

The Analysis of Advantages and Disadvantages of ‘Significant Law of Treating Haze’ and Improvement Ideas

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Keywords: Air pollution law, Significant law of treating haze, Joint prevention and control of air pollution.

Abstract. As the ‘important law of treating haze’ of the new period, while the newly revised *Air Pollution Law of the People's Republic of China* is effectively promoting all people to participate in battle of air pollution prevention by defining the new joint prevention and control of air pollution pattern, concretizing local supervision responsibilities and diversified appraisal mechanisms, improving the liability system of air pollution, etc., it gradually exposes many difficult problems, such as soft regulations about source treatment, improperly combing key concepts, dysfunctional joint conferences without actual effects, and failing to realize the cooperative progress of economic development and environmental protection. It is urgent to effectively improve air environment quality and realize the ecological process of economic development by building crisscross and the bidirectional mechanism of joint prevention and control of air pollution, setting up the scientific operational model involving subjects of pollution sources, building diversified disputes handling patterns, perfecting sharing scientific and technological methods of preventing and controlling air pollution, and improving the information disclose system.

The constant battle between economic development and environmental protection is a longtime dilemma which bothers the lawmakers. The large-scale agriculture and reclamation economy contributes to ecological degradation and the rapid development of the industrial revolution air environment pollution. In recent years, the development patterns whose cost is consuming earth resources have gradually encountered vindictive blow from nature. ‘Only by obeying the nature can we defeat it.’ The severe air pollution situation forced the sixteen session of the Twelfth NPC Standing Committee to revise and pass the most strict *Air Pollution Law of the People's Republic of China* in history, whose articles and words are multiplied (from 7 chapters 66 articles 8485 words to 8 chapters 129 articles 17788 words). The new law adheres to source treatment, planning first, transforming economic development patterns, optimizing industry structure and layout, adjusting energy structure, helping to promote sustainable development of economy. It conforms to the reasonable expectation of the public about improving environment quality and promoting ecological civilization by setting up strict supervisory system, putting ‘integrated control and the promoting joint prevention and control of regional air pollution’ and ‘cooperative control of air pollutants and greenhouse gases’ into practice. This ‘significant law’ revised in a crisis (a period in which extreme weather like haze and so forth occur frequently in China) grips the principle line which is improving air environment quality and ‘lays the solid foundation of promoting complete prevention and control of air pollutants in law’, approaching to legal system to guarantee clean air step by step, it has gained international concern [1] and favorable comment from all parties [2].

The Change of the New Law--the Original Model of Legal System to Guarantee Clean Air

The new air pollution law, a significant law of treating haze, is an important measure to green

balance the economic growth and environmental protection at present, which at least has the special advantages listed below:

Adhering to the Core Goal of Improving Environmental Quality

In a long time after the reform and opening-up, China once centralized took extensive measures to access resource contributing to the current severe situation. The new law takes improving environment quality as the sole criterion for testing the effect of environmental protection work (36 points definitely refer to 'air environment quality') and emphasizes that local people's governments in those substandard cities should timely establish, publicize, record time-limited plans to meet the national standard for air environment quality and also report and publicize relevant performance in time so as to practically imply the environment quality. For sake of avoiding illegal activities which ignores ecological environment benefits to blindly run after economic growth index and adequately taking advantage of the huge public supervision, it definitely explains the demands of setting standard for air environment quality and examining, demonstrating and publicizing the concrete air pollutants emission standard, while canceling record-keeping demand of Local People's Governments making local standard for air environment quality and air pollutants emission (especially not compulsively requests local emission standard to be stricter than that of the nation), together with simplifying relative procedures to encourage local people's governments to make concrete prevention and control standard locally by considering local economic development, the level of science and technology and air environment quality.

Defining Joint Prevention and Control of Air Pollution Pattern

The new law combines different current difficulties like significant differences in geographical characteristics of different regions, imbalance in the industrial structure development, regional heavy pollution weather. It not only strengthens the integrated control on fire coal, industry, motor vehicle and vessel, dirt and dust, agriculture and so on, but also requires pooling the wisdom and efforts of everyone to make joint prevention and control of regional air pollution. Together with making cooperative control of greenhouse gases and air pollutants such as particulate, carbon dioxide, hydroxide, VOC, hydrogen and so on, emergency measures of heavy pollution weather and the request for information disclosure is also defined in the law.

Concretizing Local Supervising Responsibilities and Diversified Appraisal Mechanism

The new law detailed regulates air environment quality plan, financial investment for air pollution prevention, regional unified supervision and cutting down air pollutants emission, which are all the concrete responsibilities for local people's governments, 'It regulates a series of mechanisms and measures, for example, local people's governments should be responsible for air environment quality in the areas under their jurisdiction, the provincial government assessment made by Ministry of Environment, governments of substandard cities should make time-limited plans to meet the national standard, superior environment protection bureau should have a talk with lower level responsible persons of those who do not complete the task and regional restriction.' [3] In addition, it puts forward appraisal methods and public mechanism of appraisal results of the air pollution prevention tasks for local people's governments; especially strengthen responsibility for environment competent department at several levels in different regions to lead the supervision and management of regional environmental protection authorities so as to avoid problems caused by multi-level supervision.

Improving Liability System of Air Pollution

The new law defines not only authorizing the administrative department of environmental protection under the local people's governments at or above the country level the power to take responsibility for punishment, but also concretizing the illegal activities and severely pushing the intensity of punishment. It also cancel the regulation that the fine imposed on units that has caused an air pollution hazard should 'not more than \$500,000', which is now replaced by multiply punishment and punishment counted by day without maximum limit. As a result, to some extent,

the misshapen situation that ‘the cost of obeying the law is much too high, while the cost of breaking the law is low’ has already been changed and can deter the pollution enterprise. Meanwhile, it further urges pollution enterprises to shoulder the responsibility better by means of regulating ways, handling information and awards of reporting that can help the public participate in air pollution prevention.

In addition, the new law further encourages the production, together with the use of clean energy and strictly restricting the air pollutants emission created during the process of production, use and transformation of the fire coal, fuel and other oil products. It also perfects the test and supervision system of motor vehicle and the environmental protection recall system by putting forward to generalizing the use of energy efficient and environmental friendly vehicles and the development of urban public transport to avoid and clean the construction dust, along with taking centralized control of air pollutants coming from civil aircraft. Together with the local people's governments, producers and operators are required to develop agriculture circular economy. Setting up the environment quality standard that can be continually raised requires local people's governments to decide, to publish and to expand the scope of those are forbidden to burn step by step according to the list of high-polluting fuel made by the administrative department of environmental protection under the state council, so as to require the governments to gradually setting up a laddering legal system to adapt to the different requirements for air pollution prevention during the different stages of sustainable development.

The Operation of the New Law—An Air Pollution Prevention Battle Involving all the People

The air qualities of cities around the nation (except La Sa, Hai Kou, Zhou Shan Island) are mostly substandard; the severe weather caused by composite regional air pollution which are characterized by PM_{2.5}, PM₀₃ and photochemical smog has contributed to threat to the public's health and has had a bad effect on the harmony and stability of society. *Global Burden of Disease Study in 2010* shows that air pollution ranked fourth in the list of reasons causing the decrease of life span, ‘the hurt of women's and children's health was the most severe’[4]. The united investigation report made by Massachusetts Institute of Technology, Tsinghua University and The Hebrew University of Jerusalem further shows when the whole amount of suspended particles increases 100 mg/m³ every time, the death rate will increase 14% and the average life span will shorten 3 years. The average amount of the suspended particles in north China means that 500 million residents lose about 5.5 years of life in average because of the severe air pollution [5]. Although this conclusion still lacks a large number of samples to prove, it has sufficiently stimulated the public to take measures to cut down the air pollution.

‘Only by carrying out the strictest regulation and the most rigorous rule of law can provide reliable protection for the construction of ecological civilization.’ Since the 18th CPC National Congress took ecological civilization into the five-in-one overall layout, ecological prevention has already become the national strategy and the relative law system keeps improving. The Third Plenary Session of the 18th Central Committee of the Communist Party of China definitely put forward ‘protecting ecological environment with strict mechanism’. The Fourth Plenary Session of the 18th Central Committee of the Communist Party of China further strengthened ‘protecting ecological environment with strict law system.’ The brand-new Air Pollution Law which has been systematically revised because the system design and the justification of punishment are not suitable for the need of current social reality, to some extent, meets the consensus and expectation of all sectors of society on protecting ecological environment and promoting sustainable development of economy and society. The process of implementation relevant to law has rapidly become a battle of air pollution prevention involving the whole people.

Different Departments in Different Regions Intensively Promulgate Concretized, Special Standard

After the release of the new law, different regions of the nation enacted multidimensional, concretized law regulatory measures basing on different regions and multiple air pollution sources

one after another. Principles like better ecological rehabilitation, joint prevention and control, government leadership and participation of the whole people are adhered to, in order to revise local air pollution control rules (like *Air Pollution Control Rules in Shan Dong province*, *Air Pollution Control Rules in Zhe Jiang province*, *Air Pollution Control Rules in He Nan province* and so on), regulations (such as *the Regulation for Prevention and Control of Air Pollution in De Zhou* and *the Regulation for Prevention and Control of Air Pollution in Ri Zhao*) and concrete standard system of a number of air pollution sources (like *the standard of dust prevention for buildings, infrastructure projects of the city in He Nan province*) which can prevent from sources and are information-shared and governance-shared. The rules and regulations are made to raise the air environment quality standard, to set up regional enforcement measures for impact assessment of air pollution emission, to promote regional combination of energy structure adjustment, to cooperate and balance environmental recall and right of waste discharge and to perfect a new pattern to determine and shoulder responsibilities.

Main Liability Subject Take Responsibilities Actively

Since the new year, from governments of main provinces, autonomous regions, municipalities to the town governments and sub-district offices have established environmental protection agencies in succession, for sake of striving to effectively, timely and sufficiently solve conflicts from all aspects of air pollution prevention including energy, industry, dust, mobile source and so on, seeking green ways to improve prevention assessment methods, to perfect motoring system for air pollution sources, evaluation scheme for damage of air pollution and marketable pollution permits for key air pollutants. Local people's governments playing a leading role in key regions like Shan Dong, He Nan, He Bei and so on, actively and regularly convene joint conferences, so as to promote annual key projects for air pollution control, to spare no effort to organize the implementation of key projects such as adjustment of industrial structure, coal management, dust emission control and so on and to continually carry out sole rectification projects on prominent problems of law enforcement, which have already borne some fruit. For example, cooperative conference for regions in and nearby Jing-Jin-Ji, with the special coal pollution treatment in He Bei province has rapidly improved the air environment quality and relatively reversed the behindhand ranking. In addition, 'De Yang Green' and 'Shang Qiu Blue' have gained favorable comment from all parties [6], Zhu Madian city has realized 'taking a deep breath under blue sky and white clouds' [7]. In order to avoid the unprecedented heavy punishment, numbers of pollution enterprises actively assist to help put the new law into practice by using clean energy equipment and changing the production and management pattern.

Diversified Propaganda of Law Popularization

Effective implementation of the law of a nation needs the wide participation of departments referring to law at different levels, relevant units, individuals and other social subjects. Together with regional People's Governments, the State Council not only propagandizes the new law by WeChat, Weibo, official websites (like voice of Bei Jing environment, Jiang Bei environmental protection, announcement of Dong Li, environment of Ri Zhao) and traditional paper-media (such as Guang Ming Daily and People's Daily), also by diversified forms, which can truly guarantee the right to know, participation rights and right of supervision and can help deter potential law breakers. For example, environmental protection authority made easy-understanding folk song about *Air Pollution Law* which has spread widely, '*Air Pollution Law, Air Pollution Law, planning to govern from source. From the State Council to ordinary public, supervising one by one without ignorance, working together to fight with air pollution, rapidly changing the methods of economic development, optimizing the industrial structure transition.*' In addition, Local People's Governments of De Zhou, Ning Bo and many other places set up giveaway programs in their own WeChat Public Platform in order to increase relevant legal knowledge of the public and encourage them to take positive part in practical activity on air pollution prevention.

Shortage of the New Law—Relatively Soft and Scattered Prevention Regulations

Though the new Air Pollution Law have an obvious advantage over the early one in aspects like structure arrangement, strength degree and cooperative integration, it still exists some important deficiencies caused by the effect of benefits for region and department, the unbalance of technical level of participators, unsuitable setting of multi-level law enforcement, limited group strength of complex supervision and so on.

Failing to Realize the Cooperative Progress of Economic Development and Environmental Protection

The normalization of regional haze weather around the nation makes air pollution prevention a focus. While the benefits of environmental protection will last forever, at present considering the scientific and technological level and the demand for economic growth is still necessary. To give enterprises time and space to transform the mode of production when improving the air environment quality is reasonable. The new law hasn't defined a clear standard of this problem. When involving the problems related to different pollution sources and special regions, the regulations are muddled and unclear, trying to avoid detailed events without defining the golden crossover point of economic increase and environmental protection.

Too Soft Regulations about Source Treatment

The new law requires 'planning first before source treatment' meaning actively implement the principle of *Environmental Production Law* that 'preferentially protecting and mainly preventing', sufficiently showing that China has already realized the importance of adjustment of causes in this area of theoretical study and of practice operation. The legal control and execution power of tail gases and bulk coal, the main air pollution sources, is relatively soft. The high demand for petroleum of the society can't be radically solved; though the new law has defined that making the standard for fuel oil quality should meet the national air pollution control requirements. Meanwhile, when it comes to the regulations of tail gases from motor vehicles, it reflects the prominent features of soft law. For example, 'When not affecting normal thoroughfare for vehicles, can techniques like the remote sensing monitoring technique be used to supervise and detect the emission situation'. Giving too much flexible space to law enforcement units and officials by the use of expression like 'can' instead of 'must' or 'should', to some extent, contributes to gap of authority rent-seeking.

Improperly Combing Key Concept

Cooperative control of air pollutants and greenhouse gases putting forward in the new law violates traditional technical standards of making laws and is bad for efficient control of the emission of greenhouse gases. 'Air pollutants' is the core concept of legal air pollution prevention that should be solved properly. Air pollutants mainly refer to the external physical medium leading to the air environmental deterioration, which are generally considered as 'matter can contribute to air pollution which is directly or indirectly emitted into the air' [8]. Meanwhile, the major component of greenhouse gases is carbon dioxide which does not belong to scope of external physical medium. Thus, it is not strict to contain greenhouse gases into the adjustment scope of the new law. The principled regulations lacking of matched implementing rules has more restricted the all-round development of emission permits trade system and are bad for the implementation of the management principles working along the both lines of market and administration to control the emission of greenhouse gases. Meanwhile, though China has made a promise to cut down the emission willingly, the solutions to the non-official obligation which can be done step by step should be made according to the different development situations in the different regions of the nation. These solutions should be involved in the control system of the new law. 'Using unified theory, mode, method to treat the pollution is not only unscientific, but also difficult to carry out'[9].

Dysfunctional Joint Conference without Actual Effect

The new law defines that ‘establishing joint prevention and control of key regional air pollution mechanism by the country’. Though governments of provinces, autonomous regions and municipalities of key regions have been delimited by environmental protection authorities of the State Council which play the leading role actively convoke joint conference regularly. Building and carrying out the unified air pollution prevention planning, together with setting up concrete scheme of unified supervision and cooperative control of pollution resources, concretizing and carrying out the objective responsibility of air pollution prevention, establishing unified initiated mechanism of administration punishment and so on is difficult to realize because of the multilateral battle of different regions, different scopes of hierarchy and different beneficial requirements .

Changes of the New Law—Building Regulation Mode Gathering All Strength of Air Pollution Prevention

In the new period, the difficulty and complexity of air pollution prevention in China require relative legal improvement insisting on low-carbon, circulatory and intensive concept of green development, anchoring force of the central government to treat pollution, promoting endurance of environmental protection bureau to improve environment quality and the ability to take responsibility, strengthening the cooperation of the power of environmental rule of law and the public's participation.[10] Helping dynamic synthetic administration around the nation and effectively adapting to all kind of polluted weather by enhancing the implement rate of soft oath and enforcement strength of principled regulations to avoid certain motor and optional law enforcement.

Perfecting Crisscross and Bidirectional Mechanism of Joint Prevention and Control of Air Pollution

Joint preventing and control of air pollution should include not only the cooperation between the above and lower governments in the same area, also good cross-region cooperation between the governments in the same level of different regions.[11] It is urgent for each department in different regions of China to insist on ecological civilization goals seeking sameness but keeping difference. It requires sufficiently considering the current economy situation, ecological characteristics and special demands of different benefits of different profit group of different regions, perfecting synthetic balance between economic magnitude, fiscal capacity and policy environment of the sharing and co-construction mechanism, sufficiently excavating interaction and cooperation space for the assessment and results identification for air pollution prevention, positively canceling the cognitive difference of relevant benefit subjects, constructing framework of negotiable legal governance with unified assessment, methods and cooperation.

Setting Up Scientific Operation Model Involving Subjects of Source of Pollution

The important characteristic of the strictness of the new law is strengthening the legal liability of pollution enterprises and public institutions. Local People's Governments enlarge the scale of responsibility with operable rules and regulations and establish strict supervision mechanism cooperating rights and duties during interpreting process. On the one hand, rapidly improving the technique level of enterprises with public institutions and other production operators, timely finishing enterprise transformation and realizing emission meeting the standard is needed. In addition, establishing compulsory insurance system for heavy pollution enterprises and perfecting financial compensation mechanism are necessary as well.

Building Diversified Dispute Handling Patterns for Air Pollution Prevention.

The dignity and effect comes from the appropriate implementation of rules and regulations and from the reasonable relief of damaged rights. The ‘evidence collection difficulty’ problem causing by the asymmetry between the participators the technical strength has been the core problem disturbing the dispute solution in this filed. It is necessary to distinguish different regions and special situations and to take concrete measures of litigation and non-litigation including spreading

the risk of compensating for air pollution damage, ensuring victims to get the reasonable relief and effectively deterring potential lawbreakers, so as to guarantee the environment benefits of the whole society.

Perfecting Sharing Methods of Science and Technology of the Prevention and Control of Air Pollution

Although the new revised *Air Pollution Law* strengthens that the nation should give full play to the supporting role of technology of prevention, along with encouraging and supporting researches in air pollution prevention and promoting technological achievement transformation and adaption for new equipment, the regulations above are soft legal regulations like oaths. While there are many universities, research institutes and enterprises continually devoted to scientific researches on air pollution prevention, the current problems like division of system and research contributing to the difficulty in the sharing of data and achievement transformations? The solution to the burning problem is accelerating to set up sharing standard for the research data of air pollution prevention in order to promote the spread and application of the technological achievements.

Improving the Information Disclose System

The omnidirectional information discloses the system is the key link of the construction of air pollution prevention system. In order to guarantee the public's right to know, to participate in and to supervise, to ease the emotions of panic of the whole society for heavy pollution and to promote sustainable development of economy and society, the air environment quality, time-limited planning to meet the standard and other relevant information should be publicized online and offline.

Acknowledgement

This research was financially supported by 'Legal Problems of Adjusting Industrial Structure to Combat Climate Change in Jiangsu', 2012JDXM018, The Key Project of Philosophy and Social Science Research in Colleges and Universities in Jiangsu Province.

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