

# *Study on the Application of the Daily Penalty System in the Environmental Protection Law*

Rongkuan Yang<sup>1</sup>, Hanfei Yang<sup>2</sup>

<sup>1</sup>Kangda HK Law Firm, Hongkong, China

<sup>2</sup>University of California, San Diego, USA

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**Abstract:** The daily penalty system in environmental protection laws is a crucial mechanism designed to enhance legal deterrence and improve the effectiveness of environmental enforcement. This system stipulates that enterprises failing to rectify environmental violations within the specified time frame will incur daily cumulative fines based on the duration of the infraction. This approach not only elevates the cost of wrongdoing but also encourages enterprises to rectify environmental violations more promptly, thus playing a significant role in environmental protection. In recent years, with the heightened awareness of environmental issues and the increasing severity of environmental problems, the study and practice of the daily penalty system have garnered widespread attention. A thorough investigation into this system could further refine the environmental protection legal framework, enhance the efficiency and fairness of environmental enforcement, and thereby promote the healthy development of environmental protection efforts in our country.

## **1. Introduction**

The daily penalty system refers to a mechanism whereby, in the event that environmental violations are not rectified within the stipulated time frame, penalties are imposed on a daily basis according to the duration of the infraction. This system is designed to incrementally raise the cost of violations, compelling enterprises to promptly rectify their illegal activities and thereby mitigating ongoing environmental damage. In China, the rapid pace of economic development and industrialization has exacerbated environmental pollution. Traditional environmental penalties, often characterized by fixed and relatively modest fines, have proven insufficient in deterring offending enterprises, leading to persistent environmental issues. The introduction and implementation of the daily penalty system are based on this context, aiming to enhance the deterrent effect of the law by increasing the cost of violations and, consequently, improving environmental conditions. The study of the daily penalty system holds significant value. On one hand, it addresses the shortcomings of traditional penalties and enhances the effectiveness of environmental enforcement. On the other hand, research and refinement of the daily penalty system offer valuable insights for the design of legal systems in other domains, thereby contributing to the advancement and perfection of the rule of law.

## 2. Daily Penalty System in Environmental Protection Law

### 2.1. Legislative Basis of the Daily Penalty System in China's Environmental Protection Laws

The system of penalty by the day refers to the regulatory measure under which polluting enterprises are subject to fines ranging from above ¥10,000 to below ¥100,000 for each day they fail to meet the Environmental Protection Bureau's deadline for rectifying violations. This unlimited penalty mechanism is rooted in the legislative framework established by the revised "Environmental Protection Law of the People's Republic of China," which was amended on April 24, 2014. This legislative amendment marked a significant step forward in China's environmental protection efforts, explicitly introducing the specific provisions for penalty by the day. The core of this system lies in its use of a continuous penalty mechanism to compel law-breaking enterprises to swiftly rectify their environmental violations. In contrast to the previous one-time fines, penalty by the day imposes a more compelling and lasting effect. Specifically, according to Article 59 of the Environmental Protection Law, enterprises that refuse to rectify their violations after being instructed to do so are subject to fines that double each day. This provision disrupts any enterprise's reliance on delay tactics or one-time fines to evade accountability, truly realizing the legislative intent that the cost of non-compliance surpasses the cost of compliance.

From a legislative perspective, the implementation of daily fines reflects an assimilation of advanced practices from international environmental law. Developed countries such as those in Europe and America adopted similar continuous penalty systems decades ago, achieving significant results. China's introduction of this system not only incorporates successful international experiences but also addresses domestic environmental protection needs by proposing robust solutions to common issues like evasion of penalties and procrastination in rectification by enterprises. The application of daily fines in China's environmental protection law also exemplifies the rigor and continuity of environmental enforcement. Previously, the limited amount of one-time fines led some enterprises to choose to violate regulations after weighing the costs and benefits. However, the introduction of daily fines has substantially increased the cost of environmental violations, compelling offenders to accelerate their rectification efforts under the pressure of daily escalating fines, thus achieving environmental protection objectives. By continually refining and strictly enforcing the daily fines system, China will further advance the rule of law in environmental protection, providing a strong safeguard for the realization of ecological civilization goals.

### 2.2. Conditions of Application of Daily Penalties

The conditions for daily penalties are explicitly stipulated in legal provisions, but their practical application still necessitates detailed analysis. Enterprises must exhibit persistent environmental violations, such as exceeding pollutant discharge limits or failing to dispose of waste as required. Such actions often have long-term, severe impacts on the environment, necessitating substantial and frequent fines to serve as an effective deterrent. Daily penalties are applicable only to ongoing, rather than isolated, infractions. For violations that can be promptly rectified, daily penalties are not appropriate. If an enterprise, after receiving a penalty decision, fails to take any substantive corrective measures and displays a clear attitude of resistance or negligence, the imposition of daily penalties becomes not only justified but essential. Conversely, for enterprises that actively cooperate in rectification efforts and strive to mitigate environmental impact, enforcement agencies should exercise flexibility and humane consideration regarding the amount and frequency of fines. From an enforcement perspective, the effective implementation of daily penalties relies on rigorous supervision mechanisms and transparent enforcement procedures. Only when enforcement agencies are equipped with adequate enforcement capabilities and technical support can the daily penalty

system truly fulfill its deterrent and environmental protection roles. This requires environmental departments to increase on-site inspection frequency, utilize technological means for real-time monitoring, and ensure transparency of information to strengthen societal oversight [1].

### 2.3. Calculation of Daily Penalty

The method of calculating fines on a daily basis primarily hinges on the duration of the infraction and the amount stipulated by law. Specifically, the penalty amount is generally computed based on a fixed daily fine until the unlawful behavior is rectified. The essence of daily fines lies in the persistence of legal accountability. This means that for environmental violations not promptly corrected, the offender will face accumulating daily fines. This mechanism not only escalates the cost of non-compliance but also compels enterprises or individuals to swiftly take corrective actions to avert greater economic losses. From a practical standpoint, the amount of daily fines must be assessed considering factors such as the severity of environmental damage, the duration of the violation, and the violator's capacity to rectify the issue. For instance, enterprises causing significant environmental pollution through the emission of harmful substances often face higher fines, reflecting the law's emphasis on environmental protection and the seriousness of the infraction. It is also worth noting that the effective implementation of daily fines relies on stringent enforcement and transparent legal procedures by regulatory authorities. Only with robust enforcement and oversight mechanisms can daily fines truly serve their intended deterrent effect, encouraging greater self-discipline in environmental management among enterprises and individuals[2].

### 2.4. Procedures for Enforcement of Daily Penalties

The execution procedure of the daily penalty system encompasses three primary stages: the investigation and case filing, the issuance of penalty decisions, and the supervision of enforcement. During the investigation phase, the environmental protection department must identify and confirm the existence of violations. This typically involves on-site inspections, sample testing, and evidence collection. The nature, extent, and environmental impact of the violations must be meticulously recorded to provide a solid basis for subsequent penalties. The accuracy and timeliness of the investigation are foundational to the effective implementation of the daily penalty system. Once violations are confirmed, the environmental protection department will issue penalty decisions in accordance with relevant laws and regulations. The amount of the daily penalty is generally calculated based on the duration and severity of the violation. The crux lies in the fairness and transparency of the penalty decisions. On one hand, the environmental protection department must ensure equal treatment for all violations; on the other hand, it must clearly communicate the basis and calculation method of the fines to the public and the fined parties to avoid unnecessary disputes and doubts. In the enforcement phase, supervision is crucial to ensure that the daily penalty system achieves its intended effect. The environmental protection department must establish a robust supervision mechanism to ensure that fines are paid on time and that necessary measures are taken to halt the violations. If offenders refuse to rectify their actions or delay payment, the department may pursue legal means to recover the fines or even impose coercive measures. Practical application of this system has also revealed certain issues. For instance, limited human and material resources within the environmental protection department can weaken the oversight and enforcement efforts [3]. Additionally, the penalty amounts may not always be sufficient to deter large enterprises, particularly when the fines are minor relative to the economic benefits gained from the violations. Therefore, enhancing legal regulations, raising penalty standards, and strengthening enforcement are key to improving the effectiveness of this system.

### 3. Problems with the Daily Penalty System

#### 3.1. Vagueness and Uncertainty of Legal Provisions

In the realm of environmental protection law, the original intention behind the implementation of daily fines was to enhance the deterrent effect of environmental legislation and curb the persistence of unlawful activities. However, the ambiguity and uncertainty within legal texts have emerged as significant issues, impacting both the effectiveness and fairness of this system. Numerous pertinent legal provisions fail to detail specific standards for calculating fines and implementing regulations, such as which date should serve as the reference for calculating fines and how to determine the duration of the unlawful conduct. This ambiguity results in confusion and uncertainty for enforcement officers in practice, with varying interpretations from different local enforcement bodies leading to inconsistent application of the law, undermining its seriousness and authority. The scope of entities subject to daily fines also remains vague, with the law not providing a unified standard for determining which behaviors should be classified as eligible for daily fines. In practice, there is often a situation where certain enterprises, due to the nature and scope of their violations, although they are in breach of the law, cannot definitively ascertain whether daily fines should apply due to the vagueness of the legal texts. This not only allows non-compliant enterprises to exploit loopholes but also affects the enthusiasm of compliant enterprises, weakening the competitive advantage of law-abiding behavior. Moreover, discrepancies between the penalty range and actual circumstances impact the deterrent effect of the daily fines system. For instance, some provisions only broadly suggest a range for daily fines without specifying details based on the nature and severity of different violations. This leads enforcement agencies to rely on experience and subjective judgment when determining specific fine amounts, often resulting in fines that are either too lenient or too severe. Insufficient fines fail to achieve deterrence and punitive effects, unable to effectively restrain environmental violations, while excessive fines may be beyond the means of enterprises, potentially causing more severe social issues.

#### 3.2. Challenges Facing Law Enforcement

The insufficient professional competence of law enforcement personnel has led to the ineffective implementation of the daily penalty system. Violations in the field of environmental protection often possess a high degree of technical complexity, requiring law enforcement officers to have relevant expertise to accurately identify and assess the extent of the infractions. However, the current law enforcement team exhibits a disparity in professional qualifications, with some officers lacking the necessary technical background to accurately judge the nature and impact of violations. In such circumstances, even with clear institutional regulations, it is challenging to ensure the reasonable enforcement of daily penalties. Enterprises and individuals often possess more resources and information, allowing them to employ various means to delay or evade penalties when facing environmental violations. Conversely, law enforcement agencies have relatively weak capabilities in acquiring and processing information, resulting in an incomplete understanding and analysis of the true nature of violations. This asymmetry of information significantly diminishes the deterrent effect of the daily penalty system, as offenders can leverage their informational advantage to gain extended response times, thereby weakening the system's deterrent impact. Additionally, there is a problem of inadequate enforcement. In some regions, environmental protection enforcement is constrained by local economic development pressures, with local governments potentially moderating the severity of penalties for environmental violations to preserve employment and tax revenue. Under these circumstances, although the daily penalty system exists, its practical enforcement is significantly undermined, failing to achieve the anticipated legal effects [4].

### 3.3. Balancing the Cost and Effectiveness of Enforcement

The dilemma of balancing enforcement costs with effectiveness stems from the fact that a daily penalty system requires significant human and material resources to ensure its effective implementation. Environmental enforcement agencies must continuously monitor illegal activities and possess specialized knowledge and technical means to accurately assess the nature and persistence of violations. Especially in the realm of pollutant emission monitoring, precision instruments and long-term data collection and analysis are indispensable. However, these expenditures often represent a heavy burden for local environmental protection departments, particularly in regions with lower economic development levels where resource allocation for environmental enforcement is already inadequate, making it even more challenging to meet the high-cost demands of a daily penalty system.

This high-cost requirement leads to several enforcement dilemmas. Faced with limited resources, local governments and environmental enforcement agencies may be inclined to adopt a lenient approach towards minor or less impactful violations, and may even resort to selective enforcement at times. This not only diminishes the deterrent effect of the daily penalty system but may also provoke public skepticism regarding the fairness of environmental enforcement. Additionally, some enterprises might exploit the shortage of enforcement resources to evade legal sanctions by delaying or concealing pollution activities, exacerbating the difficulty of managing environmental pollution. The original intent of the daily penalty system is to compel enterprises to rectify illegal behaviors and reduce environmental pollution through sustained high fines. However, in the face of insufficient enforcement resources, this intent is often hard to achieve. Wealthy large enterprises might regard fines as part of their operational costs and continue their pollutant emissions, while small and medium-sized enterprises might be forced to cease production due to their inability to bear hefty fines, leading to a certain degree of market unfairness. Ideally, daily penalties should encourage enterprises to proactively adopt environmental protection measures and reduce pollutant emissions. Yet, in practice, the use and management of fine revenues also face challenges in transparency and efficiency. If the fine revenues are not effectively utilized to improve environmental monitoring facilities and enhance enforcement capabilities, the long-term effectiveness of the daily penalty system will be significantly compromised.

## 4. Proposals to Improve the Daily Penalty System

### 4.1. Improvement of Laws and Regulations

Refining the daily penalty system necessitates legislative elaboration to clearly define the scope and specific conditions under which daily fines apply. For instance, varying fine standards and calculation methods could be established based on the severity and duration of environmental violations, thereby mitigating issues of arbitrary enforcement and disproportionately high or low penalties. Environmental protection agencies should delineate explicit penalty procedures, encompassing the identification of violations, calculation of fines, payment, and recovery processes. Such detailed regulations will assist enforcement officers in adhering to legal frameworks during execution, thus enhancing the consistency and fairness of enforcement. Currently, the division of responsibilities among environmental protection enforcement bodies is insufficiently defined, leading to potential evasion of duties and inefficiency. To address this, legal statutes can clarify the specific responsibilities of various levels of environmental protection agencies and related enforcement entities, and establish a robust interdepartmental coordination mechanism to ensure the effective implementation of the daily penalty system. Public involvement and societal oversight are also integral to perfecting the daily penalty system; disclosing the outcomes of environmental



violation cases can enhance information transparency, allowing the public to understand the enforcement of daily penalties and fostering collective social oversight. The government could further encourage public participation in environmental enforcement oversight through mechanisms such as complaints and reports, thereby providing strong support for the effective implementation of the daily penalty system.

#### **4.2. Strengthening Enforcement and Transparency**

The foundation for enhancing law enforcement rigor and transparency lies in the establishment of a professional and efficient enforcement team. The professional competence and enforcement capabilities of officers directly impact the effectiveness of daily penalty systems. Therefore, it is imperative to provide regular training to officers to enhance their legal knowledge and practical skills. The government should also clearly define enforcement responsibilities and impose stringent accountability for inadequate or negligent conduct, thereby creating an effective accountability mechanism to ensure the integrity and efficiency of the enforcement team. The enforcement process must be open and transparent; environmental protection agencies should establish a comprehensive information disclosure system, promptly releasing various details of the enforcement process to the public, including the basis for enforcement, penalty results, and remediation status. This not only allows for public oversight to prevent potential corruption in the enforcement process but also enhances the credibility of enforcement work. Additionally, leveraging internet and big data technologies to develop and utilize environmental enforcement information platforms can facilitate real-time sharing and dynamic updates of enforcement information, enabling the public and businesses to stay informed about relevant developments anytime and anywhere, thus promoting societal co-governance in environmental protection. Social supervision and public participation are also crucial means for strengthening enforcement rigor and transparency. Environmental protection agencies should establish smooth reporting channels, encourage the public to report environmental violations, and promptly investigate and address these reports. At the same time, appropriate rewards should be given to informants to stimulate public engagement in environmental protection. Public hearings and forums can be convened to gather diverse opinions, ensuring the scientific and just nature of enforcement work. In practical terms, environmental protection departments can draw on successful domestic and international experiences. For instance, the U.S. Environmental Protection Agency (EPA) has effectively curbed environmental violations and protected environmental interests through stringent enforcement and transparent processes. China, in advancing the daily penalty system, should integrate these successful experiences and devise feasible measures tailored to its own context [5].

#### **4.3. Establishment of Sound Supporting Measures**

The objective of establishing supporting measures is to enhance the deterrent effect and enforcement of environmental laws, ensuring that violations are met with persistent and severe economic penalties, thereby encouraging businesses and individuals to conscientiously adhere to environmental regulations. The primary step is to create a nationwide, unified environmental monitoring network. The introduction of advanced monitoring technologies and equipment can improve detection efficiency and accuracy, minimizing human intervention and errors. Accurate judgments regarding the duration and extent of violations can only be made based on reliable data, which in turn allows for the proper calculation of fines. Many businesses and individuals inadvertently breach environmental laws, partly due to a lack of understanding of the relevant legislation. Therefore, it is essential to raise public awareness of environmental laws through various channels, such as media campaigns, specialized training, and industry seminars. Only when

people fully comprehend the seriousness and consequences of the laws can they better comply with regulations and reduce the occurrence of violations. Moreover, establishing an efficient reporting and complaint mechanism is crucial, encouraging the public to actively report environmental infractions while providing convenient channels for complaints, such as hotlines, mobile applications, and online platforms, to ensure that reports are swiftly conveyed and promptly addressed. The investigation of environmental violations often involves complex legal procedures, necessitating an efficient and fair judicial system for support. Thus, the government should establish specialized environmental courts or adjudication bodies to ensure that cases are handled professionally and impartially. Additionally, there should be a vigorous approach to the adjudication of environmental cases, with severe penalties for malicious violators to create a formidable legal deterrent. Furthermore, incorporating environmental behavior into the social credit system, imposing credit sanctions on offenders, such as loan restrictions and market access limitations, not only increases the cost of violations but also encourages businesses and individuals to willingly comply with environmental laws through the credit mechanism.

## 5. Conclusion

The daily penalty system, as a crucial component of environmental protection law, derives its effectiveness from the sustained deterrence against environmental violations and the imposition of high penalties. However, the current legal provisions exhibit ambiguities and uncertainties in their practical implementation, and the enforcement process encounters numerous challenges, such as corporate evasion of penalties and the high costs of enforcement. To ensure that the daily penalty system truly fulfills its purpose, it is imperative to refine the legal framework, clarify execution standards to eliminate ambiguities and uncertainties, and then enhance enforcement efforts and transparency to raise corporate environmental awareness. Future research should focus on evaluating the effectiveness of the system and developing improvement strategies, continually adjusting based on practical feedback to ensure that the daily penalty system demonstrates its efficacy not only in legal texts but also in practical application.

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