

# The Justification and Proposals on Environmental Codification in China

Huiting Chen

Qingdao University of Science and Technology, Qingdao, China

## Abstract

**China has the necessity and feasibility of Environmental Codifications. China's Environmental Law Code should follow the path of "Moderate codification" from the perspective of functionalism, and adopt a gradual and step-by-step approach. The scope of adjustment of the code shall be defined with multiple factors; the total score structure; for a certain period, the Environmental Law Code needs to coexist with the single law and cooperate with other legal departments to contribute to the solution of environmental resources problems and promote the sustainable development of China's economic construction.**

## Keywords

**Environmental Law; Moderately Codes; General-specific Structure.**

## 1. Introduction

In the 1960s, due to the rapid economic development, environmental problems became increasingly severe, and the number of laws and regulations related to environmental regulations increased greatly. The legal system of environmental laws became larger and larger, and became an independent legal department with rich types and contents gradually. At this stage, single statute was the mostly adopted in legislation. There is a lack of logical system between laws and regulations, and they are inconsistent with the essential requirements of the integrity and comprehensiveness of environmental law, resulting in unsatisfactory legal implementation effects. In order to remedy this deficiency, various countries have begun to carry out a large number of measures. The formulation of comprehensive environmental laws has made the environmental law system increasingly complex, difficult to unify and coordinate, and still unable to achieve good regulatory effects. Countries have begun to embark on the path of enacting environmental laws.[1] Since then, the Environmental Codifications has gradually developed and has gradually become the trend of legislation in various countries around the world. There have been intense discussions in the theoretical community on whether China should cater to the development trend and the formulation of China's Environmental Code.

The issue of the Environmental Codification has become a key issue that scholars have paid attention to in recent years. This issue is related to the survival and sustainable development of mankind, and it needs to be discussed on the premise of our country's own actual conditions. Therefore, this article starts with the question of whether China's Environmental Law needs to be codified, first discusses the necessary and feasible conditions for the codification of China's Environmental Law, then discusses the characteristics of moderate codification, and finally propose the path to the codification of China's Environmental Code. Committed to changing the shortcomings of environmental legal system in China, and contributing to China's environmental protection and sustainable economic and social development.

## **2. The Necessity and Feasibility of the Codification of China's Environmental Law**

### **2.1. The Need for Environmental Codification**

#### **2.1.1. Codification is the Path Choice to Eliminate the Overcomplication of China's Environmental Law**

China's current environmental legal system has problems such as lack of certainty and uniformity. The frequent overlapping of environmental laws and regulations, regardless of the size of the matter, will increase the cost of institutional transactions and damage the majesty of laws and state agencies. Uncertainty of the law refers to the frequent revision of environmental laws, which is difficult to predict. Such changes of environmental laws will make environmental laws lose public trust, greatly undermine the regulatory effects of laws, and aggravate the structure of the environmental legal system. The instability of the law, on the one hand, challenges the principle of stability of the law, on the other hand, it will induce interest groups to influence the formulation of the law by means of media discourse infiltration in order to obtain private benefits.[2]The inconsistency of the environmental legal system will directly lead to difficulties in the application of the law, and the inconsistency of legal provisions will hand over the choice of law application to the administrative or judicial organs. Due to the insufficient level of the normative theory of the relevant personnel, the selection and application of legal norms can easily become the shield for "selective law enforcement", if things go on like this, the guiding and predictive role of environmental laws and regulations will be affected.

#### **2.1.2. Codification is a Manifestation of Adapting to the Needs of Social Development**

First, codification is a manifestation of adapting to the needs of social development in the new era. As we can see, the environmental legal background, the main social contradictions, and China's need for the right to speak in the world are all changing. This means that changes not only exist in the objective context, but most importantly, they are reflected in the public's subjective value needs for environmental protection. As for the changes in the overall rule of law orientation, the latter two are a qualitative change rather than a mere quantitative change for environmental legal governance. The current research attitude and pattern of environmental law in China can no longer meet the current needs of environmental legal governance.[3] The changes in the main contradictions of the society in the new era make people increasingly pay attention to the protection of related rights and interests in the ecological environment. In order to adapt to the development of human society, it is necessary to adjust the construction of the environmental legal system. In addition, the codification of the code is the embodiment of the National will, and the codification of the environmental code can reflect the will of the state in terms of policy guidance and the tendency of national policy resources. Therefore, the code has a considerable guiding role, and its significance is not only in China. A new environmental code is added, but the formulation of the code shows the country's attitude towards issues, which can produce a positive and clear direction for the development of China's future environmental rule of law.

### **2.2. The Necessity and Feasibility of the Codification of China's Environmental Law**

#### **2.2.1. Clarify the Purpose of the Environmental Codifications and Abandon the Pursuit of Codification as it Should**

In the Environmental Codification, the purpose of codification represents the expected result of the Environmental Codification, and at the same time determines the specific method, path and final code style to achieve the codification. Therefore, before the formal codification of the

environmental law, it should be clarified in the propose of Environmental Codification. The purpose of the Environmental Codification is a prerequisite for accurately grasping relevant codification theories and ensuring the smooth realization of environmental law codification. We need to make it clear that the purpose of environmental code codification. In the new era, the shortcomings of separate environmental laws and regulations continue to appear, and they can no longer meet the needs of sustainable economic and social development. In order to adapt to the value needs and rule of law in the new era, it is necessary to embark on the road of codification of environmental laws.

### **2.2.2. China has the Theoretical Research Results of Environmental Law and the Technical Requirements for Legislation**

First of all, in terms of the amount of legislation, there are a large number of laws and administrative regulations on environmental protection and resource protection in China, and there are more than a thousand local environmental regulations and rules. A relatively complete environmental legal system has been established. These laws and regulations provide the strong support to the codification of the environmental law code. Secondly, China has a large number of scholars on the theory of Environmental Codification, and many of them are professional scholars and talents in the field of environmental law. They have formed a wealth of theoretical research results on the Environmental Codification, although there are still larger theories for individual issues. Controversy, but this is a normal phenomenon of theoretical collisions in the academic world. Generally speaking, the theoretical research results in the field of environmental law are relatively mature, and the Environmental Codification has the corresponding theoretical research basic conditions.

In terms of legislative technology, we also have relatively mature legislative technical conditions before this stage. First of all, China already has relevant experience in codification, and the tradition of codification in our country has continued from ancient times to the present. Secondly, there is a wealth of extraterritorial experience that can be used for reference in the Environmental Codifications. At present, many developed and developing countries in the world have formulated diversified environmental law codes with different styles and structures, which can provide a reference for the compilation of China's Environmental Codes.

## **3. The Position of China's Environmental Code**

The theoretical proposition of moderate codification was put forward by Professor Zhang Zitai and was supported by many scholars in academia. Professor Zhang Zitai believes that moderate codification is a choice based on our country's legislative tradition and the status of the environmental legal system. The process of codification of China's Environmental Law should be gradual and staged, and the coexistence and complementarity of codes and separate laws should be allowed for a certain period of time. The author agrees with the proposition of moderate codification. The proposition of moderate codification has much advantages. Taking efforts to overcome the existing difficulties and moderately reduce the expected goals makes the codification of the code possible. There will always be unresolved legal problems in the legal field, and the emergence of new social problems will continue to bring new challenges. Continuous theoretical research is needed to adapt to new situations and new problems. Therefore, we cannot carry out sufficient research in a certain field. The conclusive theory of whether or not cannot be used to judge that our country does not yet have the conditions to compile an environmental code. If this is the goal, the road of codification of our country will not be able to move forward.[4]

In short, we should not ignore the functionality of the code for the sake of pursuing the formal elements of the code. The ultimate goal of codification is to create a better environmental law legislative model and environmental legal system pattern, and promote the sustainable

development of China's economic environment, not purely. For the purpose of formal code implementation of codification. Therefore, it should adhere to the appropriate positioning of the moderate codification. With the development of the times and the maturity of legal theory research, a higher level of codification should be gradually carried out.

## **4. The Framework and Content Conception of China's Environmental Code**

### **4.1. The Scope of Adjustment of the Environmental Code**

In determining the scope of adjustment of the environmental code, it is easy to fall into two extremes. One is to excessively expand the scope of adjustment of the environmental code and incorporate all relevant laws into the environmental code, and the other to excessively reduce the scope of adjustment. Both of these methods are obviously undesirable. Although there are many legal departments involved in the codification of environmental codes, it is not only lack of operability and feasibility, but also unnecessary to include all of them. Similarly, if the scope of adjustment is reduced too much, the meaning of codification will lose, and the function of the code is not fully utilized. Therefore, it is of great significance to correctly define the scope of environmental law adjustment.

Each sector law has its core category, and its adjustment scope is to delineate the extension of the core category. According to the experience of comparative law, the demarcation basis for the adjustment scope of environmental law includes the response norms of environmental problems, the authority of environmental legislation and law enforcement, human behavior that affects the environment, and environmental interests. But these delimitation basis have their limitations, and a single standard cannot achieve the purpose of correct delimitation. First, the demarcation basis is based on the response to specific environmental problems. Although there is a certain degree of pertinence for problem solving, it is precisely because of the specific problem awareness that makes the content of the code too fragmented, lacking systematic and normative, and environmental problems. Adjustments and solutions involve many departmental specifications, and it is difficult to distinguish operations. Secondly, delimiting the authority of relevant departments will lead to the establishment of environmental laws and environmental law enforcement by various management departments from their own interests, making departmental laws more in line with their own interests, which will lose the meaning of the formulation of the code itself. Taking human behavior that affects the environment as the basis for demarcation has certain value and logic, because the social relationship adjusted by environmental law is caused by the environment between people, but because all human behaviors in the natural world will cause or affect the environment. More or less impact, this kind of division may lead to the expansion of the scope of environmental code adjustment, and it is too difficult to abstract this concept, which obviously lacks pertinence and operability. Many scholars have discussed the concept of environmental benefits. This article agrees with Professor Guo Yanjun's view that environmental benefits include environmental safety benefits, resource benefits, ecological benefits, and spiritual benefits.[5] However, at this stage, spiritual interests do not have the possibility of protection and realization. On the contrary, private lawsuits will be abused and rights will not be infringed all the time. Therefore, it is not suitable for environmental spiritual interests to be included in the adjustment scope of the Environmental Code at this stage. From this point of view, a single delimitation standard has significant limitations. Therefore, China's current environmental code delimitation standards need to be comprehensively considered, neither can omit major environmental code regulatory fields, nor make adjustments beyond the scope of environmental law.

## 4.2. The Structure of the Environmental Code

Regarding the question of the structure of the environmental law code, it is more appropriate to adopt the General-specific structure because its rich in logic and system city. The opposite of this mode is the assembly mode, which does not pursue logic and system, and each part is independent of each other. The General-specific structure can strengthen the goal coordination and comprehensive content of the environmental code system.[6] Specifically, the content of the General part of Environmental Code is the abstraction of the rules suitable for each subparagraph, which mainly includes the purpose of legislation, the scope of application of the code, the basic general rule system, and the main principal clauses. Fundamental rules refer to rules or principles that apply to many or even all areas of environmental law. Fundamental rules can be formulated by "extracting common factors", which can provide principled regulations for the entire code. In terms of basic principles, the basic principles of the environmental law can be improved based on the principles stipulated in the "Environmental Protection Law" in conjunction with the latest developments in the environmental law. The arrangement of sub-clauses can be combined with the theoretical system of environmental law for the arrangement of content integration and system structure. The content of the specific can include pollution prevention and control, ecological protection, natural resources, renewable energy and comprehensive utilization of resources, and legal liabilities.[7] The content of the specific no longer enumerate the general regulations, but focus on the sorting out of the special norms of different editions.

## 4.3. The Link between the Environmental Code and External Regulations

The connection between the environmental law code and external norms can be divided into two parts: the connection with other environmental individual laws and the connection with civil law, criminal law, administrative law and other laws.

After the enactment of the environmental code, should the separate law and the basic law be abolished? If the relationship between it and the code is not abolished, how should it be handled? The author believes that the Environmental Code and the Separate Law are not incompatible. After the Environmental Code is promulgated, the Separate Law and the Basic Law still have their value. The coexistence of a code and a separate law is the need to implement "moderate codification". Under the path of moderate codification, the scope of adjustment of the code has certain limitations and cannot include all environmental law departments. Regulatory issues are appropriately supplemented and applied. The coexistence of separate laws and codes is equivalent to a transitional method, which is more suitable for the development level of China's environmental law at present.

Environmental law is a law with both public and private attributes. Therefore, a complete response to environmental challenges at the legal level cannot be based solely on Environmental law, the traditional legal field also needs self-adjustment in due course. At the level of legal norms, the relationship between the environmental code and other sectoral laws is concentrated in two aspects: normative measures and remedies. The institutional measures depend on the existing framework of administrative law and economic law, which can be on top of the existing administrative law and economic law. Appropriate innovation needs to respect the basic principles of administrative law and economic law, and pay attention to the connection with the private law system; in terms of relief methods, the environmental code needs to be consistent with the relevant legal responsibilities of the procedural law, civil law, administrative law, and criminal law, as well as the provisions of litigation procedures. Convergence, in the future, China's environmental law should always maintain cohesion with other departmental law procedures and legal liability regulations in the process of advancing the specialization of environmental resource trials.

## 5. Conclusion

In the new era, single statute model in environmental cannot adapt to the sustainable development of ecological civilization and economic construction. Environmental law will inevitably develop in the direction of integration, integration and systematization. At the same time, we should abandon the pursuit of a perfect code, so that the Environmental Codification is feasible. The Chinese environmental code should take the road of "moderate codification". Various factors should be considered comprehensively to determine the scope of adjustment of China 's Environmental Law Code. At the same time, it is necessary to pay attention to the coordination and cooperation with other departmental laws. Work together to build China's ecological civilization and sustainable economic and social development.

## References

- [1] Z.T. Zhang: China's Environmental Legislation Ought to Be Codified Moderately, Nanjing University Law Review, (2009) No. 1, p.240-241.
- [2] H. Jiang: Why Environmental Law Needs Codification--Based on the Justification of Legal Complication Theory, Law and social development, Vol. 25(2019)No. 5, 58-63.
- [3] X.D. Hu: On the Research Transformation of China's Environmental Law in the New Era, Journal of China Legal Science, (2020)No. 2, 206.
- [4] Y. J. Guo: How the Environmental Right Expands in my country's Positive Law, Tsinghua University Law Journal,Vol. 15 (2021)No. 1, 168-169.
- [5] K.J. Wu: The System Function and Normative Configuration of the General Part of the Environmental Code, Law and Social Development,Vol. 27 (2021)No. 3,176.
- [6] C. F. Wang, S.Y.Chen: The Justification and Proposals on Environmental Condification in China, Journal of Renmin University of China,Vol. 33 (2019)No. 2, 10-11.
- [7] L. Zhang: The Coordination of Environmental Law with the Ecologicalized Civil Code, Modern Law Science, Vol. 43 (2021)No. 2, 173.