New Trends in Judicial Review of Ecological and Environmental Administrative Penalty Cases in the Context of Rule of Law in Business Environment—— Based on the empirical analysis of 560 judgment documents

Pei Liu
Zhejiang Gongshang University, Zhejiang, China
***Corresponding author, e-mail: 312356453@qq.com**

Abstract
The ideal business environment is one in which the rule of law reigns supreme. The improvement of the business climate, which is also the focus of the efforts of the Hangzhou Municipal Party Committee and Municipal Government, has been recognized as the "No. 1 Reform Project" for 2023 by the Zhejiang Provincial Party Committee and Provincial Government. As a result, ecological and environmental law enforcement has grown to incorporate a high level of specialization, a wide range of methods, and severe procedures. This was especially true following the Measures on Ecological and Environmental Administrative Penalties, and judicial review by the People's Courts resulted in minor changes to the procedural and substantive elements of environmental law enforcement, as well as the flexible application of laws and regulations. Following the inclusion of ecological and environmental administrative penalty cases in the lawsuit, the high-frequency disputes of the people's court's judicial review are generally centered in factual and evidentiary decisions, legal procedures, and administrative discretion. It demonstrates that it is more respectful of administrative authorities' judgments in the context of the rule of law age in the corporate environment. The essay analyzes 560 judicial decisions from the past five years and examines 45 administratively failed verdicts. Furthermore, it illustrates a new trend in review that gives administrative organs' judgment more weight, stresses the strictness of administrative processes, and provides greater emphasis to the rule of law in the business sphere.

Keywords
Business environment; ecological environment; administrative penalties; judicial review; movement;

1. Introduction

As we approach the "14th Five-Year Plan" period, people's expectations for a better life are becoming more varied, multifaceted, and multilevel, and they are becoming more concerned with the state of the ecological environment. As a result, environmental law enforcement is also proposing stricter regulations and more thorough oversight. A total of 174,198 phone reports were received by the national ecological and environmental protection system in 2021. The national ecological environment system received a total of 20,714 WeChat reports, 69,007 internet reports, and 174,198 telephone reports in 2021.(Ecostat 2022 Annual Report)Its ju-

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

dicial review primarily focuses on factual findings, legal procedures, and administrative discretion. In recent years, the number of environmental administrative disputes involving lawsuits has been arranged in a ladder, with compensation cases in the first place, environmental non-litigation enforcement cases in the second place, and punishment cases in the third place. Given this, an accurate analysis of the environmental administrative penalty cases from the previous five years that have been subject to judicial assessment of new features, new regulations, and new trends can assist attorneys in better assisting parties in receiving complete, excellent, and effective legal services.

2. New features of administrative ecological and environmental law enforcement

The Administrative Penalties Law is the primary legislation governing administrative penalties. It went into effect on July 15, 2021, and any amendments to the law will also affect the penalty provisions in other areas of law enforcement. The recently enacted Measures on Administrative Penalties for Ecological Environment, which went into effect on July 1, 2023, are more in line with reality than the initial Measures on Administrative Penalties for Environment in the area of ecological environment.It has been improved in many ways and, as a departmental rule, takes into consideration the features and current state of ecological and environmental administrative enforcement.Using "double randomness and openness," 226,000 businesses were investigated countrywide between January and May 2023. 27,000 decisions regarding environmental administrative penalties were made, with fines totaling 2.11 billion yuan.When comparing the penalty data over the previous five years, it is evident that more businesses have been penalized and that this trend has continued.When comparing the penalty data over the previous five years, it is evident that while the total amount of fines is increasing rapidly, the number of penalties is declining somewhat. The prevailing patterns in environmental enforcement can be broadly described as follows.

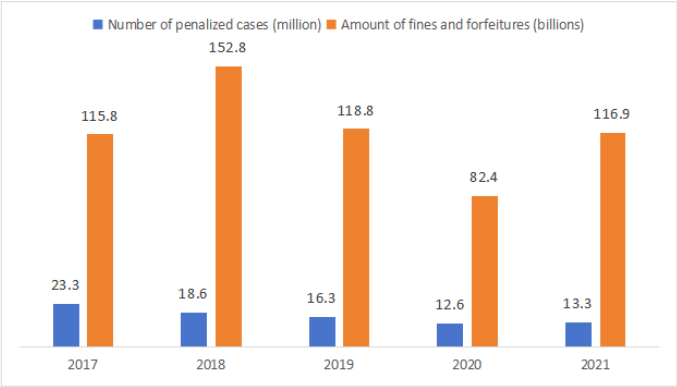


Figure 1Graph depicting the number of environmental protection administrative punishment cases and the amount of fines and fines imposed in the previous five years.

2.1Growing in Specialization

The construction of ecological civilization has reached an unprecedented strategic height since the 18th National Congress of the CPC placed it prominently and integrated it into all facets of the process of economic, political, cultural, and social construction. Over the past ten years, the institutionalization and legal protection have been continuously strengthened as the focus shifted from "coordinating environment and

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

economic development" to "coordinating economic development and environmental protection." The institutionalization and legal protection have been steadily reinforced over the last 10 years, moving from the "coordination between environment and economic development" to the "coordination between economic development and environmental protection". Environmental law enforcement is becoming more and more specialized, and ecological and environmental laws and regulations are being updated at a faster rate. Policy documents, judicial interpretations, and normative documents are also being released at a faster rate. Local environmental quality standards and pollutant emission standards are also being released more frequently. The evaluation of environmental administrative punishment cases by the people's courts frequently calls for expert judgment in the identification and testing of pertinent indicators in addition to specific expertise in ecology and the environment. The guidelines for the involvement of people's jurors with specialized knowledge in environmental resource trials were enhanced by the Supreme Court's July 27, 2023, release of Several Provisions on the involvement of People's Jurors with Specialized Knowledge in Environmental Resource Cases.

Table 1 table of environmental protection regulations and standards in the last five years.

The number of promulgated / Particular year	Local environmental legislation and regulations	Environmental rules enacted by local governments	Environmental protection criteria at the local level
2017	91	41	48
2018	125	50	100
2019	152	42	72
2020	87		22
2021	57	25	29

Administrative sanctions have certain unique features when it comes to the ecological environment. Determining unlawful facts and fabricating unlawful proof are heavily dependent on data and are, to some extent, tied to the testing organization's test results. The issue of monitoring data falsification has gained significant attention in recent years. Some businesses look for ways to get around law enforcement oversight in order to save operational expenses. Production companies can fabricate production ledger records, alter online monitoring data through a variety of techniques, modify instrument parameters, install phony software, and use other methods to create fake compliance data. The monitoring agency can provide information on the fake compliance data. Beginning in 2020, the Ministry of Public Security, the Supreme People's Procuratorate, and the Ministry of Ecology and Environment With impressive outcomes, the Ministry of Ecology and Environment, in collaboration with the Supreme People's Procuratorate and the Ministry of Public Security, has been conducting targeted measures since 2020 to address the fabrication of automatic monitoring data of major emission units. To clamp down on serious, malicious violations, ecological and environmental departments around the nation have used a "four no's and two direct's" strategy. Additionally, business executives have been held legally accountable for falsifying data. For instance, those in charge of the first environmental pollution case in China involving the use of a "COD remover" to tamper with environmental monitoring equipment and the fabrication of Shandong Jinhua Environmental Protection Technology Company's environmental assessment were both found guilty of crimes.In addition, some regions of the nation have reported several common instances of monitoring data fabrication, stressing the need for a "zero-tolerance" policy to combat unlawful activity. In the last four years, 3,667 suspected criminal cases have been

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

forwarded to public security agencies by ecological and environmental departments around the country. These departments have also looked into and addressed 19,982 incidents concerning hazardous waste and automatic monitoring data.

2.2 Increasingly diversified forms of law enforcement

As previously mentioned, local environmental supervision and law enforcement inspections have become more and more diversified, including online monitoring, unmanned aerial vehicles, infrared imaging detectors, transfer patrol monitoring, and on-site inspections by law enforcement officers. This is because the public's expectations for the quality and effectiveness of law enforcement, as well as their demand for environmental protection, are growing. The provincial ecological environment departments have disclosed typical cases of deception by third-party environmental protection service providers. These cases demonstrate the variety of sources from which illegal cases originate, including reports from the public, off-site remote inspections, on-site inspections, reports from superiors, and double-random and one-open supervisory spot checks. The Law on Prevention and Control of Environmental Pollution by Solid Wastes, the Law on the Protection of the Yangtze River, the Law on the Protection of the Black Soil, and other pertinent laws have been formulated and revised with the aim of continuously increasing law enforcement in key areas of immediate public interest. The amount of penalties for corresponding violations has also been increasing. In the event of suspected offenses, public security authorities have been linked to carry out criminal investigations and procuratorates have been linked to initiate public interest litigation. The Criminal Law Amendment (XI) went into effect on March 1, 2021, and it increased the number of points of contact between administrative law enforcement and criminal justice by including environmental impact assessment and environmental monitoring personnel among the criminal subjects of the "crime of providing false certificates" and the "crime of issuing certificates that are materially inaccurate." It also illustrates the trend of severely punishing intermediary organizations that break the law and commit crimes. This demonstrates the pattern of severe penalties for illicit and criminal activity by middle-tier organizations. For instance, since 2022, 39 persons have been criminally imprisoned in Zhejiang Province, 268 administrative cases have been filed, 9 cases have been forwarded to public security organs, and 6,373 third-party environmental protection service firms have been examined. Of course, the law enforcement process has also expanded flexible law enforcement services and deeper inclusive monitoring for minor infractions, fully reflecting the climate of law enforcement in the context of improving the business environment. It has created a list of businesses that are positive, a list of first offenders, and a list of minor offenders who will not face consequences, for instance. The "Law-learning Points Offsetting Fines" technique has also been used by Zhejiang Province's Department of Ecology and Environment to support the three "No. 1 Projects" of the province party committee. Zhejiang Province has been involved in the "Environmental Protection Project" as of late. As of right now, Zhejiang Province has 34 businesses taking part in the "Environmental Protection E Enterprise Management" points system against fines; the total amount of fines offset is 813,000 RMB.

2.3Procedures used by law enforcement are getting more and more complicated.

The level of administrative law enforcement and the capacity of ecological and environmental departments at all levels to respond to lawsuits are measured and assessed using administrative litigation as a "barometer" and "indicator" of the administrative law enforcement's capacity building. According to the Supreme Court's China Environmental Resources Trial (2018–2021) and China Environmental Judicial Development

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

Report (2018–2021), there has been an increase in environmental resources administrative cases during the previous five years.

The courts are increasingly demanding higher procedural standards from administrative agencies when cases are brought to court, so that if a particular part of the administrative procedure is unlawful, the entire decision to impose a penalty may be unlawful and may be subject to revocation. This has led to an increase in the number of cases in which grassroots ecological and environmental law enforcement agencies are defendants. "Unclear determination of facts" and "violation of legal procedures" are the primary causes of administrative agency case losses. Environmental law enforcement has a certain degree of specificity, its illegal behavior is not easy to find, illegal evidence is not easy to fix, such as excessive emissions of air pollutants and other violations of the evidence, to go through the law enforcement personnel sampling, third-party testing agency testing, on-site personnel to sign the confirmation of the multi-channel process, handled by a relatively large number of personnel, testing personnel do not have a strong sense of the law, the evidence of the steps are relatively cumbersome, the process is relatively time-consuming, grass-roots environmental protection Law enforcement brigade and the perennial face of many cases, less people, law enforcement support staff mobility, increased prosecutorial supervision, the daily affairs of a lot of fine-tuned handling of individual cases is difficult to guarantee, resulting in the failure of the case from time to time. Therefore, the high standard of judicial review requirements to force the rigor of law enforcement work, the need for every step are careful, strict compliance with the rules and regulations and procedural requirements.

3.Empirical analysis of the judicial review of environmental administrative punishment

After going into effect on January 1, 2015, the Environmental Protection Law has been in place for over a decade. Of the adjudication records from 2014 to 2020 that are publicly available, administrative penalties accounted for 10.1% of the total and were the act that was sued the most. Understanding the evolution of ecological environment governance and the shifts in national conceptions of governance can be aided by studying environmental penalties. By identifying patterns, this research can provide more precise services to the involved parties.

In the magic weapon of Peking University, Enter the key words of "Ecological Environment Bureau / Environmental Protection Bureau" and "Administrative Punishment", There were 1,863 judicial instruments retrieved, Apart from the punishment of non-lawsuit execution and the rejection ruling of retrial, Select the last five years from August 1,2019 to August 1,2023 as the observation period, Received 560 valid judgment instruments, After the study by study, Found that 45 of the judgments were rejected, That is, revocation, change, confirmation of violations, mediation, Commonly known as "administrative organ losing judgment" , Accounting for 7.6%. Taking these judgments as research samples, after sorting out, summarizing and summarizing, it is found that the high-frequency disputes of the judicial review of ecological environment administrative punishment cases in local courts are concentrated in the following dimensions. (The cases lost by the defendant referred to in this paper include total cancellation of the judgment, partial revocation, alteration of the judgment, performance of statutory duties by the judgment, illegal or invalid confirmation of the judgment, judgment compensation, and

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

withdrawal of the plaintiff's lawsuit for the change of the defendant's original administrative act.)

Table 2 Number of reasons and specific circumstances

The reason for the statutory revocation	Particular conditions	amount
The main evidence is insufficient（13）	The discovered facts are not supported by sufficient evidence.	7
	The subject of blame is incorrect or there is inadequate evidence	2
	The identified facts are ambiguous or unknown.	4
Inappropriate implementation of laws and regulations（6）	Qualitative error	1
	Applicable content selection error	2
	other	3
Violation of legal procedures（25）	surpass the time restriction	6
	Without a hearing or a group discussion	4
	Not served effectively	4
	Other violations of legal procedures	11
exceed one's authority（4）	Laws and regulations do not permit the exercise of power.	4
Obviously incorrect（8）	harsh and ineffective punishment	7
	Other instances of wrongful punishment	1

3.1Findings of fact in penalty decisions

According to Article 40 of the Administrative Penalties Law, there will be no punishment for ambiguous facts or for a lack of sufficient evidence. When an administrative body is investigating a legal infraction, it must gather and compile relevant evidence that satisfies all of the legal requirements for factual evidence—that is, it must be established that there has been a legal infraction, that the facts are supported by evidence, and that the evidence satisfies the requirements of objectivity, relevance, and legality. The decision to impose a penalty may be withdrawn if there are no facts or if the facts are not supported by adequate evidence. From the point of view of the specific circumstances in which the defendant in an environmental administrative penalty case loses, there are 28 cases in which the court decided to revoke the administrative penalty being appealed against, accounting for 62% of the total number of cases, of which there are 7 cases in which the administrative organ was ordered to make a new administrative act; there are 6 cases in which the administrative penalty was confirmed to be in violation of the law, accounting for 13%; and there is 1 case in which the decision was changed, accounting for 2%.

3.1.1The evidence corroborates the problem mutually

If there is only a "Record of Investigation and Questioning" or only photos taken during the environmental protection inspection, without other evidence to corroborate it, a direct finding of violation of the law will be considered as an unclear finding of fact and insufficient evidence.[Mu Yubin and Jinan Bureau of Ecology and Environment, (2021) Lu 0102 No.278.]If the record of the on-site inspection does not have the signature of the administrative relative on-site personnel, and if the relative later protests that he was not present at the scene to make up for the absence of the signature, the record will not be admissible by the court due to the unlawfulness of the evidence. Only the relative on-site personnel signed the transcript without other evidence to support, may also be recognized as insufficient evidence and withdrawn. [Yuanjiang Branch of Yiyang Ecological Environment Bureau, Hunan Taohua jiang Yacht Manufacturing Co., Ltd.,

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

(2020) Xiang 04 Line No.62.]There are also cases in which the time of the on-site inspection record is inconsistent with the time of the final determination of the violation, and the case is not recognized. [Shizuishan City Ecological Environment Bureau, Shizuishan Municipal People's Government and Shizuishan Shenlei Concrete Co., Ltd. Administrative Punishment Second instance Judgment (2019) Ning 02 Line Final No.35.]In addition, if a clue to a violation of the law is discovered by a higher-level environmental protection inspector, the inspector should investigate and collect evidence on his own after the referral to confirm the facts of the violation before imposing penalties, rather than taking the clue as evidence and imposing penalties directly.

Determining what constitutes "major changes" in construction projects has also generated a lot of debate in recent years. The General Office of the Ministry of Environmental Protection Circular on the Issuance of a List of Major alterations to Construction Projects in Certain Industries in the Management of EIA provided a definition of "major changes" by the Ministry of Environmental Protection (MEP). Fixing and submitting supporting documentation is required when gathering enforcement evidence to demonstrate that the company in question has made substantial adjustments but hasn't re-declared the EIA paperwork for approval. The creation of a closed loop of evidence in the detection of seepage pits, hidden pipes, and other evasive sewage discharges requires special care. There is a lack of clarity regarding the facts of the violation when, for instance, only a small amount of seepage from the buried PVC pipe on the site is discovered, and the illegal behavior is assumed to exist without samples being taken for identification from the circulation pool of the water mist spraying facility and the drainage function of the concealed pipe. If the test report monitors the water body of the sedimentation tank but does not specify which outlet and which item is found to be exceeding the standard, then it concludes that the use of seepage pits to avoid supervision of the discharge of water pollutants is an unclear determination of the facts of violation of the law.

3.1.2Environmental monitoring and management problems

When determining the facts of ecological and environmental administrative penalty cases, environmental monitoring is a crucial component. The legality of the monitoring report serves as the foundation for analyzing whether or not the facts of the penalty are clearly established. Whether or not the environmental monitoring procedure complies with the technical specifications directly affects the authenticity of the test results. The quality of the monitoring data directly affects the existence or non-existence of the facts of the violation. During the judicial review process, the court oversees and examines every aspect of the environmental monitoring program, including the organization's staff, the sampling procedure, the sampling guidelines, and the sample preservation. Comparators in the administrative sphere frequently dispute these procedures and offer justifications.

（1）Institutions and individuals doing environmental monitoring lack the necessary qualifications.
Personnel responsible for environmental monitoring must hold a valid license and have certificates that are valid for five years, according to the Measures for the Administration of Environmental Monitoring. For instance, in Anyang Zongcun Sund Water Co. v. Anyang Municipal Bureau of Environmental Protection Administrative Penalty Dispute, the court determined that the Bureau was unable to prove the veracity and legality of the Monitoring Report because it had not produced transcripts of on-site inspections (surveys), certificates of qualification for the monitoring organizations, or records of sampling. The Court held that the

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

defendant had neglected to provide the Court with a description of the qualifications of the appraisal body and appraisal personnel, the scientific and technological means used, or the process of analysis, and that there was insufficient evidence to establish the facts in the administrative judgement of the second instance of the environmental administrative penalty case between the Xi'an Municipal Bureau of Ecology and Environment and the Xi'an Tuxian Changqing Petroleum Sales Company Limited.

（2）The sampling vessel isn't up to par with the parameters for sampling.

In the field sampling law enforcement, it is best to record the sampling container, sampling personnel, sampling process and other content in the on-site inspection report, and let the company staff at the scene to sign to confirm, in order to prevent the subsequent litigation caused by the passive situation. In addition, before sampling, especially water quality sampling, to follow the relevant provisions of the "Water Quality Sampling Technical Guidelines", to confirm that the container is not contaminated before holding the sample, otherwise the later monitoring does not meet the standard, it may also be considered that the container had been contaminated, do not meet the standard, rather than the existence of illegal acts. For example, in the case of COFCO v. Bengbu Municipal Environmental Protection Bureau Administrative Penalty Dispute, the court held that the Bengbu Municipal Environmental Protection Bureau did not submit evidence of what kind of containers were used to take samples on-site and whether the containers were in compliance with the standards, and should bear the legal responsibility of failing to prove this.

（3）No sampling records were made during the sampling process

In the sampling, sampling by law enforcement officers, and then sent to the testing organisation to monitor the samples, because it involves the handover of the samples by multiple parties, it is best to make a written handover note, signed by both parties to confirm, and record the time of handover, in case of subsequent dispute over the handover of the samples in the case of a lawsuit. Ltd. v. Puyang County Environmental Protection Bureau of environmental management penalty disputes, the court found that the site inspection (survey) transcript does not contain the process of sampling of sewage from the outfall of the company, and the parties, witnesses signatures are blank, and failed to submit the presence of the sampled staff and sampling evidence, sample sealing personnel signatures to confirm the relevant Evidence, sampling list or the corresponding instruments, used to prove that the sewage water samples have been sealed on site. Therefore, the main evidence is insufficient. This view was also held by the court in the case of Hai Nan Sund Water Co. Ltd. v. Danzhou City Ecological and Environmental Protection Bureau of Hainan Province, and the case of Cao Yongzhong and Cao Shaozhu v. Leiyang Branch of Hengyang Municipal Bureau of Ecological and Environmental Protection, in which the court held that there was no evidence to prove that the sewage water samples had been sealed at the site.

（4）The sampling points don't adhere to the sampling specification's specifications.

Sampling is a crucial piece of evidence in establishing the existence of a legal breach. It must accurately depict the state of environmental harm and ensure that the sampling sites chosen adhere to the relevant technical specifications. Pollution sources of sewage monitoring points are set up according to the following principles: workshop treatment facilities or special treatment facilities for the discharge of the first category of pollutants set up as a sampling point, the second in the sewage unit of the external discharge port or plant treatment facilities discharge port. Examples of these standards and norms include "surface water and sewage monitoring technical specifications," "total water pollutant discharge monitoring technical specifi-

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

cations," and other standards and norms. The Guangdong Provincial High Court ruled in Wuchuan City v. Zhaojiang City Ecological Environment Bureau, which pitted the city's government and administrative reconsideration of the decision to order suspension of rectification disputes, that the sampling location was illegal because the monitor in the wastewater discharge before the wastewater collection pool samples failed to establish that the pool could be considered a pollutant discharge into the "external environment." The court concluded that there was a chance of losing the case in Alloy Material Company v. Pinghu Branch of the Jiaxing Ecological Environment Bureau because it was not possible to prove beyond a reasonable doubt that the plaintiff's property was the source of the water samples sent for testing.

（5）The sample procedure does not adhere to the sampling specification's requirements.

The Standard for the Discharge of Pollutants from Urban Sewage Treatment Plants stipulates that the standard for the discharge of water pollutants from urban sewage treatment plants is the daily average value, and that the sampling frequency should be at least once every two hours, with a 24-hour mixed sample. However, in practice, some environmental protection bureaus, for the sake of convenience and economy in law enforcement, used the data from a particular sampling to determine that water pollutants were discharged in excess of the standard, which was found to be in violation of the statutory procedure by the court. Ltd. v. Tianjin Baodi District Ecological Environment Bureau Environmental Protection Administrative Punishment Dispute.

3.2The violation of legal procedures in the penalty decision

Statutory procedures, which are the legal administrative procedures that must be followed, are frequently broken in practice. Examples of these violations include serving documents to adult family members who do not live in the same household, retaining service at a location other than the plaintiff's home, and serving documents by public notice without first using all available means of service. The following specific reasons or circumstances led to the quashing of the administrative penalties under appeal in 28 cases: insufficient evidence in 13, improper application of laws and regulations in 6, statutory procedure violations in 25, exceeding one's authority in 4, and evident impropriety in 8. With an emphasis on the following areas, the courts in the confirmation decisions primarily confirmed that the administrative fines were illegal due to deficiencies in the administrative procedures.

Table 3.Legal procedural violations and the number of cases

The reason for withdrawal	Specific circumstances	amount
violation of legal procedure	surpass the time restriction	6
	Without a hearing or a group discussion	4
	Not served effectively	4
	Other violations of legal procedures	11

3.2.1Group discussion procedure administration

When it comes to punishment, the legitimacy of the collective discussion process is the main concern of judicial review. There are two typical legal infractions in practice. First off, it might be argued that this violates the statutory procedure because the collective discussion's conclusion was established before to the hearing, and the decision to apply an administrative penalty was made immediately after the hearing

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

without additional collective discussion. For instance, the court determined that the hearing in Hu Yanpeng v. Lianyungang City Bureau of Ecology and Environment administrative penalty dispute case did not collectively discuss the decision again, which is a violation of the statutory procedure as the system is not the end of the investigation that is punished. Secondly, the way the group conversation was put together did not follow the rules. Heads of internal departments or agencies are not considered to be members of the administrative organs. For instance, in the Kaili Municipal Natural Resources Bureau Administrative Penalty Dispute case of Long Guoqing and Luo Chengcheng.

3.2.2There is no certainty that the parties will be able to make comments, defend themselves, or have a hearing.

Laws and regulations are always changing in the practice of law enforcement, and officers must handle a high volume of cases with limited staff. As a result, the demands placed on law enforcement procedures are increasing, and if they are careless in any one of these areas, they risk breaking the law. First, when notice of a hearing was supposed to be given but wasn't. Second, the relative misses the opportunity to ask for a hearing since the hearing notification letter is devoid of information regarding the right to a hearing and the procedural criteria for one. Thirdly, the penalty was decided upon prior to the hearing application deadline expiring. The case of Lanzhou Municipal Bureau of Ecology and Environment Gaolan Branch Administrative Penalty Dispute v. Lanzhou Fengquan Environmental Protection Power Co. Ltd. Fourth, despite the relative's request for a hearing, the administrative body still applied the fine without holding a hearing. Take the case of Gu Baocai v. Wuxi Municipal Bureau of Ecology and Environment, Administrative Punishment for Environmental Protection.

3.3The issue with the penalty decision's "excessive punishment"

While judicial review generally focuses on the legality of administrative acts, it will also review cases even if they fall within the purview of the administrative organ's discretionary power if the administrative organ has clearly imposed a penalty that exceeds the penalty's limit, leading to a disproportionate penalty that violates the principle of fairness and impartiality and deviates from the principle of the law's or regulation's purpose. For instance, in Fang Linfu and other high-profile cases, an old man was fined $100,000 for selling celery at a $14 profit. The penalty judgment may be modified or withdrawn in certain circumstances.

3.3.1There are no fines for infractions that are small.

The State has prioritized improving the business environment in recent years, and in order to reflect flexible law enforcement, a number of provisions for impunity, exemption from penalties, and mitigation of penalties have been included in the modification of the Administrative Penalties Law. For instance, when evaluating the case, the court will also take the penalties into account. For instance, the court determined that a modest penalty was waived in the Maoming Yongcheng Environmental Protection Resources Development Co. v. Maoming Municipal Bureau of Ecology and Environment and Maoming Municipal People's Government Administrative Penalty Dispute case. In addition, the court will assess the penalty's magnitude in light of the offense's source, extent, effect, and social context. If the court determines that the sentence is excessive, it will make the necessary modifications. This is especially true for offenses committed in specific environmental contexts or during unique times. For instance, the court determined that the plaintiff's discharge was comparatively small and that the epidemic was affecting the company's operations in Sichuan

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

Foodstuffs Co. v. Ecology and Environment Bureau, a dispute over the decision to impose an administrative penalty. As a result, the fine was reduced or waived.

3.3.2The basis for the discretion is not clear

In practice, administrative authorities may choose to apply relatively harsh punishments without considering all relevant factors, such as the severity of the offense, the parties' level of responsibility, and the extent of the societal harm. The courts determined that the administrative penalties imposed in Jiawang v. Guangzhou Municipal Bureau of Ecology and Environment, a dispute over administrative penalties related to environmental protection, and Long Guoqing and Luo Chengcheng v. Kaili Municipal Bureau of Natural Resources, another dispute over administrative penalties, were manifestly inappropriate and disproportionate to the offense.

4.Summary of the regularity of the extent of judicial review of environmental penalty cases in the context of the rule of law in the business environment

When considering administrative cases, the Administrative Procedure Law requires courts to "refer to" regulations. The Measures on Administrative Penalties for the Ecological Environment are departmental regulations with less validity than the Constitution, statutes, and regulations, but they must be referred to by courts when considering administrative penalty cases. Taking into account the preceding empirical analysis, it is possible to conclude that, in the context of improving the business environment, judicial review of cases involving environmental penalties will undergo some subtle changes, and the specific trends, in conjunction with the rules of adjudication, are as follows.

4.1More demonstrates regard for environmental protection technology's professional judgment.

Technical standards in the field of ecology and the environment cover a wide range of areas; 29 local environmental quality standards and pollution emission standards will be issued in 2021. Environmental trials are highly specialised, involving new and diverse types of cases and complex principles of harm, so it takes time for trial commissioners to be trained, and there is a lack of innovation in the ideas and concepts of trials, coupled with the fact that in some places, environmental resource cases are heard in a substantive manner that combines the criminal, civil and administrative aspects of the case, and in many ways they need to rely on the identification or assessment of environmental protection professional bodies. In addition, in some places, the "three-in-one" substantive trial of criminal, civil and administrative environmental resource cases relies in many respects on the appraisal or assessment of environmental protection professional bodies, and also takes into account the judgement of environmental protection authorities that have long been engaged in enforcement. Therefore, the Measures on Administrative Penalties for the Ecological Environment promulgated by the Ministry of Ecology and Environment, as well as a series of documents such as the Several Provisions on Evidence in Civil Litigation for Ecological and Environmental Infringement in the Supreme People's Court, recently published by the Supreme People's Court, reflect the professional requirements in the field of environmental protection, and further clarify the basis for judicial review. For example, Article 27 of the aforementioned penalties requires that the timeline for judicial review of evi-

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

dence in a case and the scope of sources of evidence be extended and broadened, and is no longer limited to evidence collected after the case has been filed. After a case has been filed, the court will no longer use the time of filing as the boundary for reviewing evidence, and evidence obtained prior to the filing of the case will also be reviewed. In response to the frequent challenges in practice to the authenticity and reliability of monitoring data provided by law enforcement officials, Provision 29, on the one hand, recognises the legality of data obtained from on-site sampling as evidence, and on the other hand, regulates the requirements for sampling, the fixing of evidence and the content of transcripts in the case of sampling. In the subsequent judicial review, the court verifies and determines the relevant evidence in accordance with the requirements of the law enforcement norms, and may invite experts to the court to assist in the judgement if necessary.

4.2More focus is being placed on the examination of legal procedures.

The "optimisation of the business environment" has been a continuing concern of the CPC Central Committee and the State Council in recent years, and the Supreme Court, the Supreme Prosecutor's Office and many other departments have issued a number of documents proposing that the business environment should be safeguarded for enterprises, so the intensity of judicial review is closely related to the background of the times and the spirit of the legislation. The Administrative Penalties Law underwent several drafts in the course of its revision, and some of the issues were discussed in various aspects, with a number of provisions, including those on flexible enforcement, eventually being finalised. As a result, the intensity of the courts' review of individual cases has been subtly and silently changing. Higher demands are being placed on enforcement procedures. For example, if a penalty is imposed without collective discussion after a hearing, the court will consider it a procedural flaw before, but in recent years, it will tend to be a violation of the statutory procedure. In particular, after the implementation of the Measures on Administrative Penalties for the Ecological Environment, there have been a number of changes to the timing of administrative procedures. For example, in order to allow law enforcement agencies to focus on investigating and verifying the circumstances of the case, and to make an accurate judgement on whether to open a case, Article 18 provides that a decision on whether to open a case should be made within fifteen days; for example, the administrative counterparty's time restriction for making representations and requests for a hearing is adjusted to five days after receiving notification, which is considerably more acceptable and realistic than the previous three-day requirement. Because of the changes in time points, the court must revise the criteria for the relevant time points in its judicial assessment. In the ensuing judicial review, the court must analyze the case's legality and rationality in light of the new regulations and standards, and render a fair decision.

4.3 Pay more attention to the "excessive punishment is equivalent" punishment evaluation.

Following the adoption of the Administrative fines Law on July 15, 2021, law enforcement agencies have focused on the flexible use of the "proportionality" principle in the imposition of administrative fines. The courts will also investigate and rule on the case's substance, taking into account the causes and consequences. Article 42, in particular, includes the words "without subjective intent, there shall be no impunity." During the course of law enforcement, many offenders have raised similar defenses. The meaning of "without subjective intent" in judicial review is particularly contentious. For instance, consider the case of A Company v. The district bureau of the Bureau of Ecology and Environment determined that the person being punished had used the change in the enterprise registration information to evade the administrative

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

penalties, and that the subjective intent was obvious, and that the penalties should be imposed. The Plaintiff contended that it was not at fault for the environmental offense and so should not be punished. In practice, there are few precise laws on determining subjective fault, thus it is required to analyze and judge the facts in the case.The administrative organ nevertheless bases its penalty judgment on the facts collected in the penalty procedure, and subjective blame or lack thereof is not a necessity for the imposition of administrative penalties. In other words, the existence of an offence is judged on the basis of the facts established by the evidence gathered during the inquiry, without the need to ponder on whether or not subjective fault exists. Only when the person in question raises the problem or it is determined ex officio that the person in question is not subjectively at fault should additional inquiry and judgment be undertaken, and a decision made as to whether or not to refuse to impose a penalty. Of course, even if no penalty is imposed, it does not mean that the illegal act is legalised, and it does not change the objective illegality of the act itself, and the person concerned still has the obligation to stop and correct the illegal act. In addition to this, many people have had disputes with the administrative organ due to a lack of understanding or incomplete understanding of the discretionary penalties, and Article 56 of the revised Measures on Administrative Penalties for the Ecological Environment requires that the reasons and justifications for the application of the benchmarks for the discretionary administrative penalties be clearly set out in the decision on penalties, which is also a response to the judicial practice in recent years. In general, if the court believes that negotiation and mediation are possible after review, it will also substantively address administrative conflicts through various measures in order to achieve a win-win situation in terms of both legal and social impacts.

5.Conclusions

According to the report of the Communist Party of China's (CPC) Twentieth National Congress, it is critical to defend private enterprise property rights as well as the rights and interests of entrepreneurs, as well as to support the development and growth of the private economy. Create a world-class business climate that is focused on the market, the rule of law, and internationalization. General Secretary Xi Jinping stated at the National Conference on Ecological Environment Protection, "We must plan and push forward the new course of ecological environment protection with a higher position, a broader vision, and greater strength, so as to write a new chapter in the construction of ecological civilisation in the new era." Insisting on the harshest system and the strictest rule of law to protect the ecological environment is an important aspect of Xi Jinping's ideas on ecological civilisation. The important measures to ensure a permanent system in the framework of optimizing the business environment include preserving the legitimate rights and interests of firms, enhancing the degree of environmental law enforcement, and strengthening the efficacy of judicial supervision. We can better guide enterprises in environmental protection compliance, improve the quality of law enforcement actions, and provide all-around legal services by adhering to the concept of systematic and holistic governance, learning professional knowledge of environmental protection, and familiarizing ourselves with the key points of litigation supervision, so as to contribute to the realization of Chinese modernisation in which humans and nature coexist in a harmonized manner.

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)

References

[1] Zhang Jiansheng: basic theory of modern administrative law, law press 2008.
[2] Zhou Youyong: theory of basic principles of administrative law, law press, 2019 edition.
[3] Hu Jianmiao: theory of administrative law, Law Press, 2015 edition.
[4] Ying Xing and Wang Qinghua, eds: China's grassroots administrative dispute resolution mechanism, Shanghai Sanlian Bookstore, 2010 edition.
Shanghai Sanlian Bookstore, 2010 edition.
[5] [E] Hart: The concept of law, translated by Zhang Wenxian, Encyclopedia of China Publishing House, 1996 edition.
[6] [English] William Wade: Administrative Law, translated by Xu Bing, Encyclopedia of China Press, 1997 edition.
[7] Geng Baojian: Changes in data and difficult problems in judicial review of administrative penalty cases, Administrative Law Research, 2017, No. 3.
No. 3, 2017.
[8] Liu Changxing: Multi-dimensional review of judicial review of environmental administrative cases: taking typical cases as the object, Journal of Nanjing University of Technology (Social Science).
Journal of Nanjing University of Technology (Social Science Edition), 2020, Issue 3.
[9] Liu Chao: Fracture and Unification of Administrative Regulation of Environmental Risks, Law Review, No. 3, 2013.
[10] Cai Xiaoxue: how to confirm the main evidence of the specific administrative act is insufficient, law application, 1997, no. 1.
[11] He Haibo: The principle of due process in judicial decisions, Legal Studies, 2009, No. 1.
[12] ZHOU Youyong: The development of judicial judgement on the principle of due process, Chinese law, No. 3, 2019.
[13] He Haibo: on the "obvious impropriety" of administrative acts, Legal Studies, Issue 3, 2016.
[14] Xu Yixiang and Liang Zhong: on the determination of the amount of environmental fines, Law Review, 2014, No. 6.
[15] WU Satellite: Review of China's administrative fine system for discharging wastewater in excess of the standard: from Jiangsu Gaoyou Guangming Chemical Plant to the incident of 603 yuan fine.
603 yuan fine incident, Journal of China University of Geosciences (Social Science Edition), 2017, No. 4.
[16] Wang Qingjun: Review benchmarks of administrative inaction in environmental administrative public welfare litigation, Tsinghua Law, 2020, no. 2.Issue 2.

© 2023 by the author(s); licensee Mason Publish Group (MPG), this work for open access publication is under the Creative Commons Attribution International License (CC BY 4.0). (http://creativecommons.org/licenses/by/4.0/)