Exploration and Conception of Legal Guarantee of Carbon Emission Trading

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Abstract. In accordance with the direction and requirements of market-oriented, rule of law and internationalization, and in combination with the development practice of China's carbon market, we will further improve the existing carbon trading system, and study and expand the scope of control and increase the intensity of control. Enhance the policy and regulation of the targeted, operational, promote enterprises, organizations and the public to better fulfill the carbon emission reduction responsibilities, and then form a shared good ecological environment of the social atmosphere. We actively respond to climate change to make greater contributions, to further promote the development of green & low-carbon and beautiful environment, for the construction of carbon market at home and abroad.

1. Introduction
Carbon emissions trading is a system that relies on market-oriented allocation of resources. In this system, carbon credits become a tradable resource and factor of production, through the transaction price signal reflects the value to achieve the social cost of carbon emissions internalization. [1] Through the invisible hand, we guide the market players, consciously tap the potential energy conservation, and the formation of a long-term mechanism to promote greenhouse gas emission reduction. [2] At present, China is about to start the national carbon emissions market, but China's carbon emissions trading Management Foundation is still relatively weak. National carbon emissions trading market will inevitably encounter many challenges, in this context, environmental justice should play a greater role. Another section of your paper.

2. Protection of the rule of law in the field of Eco-Environmental Protection in China
For a long time, the disputes in the field of ecological and Environmental Protection of our country are mainly solved through non-judicial means such as administrative remedies. [3] Judicial organs only play a complementary role in Ecological Environment, while Environmental judicial function has not been effectively played. [4] The main reason for the Environmental Protection, which is the environmental management as a pillar, highlighting the role of environmental administrative agencies. Environmental protection laws and regulations mostly belong to administrative or economic law, the legal consequences of environmental violations mainly bear administrative legal responsibility, while civil liability and criminal liability are only in a secondary position. Therefore, whether it is to deal with environmental violations, or to resolve environmental disputes, administrative agencies play a
leading role. In addition, it is due to the fact that the public is affected by the traditional thinking, and the victims of environmental pollution in China mainly rely on administrative channels to resolve environmental disputes.[5]

In the field of environmental justice, it attempts have been made in some places to combat environmental violations through the strengthening of the judiciary. 2008 Yunnan "yangzonghai arsenic-pollution event", Kunming City Public Security Law have set up a "Public Security Bureau of Environmental Protection," "Environmental Resources Procuratorate" and "Environmental Protection trial chamber": In May 2008, the first environmental protection trial court of Jiangsu province was established in the Wuxi Intermediate People's court. In April 2012, the higher people's Court of Jiangsu province issued a notice and launched a centralized trial of Environmental Protection cases pilot work, named " Notice on Pilot Trials of Centralizing Trials of Environmental Protection Cases in Some Courts Across The Province". On June 18, 2013, the Supreme People's court and the Supreme People's Procuratorate issued the "Interpretation on Several Issues Concerning The Application of Law in Handling Environmental Pollution Criminal Cases", and this is a relatively systematic and important judicial interpretation made by the judiciary on Environmental Protection.[6]

The role of judicial organs in the cause of Environmental Protection in our country has been gradually expanded and deepened. But at least in the 2015 "People's Republic of China Environmental Protection Law" before the implementation of the amendment, China's environmental justice relief only in the initial stage. [7]A strange phenomenon of disputes over environmental disputes follows. On the one hand, these environmental pollution and resource destruction caused by our repeated numerous environmental disputes emerge in an endless stream. On the other hand, only a few environmental cases are actually resolved through judicial channels. According to incomplete statistics, more than 100,000 environmental disputes in our country each year, less than one percent of the cases are resolved through the courts.

2015 is China's environmental justice (especially environmental public interest litigation) the development of an important time node, that we promulgated and implemented a number of environmental public interest litigation legislation and documents. The new environmental law enacted in January 2015 makes the civil public interest litigation system more clear and provide further provisions than the Civil Procedure Law of 2012. [8] In January 2015, the Supreme People's court issued “Interpretation on Several Issues Concerning The Application of Law in Environmental Civil Public Interest Litigation”. On December 16 of the same year, the Supreme People's Procuratorate passed the "Measures for The Implementation of The People's Procuratorate's Pilot Work in Public Interest Litigation". The introduction of this series of relevant laws and judicial interpretations has brought China's environmental justice work to a new stage.

3. The rule of law approach to environmental disputes

The initiation of environmental litigation is more difficult for the General parties. Bringing a lawsuit to court often requires more than sufficient evidence, but this condition is harsh for many environmental victims, resulting that environmental damage incidents highly professional and technical characteristics. [9] It makes it difficult for the aggrieved party to gather evidence sufficient and to initiate a civil action, providing some of the key evidentiary material required in the proceedings. For the illegal evidence, the perpetrators and unwilling to publicize, and it is not easy to be the injured party through the normal means, and the evidence obtained in violation of the law may eventually be excluded by the court. [10] Although China's legal and judicial interpretation, there is a transfer of the burden of proof so-called environmental pollution cases. However, the burden of proof of the plaintiff was not completely relieved. In the absence of a mature environmental public interest litigation system, through the judicial approach, the victims of environmental damage compensation is one of the great practical difficulties we face.

Judicial remedies have high time and economic costs. The backlog of court cases in the two-stage trial system, coupled with the complexity and time-consuming handling of environmental disputes, and the high economic costs of obtaining evidence for litigation, are often enormous.[11] These are
important reasons for restricting the function of environmental justice. The role of environmental justice is limited in cases where the threshold and cost of judicial settlement of environmental disputes are much higher than that of administrative remedies.

4. The role of environmental justice in carbon emissions trading

4.1. Overcome local protection.
In carbon trading, when both parties to a transaction are local units, local governments generally do not interfere with the activities of equal legal subjects in normal trading. There may also be the possibility of improper administrative actions in the vertical regulatory legal relationships that occur in local governments. Judicial powers independent of Administrative Operations intervening in carbon emissions trading disputes can help to break the thinking limit of local administrative divisions. [12] For example, the people's court through an independent case, foreign buyers lawfully and properly obtain the amount of carbon emissions of this property rights of the nature of the right to relief. It restricts local governments from interfering with normal carbon emissions trading in favor of local interests. It will not only help to overcome the local protection problems that may occur in carbon emissions trading, but also give full play to the function of the people's courts to judge independently and break through the local protectionism. Effectively, it further exclude administrative interference and solve environmental problems for a long time due to the formation of administrative divisions, different affiliations.

4.2. Civil litigation will stop the dispute, to maintain fair trade
Legal relationships in carbon trading can broadly consist of two groups. The first is the horizontal equality legal relationship established between the transaction subject and the intermediary. [13] The second one is the vertical regulatory legal relationship, which is formed by the government on the initial allocation of carbon emission rights, market regulation and market regulation. Carbon emissions trading is essentially a civil legal act by which equal entities legally transfer ownership of carbon emissions credits through buying and selling in the market. It is the equal private law relationship, formed between the trading subjects through the market buying and selling. This legal relationship is regulated by the civil law, and the disputes between the two parties arising from the transaction can certainly be resolved through the Civil Procedure.

4.3. Administrative litigation restricts the public power of administrative organs.
Although China's environmental justice relief is mainly to the people's Court of environmental resources as the representative of the judicial organs to accept civil cases. Environmental administrative litigation has also begun to occupy an increasingly important position in the Environmental Justice relief.[14] According to the "Administrative Procedure Law of the people's Republic of China" of the Standing Committee of the National People's Congress on June 27, 2017, while the latest revision decision is made. The people's procuratorates have found violations of their functions and powers or omissions in the administrative organs, being responsible for supervision and administration in the performance of functions and duties. Such as, ecological protection, resource protection, food and Drug Safety, state-owned property protection, and transfer of state-owned land use rights. Any person who may cause the state's interests or the public interest to be harmed shall file a proposal with the administrative organ for the procuratorial-examination. Also, it is necessary to urge him or her to perform his or her duties according to law. If an administrative organ fails to fulfil its duties in accordance with the law, the people's Procuratorate shall bring a suit before a people's court according to law.

4.4. Criminal proceedings against criminal offenses.
From the practice of international carbon emissions trading, carbon trading system is complex, and the more complex such a system, the more likely to be manipulated, carbon trading system prone to
different forms of fraud. A variety of carbon fraud crimes have been committed in the more mature European countries where carbon trading is conducted. The legal system and management of China's carbon trading market is far from perfect. Although the local administrative regulations on carbon emissions trading have some provisions to punish illegal and criminal, but the depth and breadth of the content of the regulations is far from sufficient to prevent and combat illegal and criminal acts that may occur in carbon trading. [15] Our legislation is almost completely non-existent in mature markets, including carbon credit fraud and illegal over-the-counter trading. In this regard, the judiciary has the responsibility and the ability to play a criminal trial function in accordance with the relevant provisions of the criminal law and the goal is to combat carbon emissions trading in criminal activities.

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