

# On the Evidential Burden of Causation in Civil Lawsuit of Environmental Pollution for Public Interests Review and Improvement

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## ABSTRACT

In order to compensate for the original litigation's inability to adequately address an extensive variety of environmental issues, civil lawsuit of environmental pollution for public interests is essential for safeguarding the ecological balance and averting possible environmental risks. It supports the protection of society's interest in the environment and the realization of environmental rights. Building a flawless causation proof of the applicable system is essential since the proof of causation is a crucial component in civil lawsuit of environmental pollution for public interests, which did not find any express provisions. In actuality, the judge's primary challenge in determining causality distribution is applying proof of causation. The burden of proof was distributed without regard to the purpose of the proof, and proof of responsibility did not differentiate between the many subjects of the ability to prove. Thus, it is necessary to first define the burden of evidence standard as well as the value orientation of environmental civil public benefit lawsuit. It also highlights the issue of shifting the evidential burden for causality in the other direction. It clarifies which standards of proof to use when the Procuratorate and social organizations are the plaintiffs. By more evenly allocating the evidential burden for causation, civil lawsuit of environmental pollution for public interests will become more value-oriented.

## KEYWORDS

Civil Lawsuit of Environmental Pollution for Public Interests; Proof of Causation; Infringement Relief Prophylactic; Inversion of the Evidential Burden.

## 1. INTRODUCTION

Alongside the economy's rapid growth came a number of environmental contamination incidents and litigation pertaining to environmental conflicts, which in turn led to the emergence of the corresponding legal system. The "Environmental Protection Law" and "on the trial of civil lawsuit of environmental pollution for public interests on the application of the law of several issues in the interpretation of the law, which provides for the prosecution of the conditions, the jurisdiction of the court and the main body of the lawsuit and other aspects of the content" deal with the application of civil lawsuit of environmental pollution for public interests law. In order to protect the public interest in the environment, the civil lawsuit of environmental pollution for public interests system was established. This has significantly increased public awareness of environmental protection among individuals, businesses, and numerous organizations. Polluted environments and declining ecological health have resulted in unprecedented relief and improvement. Offenders are prosecuted and punished under the law. It is unfortunate, though, that our laws' pertinent sections regarding the evidential burden in civil lawsuit of environmental pollution for public interests do not make this clear.

## 2. FORMULATION OF THE PROBLEM

### 2.1. Case Studies

The problem of the burden of proof in various cases has been brought to light, and in reality, the number of civil lawsuit of environmental pollution for public interests is growing. The following will be distinct litigation topics in this sense, since the plaintiff serves as the benchmark for usual case analysis.

**Table 1.** Civil lawsuit of environmental pollution for public interests with the Public Prosecutor's Office as the plaintiff

Case Name	Proof of causality
Guiding Case No. 28 of the Supreme People's Procuratorate	The evidence presented by the plaintiff met a high standard of probability, and the defendant bore the evidential burden that there was no causal connection
Supreme People's Court Guiding Case No. 135	The plaintiff provided evidence to prove the defendant's sewage and behavior regarding the disposal of pollutants, but the defendant refused to provide information on the disposal of pollutants and other environmental information; the court presumed that the plaintiff claimed that the fact of environmental pollution was established
Supreme People's Court Guiding Case No. 136	Plaintiffs make a prima facie case of relevance, and defendants bear the burden of proving the absence of causation

Two major issues of contention in procuratorate lawsuit of environmental pollution for public interests are as follows: first, the sewage behavior of pollutants; and second, environmental public welfare due to the real loss of two elements of proof in litigation that were not subject to dispute. In the Supreme People's Court guiding case no. 136, the Procuratorate only considered the relevance of the proof and did not provide specific requirements for the proof of the standard. This means that only two cases, overall, have used the principle of reversal of the evidential burden to solve the problem of proof of causation, and the proof of the standard differs. The plaintiff side of the Procuratorate took the initiative to play the role of the standard of proof has reached a considerable degree of cover in Supreme People's Procuratorate guiding case no. 28, taking into account the defendant's rental of other people's plant and no business license illegal business, the defendant's ability to prove relatively weak, at the same time, the case and need to determine the scope of the results of the damage to determine the amount of compensation, etc. Given the relative strength of Bai Shan City, Jiangyin District Hospital, of Traditional Chinese Medicine, the defendant in case no. 136, it is reasonable to assume that the judge will, at their discretion, also take the defendant's capacity to demonstrate the strength of the allocation into account.

However, the plaintiff in Case No. 135 had provided relevant prima facie evidence. In accordance with the plaintiff's request and the court's rules, the defendant had neglected to present timely proof to the contrary. As a result, the court assumed that contamination had been proven in the case, which is a variant on applying the burden of evidence to be reversed.

**Table 2.** Civil lawsuit of environmental pollution for public interests with social organizations as plaintiffs

Case Name	Proof of causality
Supreme People's Court Guiding Case No. 173	Plaintiff's evidence was sufficient to prove that the construction of the Jarsha River hydropower station posed a significant risk of damage to the ecological environment, and the defendant could not prove that no significant risk existed
Supreme People's Court Guiding Case No. 174	The plaintiff's evidence could not fully prove the specific situation of the five small-leaf maples in China, and the project has not yet actually begun, and the defendant's evidence could not prove that it does not harm the environment in which the five small-leaf maples grows, and the court collects evidence on its own

The Yunnan Green Peacock case applies the general rules on the evidential burden as well as the reversal of the evidential burden in environmental pollution tort liability. In contrast, the five small-leaf maple cases highlight the role of the courts in collecting evidence.

In the case of the plaintiff's friend of nature in the evidence, Yunnan Green Peacock has been able to initially prove that the Jasha River hydropower station construction project will produce a significant risk to the green peacock in the region. The defendant's new flat company's defense is just a predictive judgment that is not conclusive and, therefore, lacks sufficient proof, so in the reversal of the evidential burden under the defendant's rules to, bear the risk of adverse evidence. However, because this case belongs to the preventive lawsuit of environmental pollution for public interests, breaking through the original "no damage, no relief" relief concept, the specific ecological damage is not apparent. Hence, the judgment also mentioned whether the defendant needs to permanently suspend the installation of the hydroelectric power station and wait for the relevant administrative departments, depending on the specific circumstances of the law, to make a decision.

In the case of the five small maples, the plaintiff did not provide sufficient evidence on the growth and distribution of the five small maples, and the defendant also failed to prove that its upcoming construction would not impact the ecology. The court, in this case, ex officio investigation and evidence, confirmed that the completion of the tooth root step power plant might cause damage to the original ecological, and thus has the five small maple potential risk of survival. The defendant was ordered by the court to submit the survival of the maple as part of the environmental evaluation of the hydroelectric power station to the competent environmental protection administrative department for review and approval before proceeding to the next step.

## **2.2. Problems: Reversal of the Evidential Burden Rule Creates an Imbalance in the Litigation Position of the Parties**

In the aforementioned cases, the likelihood of success in civil lawsuit of environmental pollution for public interests cases is very significant, regardless of the procuratorate or social organizations as the demandant. If the plaintiff is unable to produce proof of causation, the court will either follow the "presumption" and largely reverse the burden of proof or conduct an ex officio investigation of the evidence without directly ruling against the plaintiff. It is evident that certain provisions are made by the laws and regulations pertaining to environmental civil public welfare lawsuit causation rules. But the way the case's facts are applied by the courts more clearly favors the plaintiff's position—that is, the "reverse burden of proof" and "causation." The plaintiff's and defendant's situation is inequitable due to the requirements of the proving of causation.

### **3. CIVIL LAWSUIT OF ENVIRONMENTAL POLLUTION FOR PUBLIC INTERESTS CAUSATION EVIDENCE BASED ON THE THEORY OF ORIGIN**

#### **3.1. Value Orientation of Civil Lawsuit of Environmental Pollution for Public Interests**

In civil lawsuit of environmental pollution for public interests, the distribution of the evidential burden and the standard of evidence for causation itself reflects a particular value orientation: first, that the lawsuit is intended to serve the public interests, and second, that the relief being violated is intended to be preventive.

##### **3.1.1. The Public Interest Nature of the Purpose of the Proceedings**

Civil lawsuit of environmental pollution for public interests, as opposed to civil lawsuit of environmental pollution for private interests, protects the public interest as a whole rather than the private interests of specific individuals. In civil lawsuit of environmental pollution for public interests, plaintiffs are neither the only people who stand to gain financially from a successful case nor the immediate victims. Therefore, the public's interests that are violated or may be violated by environmental pollution are the actual harm or potential harm that arises in an civil lawsuit of environmental pollution for public interests, not the plaintiff. In addition, hypothetical dangers as well as actual harms may serve as the catalyst for civil lawsuit of environmental pollution for public interests. Based on these two viewpoints, civil lawsuit of environmental pollution for public interests is more complicated for the plaintiff and differs from civil lawsuit of environmental pollution for private interests in that it is not motivated by the plaintiff's desire for legal action. Thus, in order to preserve the plaintiff's motivation to file a lawsuit, civil lawsuit of environmental pollution for public interests development requires a certain amount of support and protection.

##### **3.1.2. Preventive Nature of Remedies for Violations**

Environmental infringement is typically understood to occur when there is pollution of the environment or when the natural environment is destroyed, and then it relates to human activity. This can be thought of as a form of indirect infringement, meaning that damage to the environment can also result in harm to people's personal belongings, property, and other environmental elements, as well as harm to ecosystems. Environmental infringement, as used in civil lawsuit of environmental pollution for public interests, refers to harm that a polluter directly causes to the environment. Public interest lawsuit and environmental private action, however, differ greatly in their urgency. Conventional tort law is predicated on the requirement that the party asserting the rights have incurred real, demonstrable losses, rendering the infringement apparent. The rights holder needs relief immediately. Lawsuit of environmental pollution for public interests is more focused on the preventive and remedial aspects of relief, with objective proof of the difficulty involved, rather than the actual occurrence of adverse effects.

Environmental infringement is characterized by its long-term and latent nature, and the dangers posed by it are often abstract. Unlike the concrete dangers of property damage and loss of health that are visible in private torts, the dangers posed by aggrieved parties in lawsuit of environmental pollution for public interests will emerge over time in the future or can only be recognized based on specific scientific and technological developments, which are difficult to judge and identify at present accurately.

## **3.2. Doctrine of Proof of Causation in Civil Lawsuit of Environmental Pollution for Public Interests**

### **3.2.1. Reversal of the Evidential Burden**

In the article "Commonality of Civil Lawsuit of Environmental Pollution for Public Interests and Private Interest Litigation--Analysis from the Perspective of Relevant Judicial Interpretations of the Supreme People's Court," Wu Ruqiao argues that, since civil lawsuit of environmental pollution for public interests and for private interests share specific common characteristics in certain aspects, the distribution of the evidential burden for civil lawsuit of environmental pollution for private interests can be applied by reference.[1] Its rule is a dual-track combination of "who claims, who proves" and "inversion of the evidential burden," wherein the plaintiff distributes the evidence burden based on the defendant's assurance over whether to adopt the behavior that would harm society and the public interest. While the defendant must establish whether there is a causal link between the occurrence of the detrimental fact and its own illegal behavior, as well as whether there are exempting circumstances, the plaintiff is responsible for establishing the defendant's certainty and whether the defendant has committed an act detrimental to the public interest.

Liu Haiyang, author of "On the allocation of the evidential burden in Civil Lawsuit of Environmental Pollution for Public Interests in China", believes that in civil lawsuit of environmental pollution for public interests, the defendant is more likely than the plaintiff to present evidence demonstrating that there is no connection between the environmental violations and the damage. As such, Liu Haiyang believes that the civil lawsuit involving environmental pollution for public interests should be used to demonstrate the reversal of the evidentiary burden rules in order to maintain the lawsuit's subjective and objective unity. can eliminate the plaintiff's position in the civil case under pressure from litigation, increasing the likelihood that civil public welfare will be maintained.[2]

In short, the reversal of the evidential burden against the lawsuit for public interest according to the subject of different plaintiffs to apply different burden of proof rules, it is argued that since there is no causal relationship, the burden of proof should be shifted to the defendant in order to harm the defendant's environmental public interests. This will be accomplished by applying intense pressure to the defendant to uphold their obligations regarding environmental public interests and prevent harm from occurring in the future.

### **3.2.2. Presumption of Causation**

In the "evidential burden mitigation: civil lawsuit of environmental pollution for public interests burden of proof of allocation of contingent path", Guo Songbin, Liu Xianpeng advocate in the evidential burden mitigation mechanism, civil lawsuit of environmental pollution for public interests, the plaintiff through the easier to prove the basic facts of the proof, the behavior of the evidential burden to the defendant burden. In the application of the presumption of causation, the causal relationship elements of the distribution of the evidential burden does not apply to the so-called "inversion" rule, but the plaintiff can be applied through the presumption of reducing the difficulty of proving, that is, although the defendant does not bear the burden of proving that causality does not exist in the sense of proof of the result, but because the plaintiff through the presumption of the easier proof of the existence of the elements of the causality, its counterclaims. element exists, its burden of presenting counter-evidence to prove that causation does not exist or that its truth is unknown is somewhat increased.[3]

In the civil lawsuit of environmental pollution for public interests procedural rules of the controversy and improvement of the article, Chen Haisong advocate, civil lawsuit of environmental pollution for public interests in the litigation subject of the two sides of the difference in capacity and resources, it is necessary to presumption of causation in the application of differentiated standards of proof, should not apply the absolute "inversion of the evidential burden" rule, should be applied respectively Instead of adjusting to the absolute "inversion of the evidential burden" rule, the standard of proof of

"presumption of causation" should be applied to different degrees. For the social organization as the plaintiff of the lawsuit, as long as the plaintiff puts forward the relevant evidence material reaches the degree of "prima facie evidence", it is presumed that the causal relationship is established. Procuratorial organs, due to its "legal supervision organs" position and the nature of the state organs, in the collection of evidence has more measures and ability to resources, so should set a higher degree of proof of causality standard, such as evidence must reach a high degree of proof standard.[4]

The presumption of causation argues for a "modified" reversal of the evidential burden in civil lawsuit of environmental pollution for public interests, whereby the plaintiff must first prove a link between the injurious act and the harm to the public interest, and then the defendant may provide evidence to prove the opposite, that there is no causal link between the two. It is considered unfair to place the burden of proving causation solely on either party, and both parties to the litigation should be involved in proving causation.

### 3.2.3. The Claimant Who Adduces Evidence

In Rethinking the Reversal of the Evidential Proof in Lawsuit of Environmental Pollution for Public Interests--Taking the Statutory Plaintiff's Qualification as a Perspective, Xu Shulin and Leng Luosheng argued that the plaintiff in lawsuit of environmental pollution for public interests is more powerful than the ordinary civil subjects such as individual citizens as plaintiffs in ordinary environmental infringement disputes, and possesses the strength to fight against the defendant to achieve the balance of litigation status. The balance of the litigation position. Compared with ordinary environmental infringement lawsuits, the plaintiff's probability of success has increased. From the defendant's point of view, under the inversion of the evidential burden, it is difficult to prove negative facts, and the burden on the defendant has increased. Therefore, in order to preserve the justice of litigation, civil lawsuit of environmental pollution for public interests of the special characteristics of its lack of legal basis for the inversion of the evidential burden, so the evidential burden should be applied to the allocation of "whoever claimed to prove".[5]

Bo Xiaobo, the author of "three-dimensional model to binary model - on the improvement of environmental pollution for public interests relief lawsuit system", believes that civil lawsuit of environmental pollution for public interests is a "government against the people" lawsuit, the two sides of the ability to prove and "people against the people" environmental infringement lawsuit is very different, the rules of evidence should not copy the environmental infringement of the evidential burden reversal of causation. "Environmental infringement lawsuit is very different, the rules of evidence should not copy the environmental infringement of the inversion of the evidential burden in the causal relationship. In this "government against the people" in the lawsuit instead of requiring the defendant to prove, whether from the logical level or the legitimacy of the rules are not persuasive, so the plaintiff bears the evidential burden of causation is more reasonable.[6]

## 4. REVIEW OF THE RULES OF EVIDENCE FOR CIVIL LAWSUIT OF ENVIRONMENTAL POLLUTION FOR PUBLIC INTERESTS ON CAUSATION

In actual court proceedings, the evidential burden in civil lawsuit of environmental pollution for private interests is reversed in favor of the defendant in civil lawsuit of environmental pollution for public interests. This means that while the plaintiff is not required to present evidence of causation, the defendant is responsible for proving the absence of causation. In addition, the plaintiff must present proof that there is a connection between the infringement and the consequences of the damage, according to an amended interpretation of article 6 of the inversion of the evidential burden by the Supreme People's Court in cases involving environmental infringement liability disputes. In light of this, the presumption of causation-an amended "inversion of the evidential burden"—will also be applied at the judge's discretion. The plaintiff will only be required to bear the initial evidential burden,

and the court will conclude that causation exists based on the presumption of causation. Compared to reversing the evidential burden, the presumption of causation places a heavier evidential burden on the plaintiff.

Two factors provide support to the theory of reversing the evidential burden: first, the public interests goal of civil lawsuit of environmental pollution; and second, the plaintiff's social organization when the defendant's evidence is comparatively stronger. Regarding these two arguments, I think that the nature of the object of proof should be taken into consideration in addition to the subject's nature when evaluating the plaintiff and defendant's capacity for proof.

#### **4.1. Inversion of the Evidential Burden Applied by the Public Prosecutor's Office and the Conflict of Infringement Prevention Functions**

The infringement remedy and prevention role of civil lawsuit of environmental pollution for public interests are in conflict with the application of the reversal of the evidential burden rule for proof of causation when the procuratorate serves as the plaintiff. The Supreme People's Procuratorate released the Rules for Handling Public Interest Litigations by People's Procuratorates in June 2012. According to the provisions of Article 86 of the Interpretation, the procuratorate will gather evidence primarily from actions that cause harm to the social public interest and violate the environmental public interest when filing a civil lawsuit of environmental pollution for public interests. It is the proof of the consequences of harm to the public interest in society, without having to prove a connection. However, as a contemporary form of litigation, civil lawsuit of environmental pollution for public interests is meant to serve as a means for the government to carry out its role of environmental protection by overseeing and enhancing the traditional litigation mechanism, rather than serving as the main mechanism for environmental protection or creating a separate set of channels parallel to it. According to this perspective, the pertinent responsible parties for environmental protection programs shouldn't launch a lawsuit in the public interest because it would only be unproductive to stand on the high ground and risk damaging environmental protection. In particular, our law adopts the principle of reversal of the evidential burden in traditional civil lawsuit of environmental pollution for private interests, based on the reality of the dangers and the urgency of the rights of relief, to effectively protect the injured party's legal rights and interests. However, the objective limitations in lawsuit of environmental pollution for public interests, which are based on an uncertain future and the state of science and technology at the time, require businesses to bear a heavier burden of proof, increasing the risk of losing. This will not only result in an increase in abusive lawsuits and a lack of governmental environmental supervision, but it will also dampen the enthusiasm of the business's production activities, which will have an impact on economic development. Therefore, the criteria for the distribution of evidence should not apply to the inversion of the evidential burden or the presumption of causality for the prosecutor's office, whose capacity to provide evidence is equal to that of the defendant.

#### **4.2. Conflict between the Full Application of the Inversion of the Evidential Burden and the Preventive Function of Infringement by Social Organizations**

The preventive purpose of infringement remedy is likewise at odds with the full implementation of the inversion of the evidential burden in environmental civil public interest lawsuits including social organizations as plaintiffs. Given that the civil lawsuit of environmental pollution for public interests has "abstract danger" as one of its objects of proof and that the public interest is the litigation's value orientation, if the abstract danger of social organizations' burden of proof to the public interest is unjust, it will increase the evidential burden, raise the possibility of losing the case, and undermine the plaintiff's goal of upholding the public interest. To maintain the equality of both parties in the litigation and balance the public interest of the purpose of the litigation and infringement of the relief of the preventive nature, the judge must use discretion to allocate the burden of proof in specific cases involving specific objects of proof, whether the plaintiff has sufficient ability to prove, and if the

defendant's burden of proof should be reversed for the non-existence of causality of the ability to prove.

## **5. SUGGESTIONS FOR IMPROVING PROOF OF CAUSATION IN CIVIL LAWSUIT OF ENVIRONMENTAL POLLUTION FOR PUBLIC INTERESTS**

### **5.1. Establishment of the Principle of Protection of the Public Interest and Preventive Relief**

Reverse burden of proof or "modified reverse burden of proof" (i.e., the presumption of causation) rules are typically applied in China's civil lawsuit of environmental pollution for public interests proof of causation. This burden of proof system lessens the plaintiff's evidential burden, encourages the plaintiff to represent the social and public interests of the civil lawsuit of environmental pollution for public interests, and accomplishes the public interest goal of the litigation. However, the proof of causation applies the reverse burden of proof rule, which unduly aggravates the evidential burden on the defendant and even results in an imbalance in the position of the parties to the action, regardless of the ability to prove or the object of proof. From a different angle, the application of the inversion of the evidential burden undoubtedly increased the defendant's risk of losing the case, weakened the defendant's enthusiasm for the development of the enterprise, is likely to impair the economy and the market, and is fundamentally contrary to the aim to protecting the public interest. This is because the evidentiary capacity is clearly higher than the procuratorate for the defendant. Consequently, the ability of civil lawsuit of environmental pollution for public interests to achieve its own worth is also determined by the establishment of the protection of the public interest and the violation of the principle of prevention of relief, as well as the balance between the two.

### **5.2. Application of the Evidential Burden to the Procuratorate**

Taking the aforementioned into consideration, I think that in civil lawsuit of environmental pollution for public interests, where the procuratorate serves as the primary body, the rule of whoever claims whomever submits evidence should be implemented. The Procuratorate has a stronger proof capacity than other social subjects, as demonstrated by the cases No. 28 of the Supreme People's Procuratorate, No. 135 of the Supreme People's Court, and No. 136 of the Supreme People's Court. It is evident from these cases that the Procuratorate has far more means of obtaining evidence than the defendant, and as such, the rules of causality and inversion of the evidential burden should not be put into use in lawsuits in which the Procuratorate is the plaintiff. Therefore, in a lawsuit where the procuratorate is the plaintiff, neither the presumption of causation nor the inversion of the evidential burden should be applied. Additionally, civil lawsuit of environmental pollution for public interests case win rate is very high, which serves to further the goal of encouraging the maintenance of public interest. In this case, the judge should exercise discretion in determining who claims to present evidence, ensuring that the positions of the plaintiff and defendant in the litigation are sufficiently counterbalanced.

### **5.3. Incomplete Application of the Reversal of the Evidential Burden to Social Organizations**

The public prosecutor's office is more capable of providing evidence than social groups, but in actuality, the application of the rule reversing the burden of proof on causation has produced an extraordinarily high success rate for plaintiffs. Given their ability to do so, social groups find it relatively easy to demonstrate the abstract risk and the causal relationship in some non-infringement remedial civil lawsuit of environmental pollution for public interests. In the Yunnan Green Peacock case, for instance, the evidence presented by the plaintiff Friends of Nature during the first trial,

including the "Study on the Seasonal Rainforest Communities in the Lower Valley of the Green Juice River in Yunnan" and the "Research Report on the Vegetation of the Upper Red River's Jashan River, Shiyang River, and Green Juice River," was sufficient to demonstrate that the project in question posed a significant risk to the ecosystem's biodiversity and biosafety over the entire submerged area. Furthermore, it will only be easier to violate remedial civil lawsuit of environmental pollution for public interests for particular impair to the evidence at this point since it is too difficult and burdensome for the defendant to carry the evidential burden of causation in the absence of evidence.

## 6. CONCLUSION

In its original field of application, the injured party played a very obvious role in the protection of the injured party, for the weak ability to prove that the injured party is a welcome relief, but also to maintain the fairness and justice of the law. As a private environmental infringement litigation to protect the interests of the injured party of the burden of proof reversal system. However, moved from the environmental private infringement lawsuit to the civil lawsuit of environmental pollution for public interests in which the burden of proof was reversed. This seemed to be a bit of a water and soil situation, not just because of the litigants' ability to tip the scales in favor of the other side, but also because of the potential for environmental harm and the intricate details of the ruling.

Of course, establishing burden of proof rules takes time and requires theory and practice of continuous exploration in order to find an appropriate burden of proof allocation mode for China's future lawsuit of environmental pollution for public interests needs and to improve the civil lawsuit of environmental pollution for public interests causation proof system. After all, three feet of ice is not going to get warm in a day.

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