

# Role Optimization and Strategic Adjustment of Procuratorial Organs in Promoting Corporate Compliance Construction from the Perspective of Environmental Pollution Crimes

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**Abstract.** With the improvement of environmental protection awareness and the in-depth rule of law, the compliance construction of environment-related enterprises has become the focus of social attention. It is necessary to discuss the role of optimization and strategy adjustment of the procuratorial organs in promoting the construction of corporate compliance from the perspective of environmental pollution crimes. Corporate compliance and the current situation of enterprises involved in environmental pollution crimes in China deserve attention. Meanwhile, the procuratorial organs play the role of supervisor in the regulation to promote the compliance of enterprises with environmental pollution, but its supervision effect is limited. The procuratorial organs with a supervisory role when promoting corporate compliance aim to enhance corporate development. During the enterprise compliance, whether an enterprise complies or not needs to be analyzed from the perspective of game theory, which is always driven by its interests and external regulatory incentives. Compliance construction and improvement of legal procedures from the perspective of norms should consider incentives and regulations for the implementation of compliance plans, the construction of the legal status of third-party organizations, and post-event incentives and feedback from third-party organizations.

**Keywords:** Procuratorial Organs; Corporate Compliance; Environmental Pollution Crime; Compliance Motivation; Legal Procedures.

## 1. Introduction

Since 2020, China has made significant progress in the pilot compliance of enterprises involved in the case. As of April 2022, procuratorial organs across China have handled a total of 9,016 compliance cases, of which 6,687 have adopted a third-party supervision and evaluation mechanism, and 3,736 enterprises and 7,787 people have not been prosecuted according to law. However, 138 enterprises have failed the evaluation and were held accountable for criminal responsibility. [1] In the same year, the Ecological Environment Department issued 91,000 environmental administrative penalty decisions, with a total fine and confiscation of 7.672 billion yuan. In addition, the courts concluded 245,000 cases about environmental and resource. The procuratorial organs filed 21,600 public prosecutions for crimes of destroying environmental resources and filed 95,000 public interest litigation cases. Judicial appraisal institutions have completed more than 20,000 environmental damage appraisals. [2]

Despite these achievements, the environmental pollution problem in China is still serious. Many enterprises involved in the case lack the awareness of saving resources and protecting the environment, and some enterprises even repeatedly commit crimes. This is partly because the agency relies too much on accountability mechanisms when enforcing the law, resulting in the failure of deterrence. [3] The Environmental Protection Law is mainly positioned as a law for the supervision of regulators, but it lacks the supervision of regulators.[4] The deterrent effect of the law depends on the combined effect of the severity of the punishment and the probability of implementation. [5]

The procuratorial organs are key to promoting the construction of corporate compliance, intervening through direct prosecution and non-prosecution in compliance. Although the compliance non-prosecution strategy shows strict management and preference for the procuratorial organs, it still faces



challenges in practice, especially the issue of public prosecution when dealing with heavily polluting enterprises. Procuratorial organs need to play a better leading role in reviewing prosecutions, supervising compliance improvements, and acceptance results, while stimulating the enthusiasm and initiative of enterprises. In addition, the handling of environmental pollution crimes should consider the responsibility of enterprises to repair the environment themselves, and take more restorative judicial measures to fully reflect the particularity of environmental legal interests.[6]

## **2. Background and Purpose of Promoting the Compliance Construction of Enterprises Involved in Environmental Pollution Crimes by Procuratorial Organs**

### **(1) Background of Promoting the Compliance Construction of Enterprises Involved in Environmental Pollution Crimes by Procuratorial Organs**

Environmental protection and economic development should be balanced. With the development of the economy, environmental protection has been attractive globally. According to China's Statistical Bulletin on National Economic and Social Development in 2022, although the GDP has grown by 3.0%, there is still a gap with the simultaneous improvement of energy conservation and emission reduction. The air quality in most cities across China is not up to standard, nor is the quality of more than one-tenth water body sections. [7] In this context, the procuratorial organs promote corporate compliance and conduct legal supervision activities of ecological and environmental protection in accordance with the law by performing various functions. For example, in the environmental pollution case of L Company in Zhangjiagang City, [8] the enterprise plays an important role in the local economy, but it adopted the non-prosecution in compliance under legal supervision, optimized its operating model, and improved its sense of responsibility and risk prevention and control capabilities. Through the establishment of a compliance management system, the enterprise strictly abides by environmental protection regulations when carrying out business activities, reduces pollution and environmental damage, and achieves sustainable development. At the same time, with the improvement of public awareness of environmental protection, the performance of enterprises in environmental protection also affects their social image and market competitiveness, prompting enterprises to pay more attention to environmental protection while pursuing economic benefits, which realizes the double promotion of social responsibility and commercial value.

The self-supervision of enterprises involved in environmental pollution and the guidance of procuratorial organs are insufficient. Enterprises' self-regulation is vital to ensuring legal and regulated operations, especially those with significant environmental impacts. Self-regulation not only involves the formulation of internal rules and regulations as well as the establishment of regulatory agencies, but is also the key to preventing environmental pollution. In China, the Administrative Measures for the Legal Disclosure of Enterprise Environmental Information requires enterprises to disclose specific environmental information, but the form and content of disclosure are still insufficient, and the information is highly arbitrary with low quality. Meanwhile, the requirements of exchanges in the A-share market for environmental reporting are mostly encouraging rather than mandatory, triggering insufficient information disclosure by some companies. [9] Such an inadequate disclosure affects the cost of capital of the business and investors' evaluation of sustainable development. The particularity and asymmetry of environmental information make comprehensive information disclosure critical for stock price pricing. [10]

Lack of strict self-regulation and comprehensive environmental information disclosure may lead to companies ignoring environmental protection responsibilities while pursuing economic interests, resulting in environmental violations. In addition, the procuratorial organs should exercise the right of public prosecution in accordance with the law. Meanwhile, it needs to consider the compliance review of the enterprises involved in the case, so as to urge the enterprises to assume their environmental restoration responsibilities and improve the internal supervision system. Through the non-prosecution in compliance, it can prevent enterprises from committing crimes again and promote the long-term sustainable development of enterprises. This approach is not only an alternative to

punitive measures, but also an effective strategy for promoting sustainable social and economic development.

## (2) Purpose of Promoting the Compliance Construction of Enterprises Involved in Environmental Pollution Crimes: Prevention, Punishment and Guidance

The procuratorial organs promote compliance construction based on various factors and social background. During the transformation of the Chinese economy from high-speed development to high-quality, the number and scale of enterprises have continued to increase. Besides, violations of laws and regulations by enterprises have occurred frequently. In order to standardize enterprise behavior, reduce violations, and promote enterprise self-management and self-discipline, procuratorial organs have promoted enterprise compliance.

**Prevention:** It caters to enterprises' needs for risk prevention and environmental protection. With the rapid economic development, the impact of enterprise activities on the environment and society has increased. The procuratorial organs emphasize the prevention of risks such as potential pollution through pre-prevention measures other than public prosecution. Especially after major environmental pollution incidents and safety accidents, this demand is more urgent. The procuratorial organs have provided statutory relief channels through the Pilot Program for the Reform of Public Interest Litigation by Procuratorial Organs [11], but it is still necessary to further improve the pre-litigation procedures for criminal and civil public interest litigation to strengthen the prevention and relief of environmental pollution in advance.

**Punishment:** It is to strengthen legal deterrence and restorative justice. With the rapid development of the market economy, many private enterprises sacrifice environmental resources for economic interests and commit environmental pollution crimes. Since the cost of crime is low and the cost of abiding by the law is high, the procuratorial organs need to consolidate legal deterrence to ensure that enterprises dare not break the law. At the same time, the procuratorial organs adopt restorative justice, allowing the enterprises involved in the case to participate in the restoration of environmental damage caused by their illegal activities, so as to realize the integration of pre-prevention and restorative justice.

**Guidance:** It is based on policy orientation and incentive compatibility mechanisms. The procuratorial organs are not just regulating and restricting enterprise compliance guidance. According to the Constitution, China encourages and supports the development of the non-public sector of the economy, and exercises legal supervision and management. [12] The procuratorial organs draw a compliance blueprint for enterprises through clear policy orientation, proposing a path that not only complies with regulations but also promotes sustainable development. In addition, through the incentive compatibility mechanism, the procuratorial organs have found in judicial practice that simple punishment or reward is not enough for enterprises to internalize compliance awareness. Implementing the enterprise compliance non-prosecution system can stimulate the internal compliance motivation of the enterprise and ensure that it continues to go ahead on the road of compliance. This mechanism has a demonstration effect on other enterprises, thereby improving the compliance awareness and compliance of the business environment as a whole.

In general, the procuratorial organs continue to strengthen legal education, supervision and law enforcement in promoting enterprise compliance, combined with restorative justice and incentive mechanisms, so as to achieve pre-prevention, timely punishment and effective guidance for enterprises, ensuring high-quality economic and social development for sustainable development.

## (3) Sorting and Analysis of Enterprise Compliance Process

The sorting and analysis of enterprise compliance processes mainly includes review and follow-up procedures, aiming to ensure that enterprise activities are legal and standardized, especially behaviors that may pose a threat to the environment or public safety.

**Review:** Applicable conditions and legal basis for non-prosecution in compliance.

In terms of its applicable objects, it is mainly aimed at small, medium and micro private enterprises, especially family businesses or individual independent enterprises. [13] If these enterprises are involved in the case, they usually sacrifice the cost of abiding by the law for economic interests, but their substantive illegal infringement is relatively small. They have a good attitude of pleading guilty and accepting punishment, which complies with the provisions of the Criminal Procedure Law. In terms of criminal facts, the criminal circumstances of the enterprise involved in the case did not cause serious consequences, and the person responsible may receive a lighter penalty, so compliance non-prosecution is applicable. As for large-scale enterprises that seriously pollute the environment, even if they surrender, the procuratorial organs may file a public prosecution to avoid the excessive impact of discretion on judicial power.

As for the basis of compliance review decisions, firstly, the legal basis should be considered. According to the principles of the Criminal Procedure Law, the facts of the case must be clear and the evidence must be sufficient. In addition, the public interest should be considered. When considering whether to conduct a compliance review of an enterprise, it is necessary to assess the possible impact of direct litigation on the enterprise and related parties (such as employees, investors, and partners). Meanwhile, compliance conditions must be taken into account. The procuratorial organs evaluate whether the enterprise has established a reasonable environmental governance and internal rectification plan, such as a compliance charter, a compliance organizational system, etc., so as to ensure that the enterprise has a structure to prevent recidivism.

Follow-up procedures: enterprise compliance rectification. Enterprises need to formulate and implement detailed rectification plans according to the guidance of procuratorial organs or regulatory agencies, including organizational structure adjustments, internal management system improvements, employee training, etc. In addition, a special compliance rectification team should be set up to be responsible for monitoring and reporting the progress of rectification. After completing the rectification, the enterprise needs to accept the acceptance and evaluation of the procuratorial organs mainly through document review, on-site inspection, employee interviews, etc. After the acceptance is passed, the procuratorial organs will hold a public hearing to solicit suggestions from all parties, and finally make a decision not to prosecute qualified enterprises. Throughout the compliance, the procuratorial organs should take into account the continuity of business operations and social responsibilities while ensuring compliance with the law, so as to avoid irreversible negative impacts on the enterprise due to handling cases. Furthermore, for cases involving complex pollution situations or requiring professional assessment, a third-party supervision and assessment mechanism will be used timely to ensure the professionalism and effectiveness of rectification. This approach aims to balance the needs of law enforcement and economic and social development, and promote the modernization of the national governance system and governance capabilities.

### **3. Compliance Motivation and Game Driven by Interests**

Compliance construction is not only an inevitable requirement for enterprises to comply with laws and regulations, but also a vital means to maximize their interests in economic and social development. However, there is a complex interest game among enterprises, procuratorial organs and evaluation agencies in this process. At the same time, the procuratorial organs need to consider these interest games, adjust the strategy of promoting enterprise compliance construction, and improve the efficiency of compliance construction.

#### **(1) Enterprise Compliance Motivation and Interest Consideration**

The economic and social value of criminal records should be avoided. Criminal records mean significant economic losses and social reputation damage to enterprises. Economically, illegal acts may lead to huge fines and affect the profitability and financial status of enterprises. For example, Jiangsu Chengyang Crop Technology Co., Ltd. was fined 10 million yuan, which significantly affected its investment and development. In addition, criminal records may trigger damage to the reputation of enterprises in business cooperation, loss of market opportunities, and impact on revenue

and market expansion. In society, criminal records damage the public image of enterprises and reduce consumer trust. According to Article 8 of the Administrative Measures, criminal enterprises are forced to disclose environmental information, which further leads to the loss of customers and the decline of market competitiveness. For example, Chengyang's case was negatively reported by Sina Finance and The Paper, further dampening consumer confidence. Criminal records may also arouse employees' doubts about enterprise values and ethical standards, and affect work enthusiasm and team cohesion. Besides, the punishment of key managers will affect enterprise operations and product development, weakening operational efficiency and innovation capabilities.

Compliance construction, enterprise image and market competitiveness should be enhanced. Compliance construction is the key for an enterprise to maintain a good social image and market competitiveness. Enterprises demonstrate their environmental protection efforts through public disclosure of annual ESG reports and other forms. For example, Alibaba and Midea Group attract consumers and investors through environmental information disclosure and reduce capital costs. [14] Positive social image, especially environmental image, is crucial to enterprise image, which can attract more consumers and investors and win wide recognition. Taking the case of Company X in Weifang, Shandong as an example, the enterprise carried out compliance rectification by referring to the ESG compliance standards of the foreign investor H Group and improved the decision-making mechanism and internal management. It not only solved the environmental pollution, but became an example of compliance reform for foreign-funded enterprises. Enterprises enhance market competitiveness through compliance operations, with integrity and compliance as important factors for gaining competitive advantages. The quality of products and services of enterprises with good environmental information is recognized by consumers, which improves customer loyalty and market share. Shandong Weifang X Company was approved to increase production after compliance rectification, which significantly improved its sustainable development capabilities. By actively conducting compliance rectification, enterprises can avoid criminal records and realize the positive incentive effect of environmental information disclosure. Once the compliance rectification is approved by the procuratorial organs and a decision not to prosecute is made, the enterprise can convey its positive image of law-abiding and compliance to society through information disclosure, reshape the corporate image and improve market competitiveness.

## (2) Game Between Procuratorial Organs, Enterprises and Third-Party Organizations

Prosecutorial organs and enterprises: They should balance power and interests in the formulation and implementation of compliance programs. In current judicial practice, to persuade the procuratorial organs to start the compliance supervision and inspection process, enterprises usually carry out compliance self-inspection immediately after the review and prosecution, identify system defects and control loopholes, and submit self-inspection reports. [15] As a legal supervisory organ, the primary consideration of the procuratorial organs is to ensure that the entire process of the enterprise's compliance rectification complies with national laws and regulations, and to help the enterprise eliminate hidden dangers in the original system and realize decriminalization. [16] However, as an independent economic subject, enterprises always pursue the maximization of economic interests. When the cost of compliance rectification exceeds the benefits brought by information disclosure, the enterprise may adjust the compliance plan from "comprehensive compliance" to "special compliance", which is contrary to the original intention of the comprehensive reform promoted by procuratorial organs. The procuratorial organs can force the enterprise to implement a comprehensive and strict rectification plan, but this may dampen enterprises' enthusiasm, especially for small and medium-sized ones with poor ability to withstand pressure. It is difficult to complete the rectification goals of procuratorial organs. Therefore, in the stage of promoting the compliance rectification plan, the procuratorial organs must promote the effective rectification of legal compliance and consider the incentive issues of enterprises and their actual capabilities.

Enterprises and third-party organizations: They should guarantee the independence and impartiality of compliance assessment. Compliance assessment is vital to testing the effectiveness of enterprise compliance construction. Third-party organizations usually select professionals to conduct

supervision and evaluation according to the circumstances of the case guided by the procuratorial organs. Although the legal status of third-party organizations is not clear and lacks mandatory legal effect, the procuratorial organs usually rely on the written reports of third-party organizations in practice. [17] As the scale of enterprises expands and the internal governance structure becomes complex, the concealment of enterprise crimes increases, and so does the investigation difficulty faced by third-party organizations. This may lead to enterprises trying to influence the evaluation results of third-party organizations through improper means, and damage the independence and impartiality of the evaluation. Therefore, whether the legal status of third-party organizations should be strengthened to prevent enterprises from interfering with their work is a question that needs to be resolved.

Procuratorial organs and third-party organizations: They should implement incentives and feedback after rectification. Although the work of a third-party organization is of a public interest or service nature, [18] its members, as independent professionals, may consider the interests of participating in enterprise compliance reform. Units to which members belong may use this to enhance their social image and obtain indirect benefits. Therefore, when the procuratorial organs hope that a third-party organization will assist in completing the enterprise compliance rectification work, it needs to consider how to provide appropriate incentives and feedback to the relevant personnel of the third-party organization.

To sum up, in the construction of enterprise compliance, the procuratorial organs and the enterprise need to balance the strictness of the compliance plan with the incentives and capabilities of the enterprise for implementation. It is necessary to ensure the independence and impartiality of compliance assessment between enterprises and third-party organizations. Prosecutors and third-party organizations face the challenge of incentives and feedback. Solutions to these problems will help improve the effectiveness and efficiency of compliance construction.

#### **4. Compliance Construction and Improvement of Legal Procedures from the Perspective of Standardization**

In the current legal and regulatory environment, with the continuous improvement of compliance requirements and the expansion of implementation, various enterprises, especially those in the environmental field, are facing unprecedented challenges and opportunities. As society pays more attention to enterprise responsibility, compliance is no longer just an legal requirement, but an integral part of enterprise social responsibility. In this context, the procuratorial organs should adopt a full-process construction and improvement strategy, and strive to implement more detailed and hierarchical compliance review and rectification guidance for enterprises during the review and prosecution stage.

##### **Construction and Improvement of the Whole Process**

A compliance strategy with hierarchical classification should be developed. During the review and prosecution stage, the procuratorial organs should formulate hierarchical and classified compliance strategies based on the background, operating methods and capabilities of the enterprise. For large enterprises with certain economic capabilities, the compliance review system can be applied and only plays an auxiliary role. For small and medium-sized enterprises, the procuratorial organs should play a guiding role, provide compliance inspection suggestions and clarify the key to rectification, so as to help them be targeted in the initial stage of compliance rectification. At the same time, a good rectification information environment should be created for small and medium-sized enterprises to provide state support and enhance their confidence in rectification. Different rectification standards should be set for enterprises with different severity of environmental pollution and regions. For enterprises that are seriously polluted or close to residential areas, compliance strategies should be adjusted, priority should be given to remediating polluted areas, and community participation and supervision of enterprise rectification results should be strengthened to reduce enterprises' pressure of public opinions.

Precaution and process optimization should be conducted. The procuratorial organs should strengthen preventive measures in advance, optimize the compliance notification system, strengthen the supervision of the whole process of enterprises from registration, and cooperate with market supervision and other departments to promote enterprises to consciously abide by laws and regulations. [19] In addition, the Supreme People's Procuratorate should optimize the Pilot Program, increase the pre-litigation of "criminal litigation incidental to civil litigation", and strengthen the responsibility for environmental restoration, so that enterprises can enter the compliance review stage only after environmental restoration. The legislature should include "punitive damages" in the Criminal Law to enhance the deterrent effect on environmental crimes, provide legal support for the compliance rectification of heavily polluting enterprises, and reduce public dissatisfaction with the compliance non-prosecution decision. The Supreme People's Procuratorate should refine the Guiding Opinions, issue judicial interpretations for enterprises involved in environmental pollution, clarify the applicable standards for compliance reform and third-party mechanisms, and improve the professionalism and efficiency of the compliance process. At the same time, it should be decided whether to omit the hearing procedure according to the completeness of the rectification results and the degree of professional controversy, so as to speed up the return of enterprises to the market and release their economic vitality.

These measures will help the procuratorial organs consider the incentives and capabilities of enterprises while promoting enterprise compliance reform, so as to ensure the effectiveness and fairness of compliance rectification, and optimize the legal environment to support the sustainable development of enterprises.

#### Strategy Adjustment and Role Optimization from the Perspective of Game

Incentives and regulations should be formulated for implementing compliance plans. Prosecutors need to ensure that enterprises realize that compliance is not only a legal responsibility, but the key to enhancing enterprise image, enhancing market competitiveness, and ensuring sustainable development. According to empirical research, during periods of economic stability, the ESG performance of enterprises is positively correlated with their stock returns. However, during crises such as COVID-19 pandemic, the stock prices of enterprises with good ESG performance fall less. [20] On this basis, the procuratorial organs should make enterprises aware of the importance of compliance through publicity and education during the review and prosecution stage. At the same time, a "mandatory information disclosure system for compliance rectification enterprises" should be established to stipulate the time limit, form and channel of information disclosure of enterprises involved in the case, enhance their endogenous motivation for compliance, and promote enterprises to consciously cooperate with rectification. In addition, enterprises should be guided to take measures to reduce carbon emissions and increase carbon neutrality when formulating compliance plans, and display the positive image of enterprises and the rectification recognition obtained through information disclosure. The procuratorial organs should also strengthen cooperation with the administrative agency and formulate a "reputation penalty system for compliance rectification of enterprises involved in the case." For enterprises that respond negatively to compliance plans, reputation penalties and information regulation tools are used to affect their public image as punishment methods to enhance enterprise self-discipline. [21]

Third-party organization legal status and incentive mechanism should be built. At present, the legal status of third-party organizations is unclear, which may lead to insufficient cooperation by enterprises in their work. The procuratorial organ should legally clarify the status of the third-party organization and define it as a "temporary organization of the procuratorial organ" [22], so as to enhance its authority and independence, reduce the interference of enterprises, strengthen the relationship between the procuratorial organs and the third-party organization, and improve judicial efficiency. Third-party organizations should be clarified to have the nature of "national public officials" in law. Besides, the Supervision Law can be used to regulate their behavior and resolve disputes over the application of law for third-party organizations' dereliction of duty. [23]

In addition, a “publicity incentive system of the third-party organization case closure” should be built. After the third-party organization completes the compliance rectification, the information and performance of its individual and affiliated agents will be disclosed through the official website of the procuratorial organs to demonstrate its social responsibility and enhance its social image, which brings benefits to the unit and promotes the efficient supervision and high-quality evaluation of third-party organizations in future cases through positive incentives.

## 5. Conclusion and Outlook

Up against globalization and rising ecological awareness, environmental protection and enterprise compliance issues have attracted widespread attention from the public and regulatory agencies. As the national legal supervision agency, the procuratorial organs play a key role in promoting the compliance of enterprises involved in environmental pollution crimes. It strengthens legal constraints on enterprises through legal means and procedural innovation, which promotes self-improvement and social responsibility of enterprises. With industrial upgrading and technological progress, the compliance environment has been complex, bringing new challenges. The procuratorial organs have made enterprises aware of the importance of compliance through education, implemented “double carbon” rectification, and enhanced compliance motivation through mandatory information disclosure. Faced with the challenges of complex businesses and lack of attention to compliance, it is necessary to strengthen coordination and information sharing with administrative agencies. The optimization of legal procedures is crucial. Meanwhile, it is necessary to simplify the process, enhance transparency and fairness, clarify the status and incentive system of third-party organizations, and establish an effective supervision mechanism to improve compliance awareness and rectification efficiency, so as to promote the healthy development of enterprises.

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