

# ***Legal Analysis and Normative Application of Environmental Non-litigious Administrative Execution Injunction—From the Perspective of the Dilemma of the "Gap Period" in Environmental Non-litigious Administrative Execution***

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**Abstract:** When administrative counterparts passively handle administrative penalties and other administrative acts, environmental protection administrative organs often fall into a dilemma of environmental protection due to the lack of enforcement powers, especially if the environmental violations persist before they apply to the court for enforcement. This paper takes the existing injunction system in litigation as a research model, analyzes the legal basis of environmental non-litigious administrative execution injunction, and explores the application path of the injunction, aiming to address the "gap period" in the enforcement behavior of environmental protection administrative organs. By integrating environmental administrative law enforcement with justice, the paper enriches the means of preventive relief for ecological environmental damage.

## **1. Introduction**

The prohibition order is not a compulsory enforcement method in legal nature, but a system of behavior preservation. The author attempts to explore the rationality and feasibility of the non litigation compulsory enforcement injunction system for environmental protection, viewing it as a means of preventive relief for ecological and environmental damage. The exploration purpose of the non litigation administrative execution prohibition order for environmental protection is to provide temporary protection measures for the ecological environment before the environmental protection administrative agency applies to the court for compulsory execution, and to establish an innovative and practical judicial preparation procedure for non litigation administrative execution that is in line with the current environmental protection situation.

## **2. Review: Environmental Protection Non Litigation Administrative Enforcement Prohibition Order: Realistic Difficulties**

In the traditional environmental governance system, environmental law enforcement agencies

generally impose corresponding administrative penalties, decisions, and other administrative actions on environmental violations. According to Article 53 of the Administrative Enforcement Law, environmental protection administrative agencies need to wait for the expiration of the administrative relief period of the administrative counterpart before applying to the court for compulsory enforcement after making administrative actions. According to the law, the administrative relief period for the administrative counterpart shall be at least six months, that is, within three months from the expiration of the six-month administrative litigation statute of limitations (including the 60 day administrative reconsideration statute of limitations). If the actor fails to fulfill the administrative obligation after being urged, the environmental protection administrative agency shall apply for compulsory enforcement to the local people's court. In this way, a "window period" for environmental protection has been formed. Due to the long time span between the discovery of environmental violations and the application for enforcement, it often leads to missing the optimal enforcement time. If the perpetrator of environmental violations holds a negative attitude towards administrative decisions during the "window of absence", or even ignores administrative decisions and continues to engage in environmental violations, it will easily cause irreversible ecological and environmental damage consequences. The reason why environmental protection administrative agencies themselves do not have the power to enforce their administrative decisions is that the purpose of China's administrative legislation is to "regulate the exercise of administrative power and protect the rights of citizens". But this also puts them in a dilemma. They are "powerless" when faced with the perpetrator's failure to comply with administrative decisions and the continued existence of environmental violations. Based on the urgent need to avoid the loss of relief time caused by procedural delays due to ecological and environmental damage, non litigation administrative enforcement injunctions for environmental protection have emerged.

Since the first case of environmental protection non-litigation administrative execution prohibition order in local judicial practice—specifically, the case of Wuxi Wanchang Transportation Engineering Co., Ltd. being ordered to suspend work and subsequently applying for compulsory execution by the Xishan District Environmental Protection Bureau in Wuxi City, Jiangsu Province—many places have issued relevant pilot documents. These documents are aimed at the judicial application of prohibition orders in response to the "window period" of environmental protection non-litigation administrative execution.<sup>[1]</sup>

There are trial cases of prohibition orders in judicial practice, such as the Chongqing Wanzhou District Environmental Protection Bureau applying to the court to issue an environmental prohibition order to Baojie Waste Oil Recycling Company, and the Henan Xinmi City Environmental Protection Bureau and court issuing an environmental resource protection prohibition order against Li's washing sand plant. However, the provisions of local legal documents on the application of injunctions are not uniform. Puyang City, Xinyang City and other places have not specifically stipulated the scope of prohibition, but only briefly pointed out that factors such as the continued existence of environmental violations, significant impact on the surrounding environment, and the possibility of irreversible damage if not stopped in a timely manner can be considered. And Wanzhou District in Chongqing listed in detail the applicable situations of the prohibition order. Both methods have their own advantages and disadvantages: the former has a wide range of applications but low recognizability, while the latter has high recognizability but may overlook applicable situations.

The non litigation administrative enforcement prohibition order for environmental protection, originating from local exploration, aims to provide temporary protection for the ecological environment and is a measure of judicial protection for administrative actions aimed at achieving environmental public interests. However, due to the fact that the prohibition order system spans

both substantive and procedural fields, involving complex and numerous issues, further research is still needed. The author attempts to explore the legal basis and application path of this system.

### **3. Tracing back: The legal nature of non litigation administrative enforcement injunctions for environmental protection**

The direct legal basis for pre litigation and in litigation injunctions in ordinary environmental protection cases is the behavior preservation system stipulated in the Civil Procedure Law. Articles 2 and 11 of the Eighth Amendment to the Criminal Law of the People's Republic of China provide legal guidelines for the application of environmental criminal injunctions, while there is currently no corresponding legal support for non litigation administrative execution injunctions in environmental protection cases. As a system in procedural law, how should its legal nature be reflected.

#### **3.1 Prohibition order should be a judicial safeguard measure for administrative actions aimed at achieving environmental public interests**

There are two views on the legal nature of non litigation administrative enforcement injunctions for environmental protection: one is to regard them as administrative coercive means, and according to Article 53 of the Administrative Coercion Law, they should be applied for and implemented by environmental protection administrative agencies; Secondly, it is believed that it is homogeneous with the behavior preservation system in the litigation system, both of which are temporary protective measures to prevent irreparable damage. Accordingly, the prohibition order can be modified with reference to administrative enforcement or behavior preservation procedures. However, according to Article 12 of the Administrative Compulsory Law, the administrative compulsory execution method has been summarized as "other compulsory execution methods" [Bai Weixian, Jin Lifa, Xue Gangling: "Comparison of Administrative Execution Systems between China and the United States", published in Administrative Law Research 2001 (1). Therefore, it should have homogeneity and equivalence with the first five compulsory execution methods. That is to say, the measure should have finality.

The author believes that the legal effect of the non litigation administrative enforcement prohibition order for environmental protection is temporary and serves as transitional judicial protection. It should have a time limit and can enter into litigation or enforcement after the expiration of the period. Administrative enforcement is carried out by administrative agencies and is considered an administrative act; Before applying for compulsory enforcement, the prohibition order needs to be reviewed and enforced by the court, so it should not be equivalent to administrative compulsory enforcement.<sup>[2]</sup>

Secondly, there is a difference between non litigation administrative enforcement injunctions for environmental protection and behavior preservation. The relationship between pre litigation preservation and in litigation preservation needs to be clarified, as injunctions are not necessarily related to litigation. Firstly, their nature is different. The basis of the right to request behavior preservation is the right to sue, and its legal attribute is the litigation (behavior) preservation system; The prohibition order belongs to the means of preventive relief for environmental damage, and its legitimacy comes from ensuring the effectiveness of law enforcement actions by environmental administrative agencies without independent enforcement power. Secondly, the purpose is different. The original intention of the behavior preservation system and the concept of behavior preservation itself are aimed at achieving the preservation of the judgment results. However, injunctions do not aim to preserve the judgment results, but to limit the potential harm consequences to a small extent or limit their destructive power. Thirdly, the applicable stages are different. The preservation of

general behavior is conditional on the applicant filing a lawsuit, while the application of a restraining order is not necessarily accompanied by litigation procedures before the administrative agency applies to the court for compulsory enforcement of the administrative decision. The environmental protection administrative agency only issues a restraining order through the court to urge the violator to stop the environmental illegal behavior and prevent further damage to the ecological environment. It is also unknown whether the restraining order will enter the litigation or enforcement stage after its expiration. Fourthly, the applicant is different. The applicant for behavior preservation is generally the plaintiff in subsequent litigation, which may be a natural person or a legal person, while the applicant for a restraining order can only be the environmental protection administrative agency. Fifth, the protected objects are different. The protection object of the behavior preservation system is the behavior of the parties, while the protection object of the prohibition order is the public interest of the ecological environment. This is the key difference between prohibition orders and behavior preservation. When reviewing the conditions for behavior preservation, the court inevitably needs to weigh the personal interests of both parties, the public interest, and the institutional interest of behavior preservation, that is, simply requiring that it does not harm or conflict with the public interest; The ultimate goal of a restraining order is to protect the public interest of the environment. When making a judgment on whether to issue a restraining order, the court only needs to choose between the public interest of the environment and the personal interest of the respondent.

### **3.2 Prohibition order is a preparatory procedure for non litigation administrative enforcement of environmental protection**

The establishment of non litigation administrative enforcement prohibition orders for environmental protection aims to fill the "gap period" between law enforcement by environmental protection agencies and judicial enforcement, and provide temporary protection. Can the prohibition order system become an efficient judicial procedure for remedying ecological and environmental damage and resolving the issue of "time gaps"?

Article 59 of the Administrative Enforcement Law allows environmental protection agencies without enforcement power to apply to the court for immediate enforcement of administrative decisions in emergency and public interest situations, which is an exception to Article 53. But the prohibition order is different from the immediate execution system: immediate execution refers to the court's substantive review and confirmation of the administrative decision, while the prohibition order is the minimum procedural guarantee, a temporary protection before administrative execution, can be used at any time, does not have final effect, and can still enter the execution procedure after the expiration of the validity period. It is a preparatory procedure. Therefore, a restraining order can advance the court's mandatory order time and protect the ecological environment earlier.

It should be clarified that a restraining order does not belong to the litigation process. The litigation procedure is based on the basic framework of court mediation, but the non litigation administrative enforcement injunction for environmental protection fully utilizes judicial initiative to intervene in the process of ecological environment damage relief in advance. This intervention may to some extent cause the loss or reduction of procedural rights of the administrative counterpart. The purpose of applying for a restraining order is to prevent the occurrence or expansion of ecological and environmental damage, and the subsequent litigation actions and judgment results of the parties are not necessarily related to winning or losing the restraining order. Secondly, prohibition orders are different from executing programs. Execution procedure refers to the process of forcing the implementation of undisputed and effective judicial judgments or administrative actions that are granted execution. The content of environmental prohibition orders is generally to

order the perpetrator to immediately stop environmental violations, and it is applicable before the court enforces it. Based on the requirement of timeliness, the court does not need to conduct a strict examination of the application for an injunction, but only needs to conduct a formal examination of the application matters. Environmental protection administrative agencies do not need to execute on their own, they only need to wait for the expiration of the prohibition period and then apply to the court for compulsory enforcement of specific administrative actions based on the actual situation. This characteristic is similar to non litigation enforcement. Therefore, the high timeliness required by the prohibition order is in line with the procedural legal principles of "power, freedom of proof, and simplicity" followed by non litigation procedures. Environmental protection non litigation administrative execution prohibition orders can serve as a preparatory procedure for environmental protection non litigation administrative execution procedures. Faced with the current huge amount of environmental penalties or ecological damage compensation costs, environmental violators are often overwhelmed, and some enterprises face bankruptcy risks. Prohibition orders can have a pre-emptive effect on the environmental pollution and ecological damage behavior of the parties involved, and can play a positive role in reducing the administrative responsibility and ecological damage compensation responsibility of the violators. Their application can better balance the relationship between the procedural rights deficiency and the substantive rights supplementation of environmental administrative counterparties.

#### **4. Exploration: Structured stratification of the application of non litigation administrative enforcement injunctions for environmental protection**

##### **4.1 The prerequisite for the prohibition of hierarchical processing of applicable situations**

The application of a restraining order should follow the principle of proportionality, and the court should comprehensively consider the environmental violations, risks, and degree of damage of the respondent, and explain the administrative decision, highlighting the urgency and necessity of the restraining order.<sup>[3]</sup>

Administrative decision types such as orders, confirmations, penalties, measures, reconsideration, etc., although all involve implementation, enforcement is more common in penalties and orders. According to the search results, the prohibition order mainly applies to administrative decisions that are "ordered to rectify" and "ordered to rectify within a specified period of time", including situations where both punishment and rectification orders are issued simultaneously, only punishment is imposed but includes a requirement to stop illegal activities, or other decisions are used to urge the cessation of illegal activities.

##### **4.2 Stratify the application of injunctions in terms of value expression**

In response to the different situations where the perpetrator of environmental violations has already caused ecological damage and has not yet caused ecological damage, and based on the types of administrative decisions made by environmental protection administrative agencies, the application of prohibition orders is layered at the level of value reflection. The first layer is that if the environmental pollution or ecological damage caused by the perpetrator has not actually caused but may cause ecological damage, the environmental protection administrative agency will make an administrative decision to order correction. If the perpetrator continues to commit environmental violations, the environmental protection administrative agency will apply to the court for a restraining order to exert its temporary ecological protection and prevention value; The second layer is that in the case where the environmental pollution or ecological damage caused by the actor has already caused ecological damage and may continue to cause damage repeatedly, the environmental

protection administrative agency has made an administrative decision to order the actor to make corrections within a specified time limit. If the administrative counterpart fails to make corrections within the prescribed time limit, the administrative agency may apply to the court for an injunction to play its remedial value in preventing the expansion of damage.

## **5. Breakthrough: Standardized Application of Non litigation Administrative Enforcement Prohibitions for Environmental Protection**

According to the Administrative Enforcement Law, the power of administrative enforcement must be established by law. Whether the court delegates the enforcement power to administrative agencies, conducts joint enforcement with administrative agencies, or allows administrative agencies to assist in enforcement, in fact, it grants enforcement power to administrative agencies that do not have enforcement power, which clearly violates the principle of "administrative legality". The innovation of local judicial practice also faces this confusion. Therefore, in order to fully leverage the institutional advantages of non litigation administrative enforcement injunctions for environmental protection, it is essential to regulate their application within legal authority.

The non litigation administrative enforcement prohibition order for environmental protection has similarities to the non litigation procedure: it applies to an application submitted by one party to the court before execution, and based on high timeliness requirements, without the need for the applicant or respondent to provide evidence, cross examine, debate and other stages, it can be directly reviewed by the court to confirm its legality and necessity before issuing a document. As a result, there may be certain review loopholes in the application of the injunction system. Therefore, further procedural design should be carried out for the application, review, and execution of injunctions to provide both parties with a certain degree of rights protection. The author attempts to explore the standardized application of specific operational procedures for restraining orders by drawing on existing non litigation administrative execution application procedures.

### **5.1 Conditions for applying for a restraining order**

#### **5.1.1 Clear application items.**

It should include information about the parties involved, environmental damage, prohibited content, scope, and duration. The premise is that the perpetrator refuses to comply with the administrative decision, resulting in the risk of ecological damage. Due to the difficulty in quantifying and permanent ecological damage, which is considered "irreparable", urgent and effective measures are needed to clarify the application matters and prevent damage in a timely manner.

#### **5.1.2 Preliminary evidence and proof.**

When applying for a prohibition order, environmental protection administrative agencies need to submit evidence formed during the administrative law enforcement stage, including factual evidence (proving the existence and continuation of environmental violations) and procedural evidence (procedures and legal basis for administrative filing, investigation, and ordering to stop violations), to prove legality and reasonableness.<sup>[4]</sup>



## **5.2 Review methods and procedural safeguards for injunctions**

### **5.2.1 Establish an efficient method for reviewing prohibition orders.**

The applicable rules for injunctions include application, examination, and execution, with examination being the core. The non litigation review methods include written review and hearing. As a temporary and high time effective relief measure, the prohibition order should be reviewed efficiently and quickly, with priority given to protecting the public interests of the ecological environment. Therefore, it is recommended that the court prioritize written review and provide the parties with minimum procedural safeguards, such as the opportunity to present their opinions.

### **5.2.2 Minimum procedural safeguards and rights remedies.**

The non litigation administrative enforcement prohibition order for environmental protection aims to prevent environmental agencies from being unable to prevent environmental violations, leading to the expansion of damage. It is not about judging the correctness of administrative decisions, but about preventing the deterioration of damages. The appropriateness and implementation of administrative decisions will be left to be resolved through subsequent litigation or non litigation procedures. Based on the preventive and temporary nature of injunctions, the procedural safeguards provided to the parties should be at a minimum, such as expedited reconsideration, which shall be reviewed by the higher-level court, and the injunction shall not be suspended during the reconsideration period. If there is indeed an error, national compensation can be applied for.

## **5.3 Subject, basis, and procedure for the execution of a prohibition order**

### **5.3.1 The enforcement subject of a restraining order is the court.**

In non litigation administrative enforcement, the "separation of arbitration and enforcement" model has attracted much attention, which means that the court reviews the legality and decides whether to execute, and the enforcement work is handed over to the administrative agency. However, this model faces issues such as legitimacy disputes and operability, and currently the enforcement subject is still the court. Based on the statutory authority, the enforcement subject of the non litigation administrative execution prohibition order for environmental protection should also be the court, which can be responsible for the enforcement bureau or the environmental resources trial court. Environmental protection administrative agencies can supervise, but should not be the enforcement subject

### **5.3.2 Set up special prohibition orders in the form of legal documents.**

In practice, when the people's court grants an injunction, it generally follows the procedure for granting compulsory enforcement and makes a ruling to grant the injunction. However, there are dual obstacles in terms of substantive and procedural principles when issuing a restraining order through adjudication. In terms of substance, the ruling does not have specific enforceable content; In terms of procedure, the ruling applies to procedural matters and some substantive matters, while the injunction has both substantive and procedural attributes. Since injunctions are a newly emerging special legal system, litigation documents should also be adapted accordingly. Based on the application of environmental protection administrative agencies and the decision to approve the execution of injunctions after examination, it is necessary to further transform the content of the decision into an independent injunction with enforceable content, so that it has true execution

function, such as changing the document style to "injunction" instead of "judgment" or "ruling". It should be noted that the court's decision on whether to issue a restraining order is not a confirmation of basic legal facts. Even if the period of the restraining order exceeds, it can still enter administrative litigation or non litigation administrative execution procedures. Therefore, restraining orders derived from traditional judicial documents should not have res judicata effect.<sup>[5]</sup>

### **5.3.3 Implement hierarchical processing of the program.**

As mentioned earlier, due to the different legal criteria for applying for a restraining order, differentiated examination methods have been established. Therefore, the execution of a restraining order naturally differs between general and emergency situations. Therefore, the execution procedure of the prohibition order should be separately stipulated according to the general situation and emergency situation, and the specific operation process can refer to the relevant provisions of civil guarantee. For example, in emergency situations, a prohibition order can be issued directly within 48 hours and immediately enforced, followed by timely notification to the respondent; In non emergency situations, the people's court shall decide whether to make a ruling within five days after hearing the opinions of both parties or conducting on-site inspections.

## **5.4 Unique provisions on the effectiveness of injunctions**

### **5.4.1 The direct effect of the prohibition order.**

Once the prohibition order is issued by the court, it becomes effective, and the perpetrator shall immediately cease environmental violations in accordance with the content of the ruling or prohibition order. It should be pointed out that the non litigation administrative enforcement injunction for environmental protection is only a temporary order. If the environmental protection administrative agency does not apply for enforcement within a reasonable period of time from the expiration of the deadline stipulated in Article 53 of the Administrative Compulsory Law, or if the court finds during the enforcement process that the injunction should not be issued in this case, the injunction shall automatically become invalid or be allowed to be revoked.

### **5.4.2 The effectiveness of the prohibition order shall terminate.**

The termination of the effectiveness of non litigation administrative enforcement injunctions for environmental protection mainly concerns the termination time and method. At present, the implementation measures of local prohibition orders mainly focus on two aspects regarding the termination of non litigation administrative enforcement prohibition orders for environmental protection: one is the starting point of the termination time of the prohibition order. One is to use the expiration date of the deadline stipulated in Article 53 of the Administrative Compulsory Law as the starting point, and the other is to use the date of service of the restraining order on the respondent as the starting point. The second is the termination method of the effectiveness of the prohibition order. Some injunctions automatically terminate their effectiveness after the expiration of their validity period, while others require the court to exercise the method of revoking the effectiveness of the injunction.

The prohibition order before the expiration of the performance period after the administrative decision is made and the prohibition order after the expiration of the administrative relief period should not be treated equally during their existence. The duration of the prohibition order before the expiration of the performance period after the administrative decision is made can be stipulated as from the date of issuance of the prohibition order to the date when the actor completes the performance of the administrative decision; After the expiration of the administrative relief period,



the effectiveness of the restraining order may continue for a period of 30 days from the date of issuance of the restraining order to the expiration of the period stipulated in Article 53 of the Administrative Compulsory Law. During the duration of the above-mentioned prohibition order, considering that the prohibition order involves the time limited benefits of depriving the respondent of procedural rights, the respondent should be granted the right to request early termination of the prohibition order if there is evidence to prove that the emergency situation has been eliminated or it is not appropriate to continue to execute the prohibition order. If the court finds that it is indeed inappropriate to continue to execute the prohibition order after examination, the prohibition order can be terminated in advance. Otherwise, the effectiveness of the prohibition order should automatically terminate after the expiration of the period.

## 6. Conclusion

In the context of the increasingly prosperous environmental protection concept, the compensation and relief methods for ecological environment damage have shown a trend of shifting from mainly focusing on damage compensation relief to highly emphasizing restorative and preventive relief. The non litigation administrative enforcement prohibition order for environmental protection has changed the dilemma of environmental administrative agencies being powerless due to the lack of independent enforcement power in the face of persistent environmental violations by environmental violators. It better interprets the relationship between judicial protection of environmental public interests and administrative law enforcement protection, and solves the "gap period dilemma" between environmental administrative law enforcement and environmental judicial enforcement protection. However, due to local restrictions, its judicial application still faces challenges such as limited scope and non-standard procedures. It is necessary to design specific rules from the aspects of determining application conditions, improving review methods and procedures, clarifying the executing subject, basis, procedure, and rights relief, by using the legal principles of litigation and non litigation procedures in a staggered manner, following the process structure initiated by administrative agencies and decided by courts. Administrative power has always been regarded as the representative of public interest, and environmental public interest should be mainly maintained by administrative power. Prohibition orders, as an important measure to improve environmental administrative law enforcement, can fully play the complementary role of environmental justice in cases of administrative inaction or disorderly behavior.

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