is a preventive measure compared with the damage compensation which is commonly used in tort cases in China. Judging from the actual performance effect of the case, the environmental cases that have been dealt with at present often have the judgment of sky-high compensation, but the defendant may not have the ability to perform the phenomenon.[19] Prohibition order of environmental litigation is one of the effective measures to stop loss in time and avoid sky-high price judgment issuing sky-high price blank check, and the discretion standard of prohibition order and the standardization of prohibition document style are the premise and guarantee for the prohibition order system to be promoted. The adjudication of the injunction of action belongs to the nature of procedural matters in the litigation system of China. Although China has the legal tradition of written law, it can promote the popularization of the injunction system of environmental litigation by publicizing the discretion reasons of procedural problems in the form of cases.

(Revised by Robert D. Roderick)

19 Lv Zhongmei, *The Environmental Justice Reason Cannot Stop at Sky-High Compensation: A Review of Taizhou's Environmental Public Interest Litigation Case*, 3 China Law 244 (2016).