

Study on the Path Construction of Enterprise Environmental Criminal Compliance

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Abstract: Environmental crime is in the high incidence state all year long, and it is difficult for all kinds of punishment in practice to play a substantive prevention role in environmental crime, mainly because the existing judicial concept and environmental crime is not coordinated, the preventive judicial concept behind the enterprise compliance system can provide a new perspective and new thinking for environmental crime governance. At the same time, the introduction of enterprise compliance system in judicial practice can effectively guide enterprises to form a perfect organizational structure in the aspects of value concept, system design and social participation. The establishment of enterprise environmental criminal compliance system needs not only the organization construction based on internal governance, but also the judicial incentive based on external governance. Procuratorial organs should play a leading role actively and form a joint force with administrative organs and judicial organs to promote the in-depth development of enterprise compliance system in the field of environmental crimes.

Keywords: Enterprise Compliance; Environmental Crimes; Path Construction

Introduction

The establishment of enterprise environmental criminal compliance system needs to coordinate multi-subject and multi-department law of social governance. The key to the construction of this system lies in the coordination of each subject and organic integration. To be specific, the whole enterprise environmental criminal compliance system should be centered on the procuratorial organs, combined with the existing pre-trial procedures, and form the connection and cooperation between the procuratorial organs and the administrative organs by making and issuing procuratorial suggestions to the administrative organs. At the investigation stage, the administrative organs lead the investigation of the facts of specific cases related to environmental crimes, and the procuratorial organs play the supervision function. If the administrative organs do not perform their duties or are not active in performing their duties, they can make and issue procuratorial suggestions. If they still do not perform their duties or are not active in performing their duties after making and issuing procuratorial suggestions, the procuratorial organs can bring environmental administrative public interest lawsuits^[1]. After the case is transferred to the public security organ for examination, the procuratorial organ should give full play to its advantages of entering the grass-roots public security system to guide the standardized investigation. Since the administrative organ has first investigated the environmental crime before it is transferred to the public security organ, the procuratorial organ should take the initiative to cooperate with the screening of which evidence can be directly connected and which evidence needs further investigation and collection. Before the examination and prosecution, fully understand the relevant situation of the involved enterprises and master first-hand data, specifically investigating the impact of the involved enterprises on local tax revenue, enterprise scale, production and business scope and social evaluation, so as to draw a conclusion on whether it is necessary to carry out further rectification; After the case review and prosecution, the procuratorial organ should take the initiative to communicate with the enterprise involved, inform it of the corresponding preferential treatment for leniency in compliance. If the enterprise has not yet established a compliance system, it should ask whether it has the willingness to establish a compliance system. At the same time, according to a series of factors, such as the attitude of guilty plea, the degree of legal interest repair, whether to obtain the

understanding of the victim, make the decision whether to prosecute or not; During the trial, the procuratorial organ should play the role of the public prosecution organ, objectively state to the court the relevant performance of the enterprises involved, and suggest the court to give lenient treatment as far as possible based on the information in the investigation and prosecution review.

1. Multi-subject governance with procuratorial organs as the center

The prosecution as the center does not mean that other subjects do not need to participate. In the stage of environmental crime investigation, the cooperation between administrative organs and public security organs is needed, which is not only due to the problem of obtaining evidence of environmental crime, but also effectively solve the practical problem of the shortage of manpower of public security organs in the field of environmental crime. In the compliance inspection stage of environmental crimes, the active participation of social organizations, including lawyers, deputies to the People's Congress, members of the CPPCC, administrative organs and other third parties is needed, and the supervision by public opinion is needed. For environmental crimes, the actual effect of governance and protection is far greater than the trial by the court. All these processes require the participation of other subjects, and more importantly, the coordination and cooperation between execution and criminal and civilian connection should be formed, so as to avoid the failure of enterprises to enter the criminal compliance category due to receiving heavy punishment such as revocation of business license in the stage of administrative punishment^[2]. Of course, in the special environmental compliance, the active role of the lawyer team should be played. Whether it is the formation of the investigation report or the subsequent compliance construction, the lawyer team will play an irreplaceable role. In the special compliance rectification of enterprises, the procuratorial organ should play a central leading role that can form a joint force in the whole society at all stages. This process requires practice, exploration and constant trial and error, and the construction of enterprise environmental criminal compliance system also needs to be carefully carried out in this process.

2. The environmental criminal compliance system of enterprises at the trial stage

This paper holds that leniency of enterprise compliance can form the value orientation of the system of leniency of guilty plea, that is, applicable to the whole stage of criminal proceedings, the difference lies in the size of leniency range.

The first is that the court adopts the procuratorial organ's suggestion to apply the enterprise environmental criminal compliance. This situation applies to the fact that although the procuratorial organ applies lenient incentive in the examination and prosecution, it puts forward the suggestion of lenient sentencing. After the examination, the court considers that the enterprise complies with the applicable compliance adjustment and makes a judgment according to the procuratorial organ's sentencing suggestions to make a judgment; Second, the court thinks that the incentive measures made by the procuratorial organ are correct, but does not fully agree with the proposed sentencing suggestions. At this time, the final judgment of the court is implemented; Third, the court believes that the prosecution's incentive measures are wrong, at this time the court should make a judgment in accordance with the law.

The second is that the court takes the initiative to review the relevant materials of the enterprise in the trial and believes that it can apply the environmental criminal compliance of the enterprise. This situation applies to the fact that the procuratorial organ fails to apply enterprise environmental criminal compliance in the examination and prosecution stage, or the enterprise changes its mind and initiatively requests the application of enterprise environmental criminal compliance in the trial stage, and the court considers it applicable after the examination. At this time, the measures available to the court can only apply to the environmental criminal compliance of the enterprise, but the judgment result should be different from the judgment result actively applied by the enterprise in the examination and prosecution stage.

In addition to making light and mitigated criminal punishment, the court should also actively apply probation, and probation should become the biggest incentive measure for enterprises' environmental criminal compliance in the trial stage. Similar to the procuratorial organs, the courts should actively visit and investigate the enterprises, fully listen to their own interest demands and actual operating difficulties, and use judicial resources to help the enterprises improve environmental criminal compliance plans, introduce supervisory subjects and listen to opinions when making a suspended sentence, lenient or reduced punishment^[3]. When probation is applied, a hearing may be held and local deputies to the people's Congress, members of the Chinese People's Political Consultative Conference, people's supervisors, representatives of public security organs and administrative supervision departments,

representatives of the Federation of Industry and Commerce and representatives of third-party organizations may be invited to attend the hearing. The purpose of the hearing is to hear opinions from various parties and accept social supervision, so that the probation issued by the court can better stand the test and be better understood by the society. Avoid the masses have indulgent crime doubt.

3. Conclusion

Corporate environmental criminal compliance is an important way to deal with corporate environmental crimes, and it is also the practical application of the special plan of corporate compliance. It has irreplaceable practical needs in today's society of comprehensively building ecological civilization. In fact, the soul of enterprise compliance does not lie in the "large and complete" compliance management system, which is also the core of enterprise compliance that differs from traditional risk prevention and control departments. These special compliance plans are not only restricted by the general compliance policies and procedures of the enterprise, but also develop special effective coping mechanisms. Therefore, there are a number of relatively independent branch management systems under the unified enterprise compliance management framework, which makes enterprise compliance become professional. Back to the special environmental compliance, environmental compliance in our country has been explored in practice, but as a kind of compliance management driven by administrative organs, there is no difference between the allocation of internal resources and other business risks covered by corporate governance such as operation and management, commercial bribery and other business risks, and can not be based on the nature of the enterprise, business, scale and main compliance risk points. Develop special environmental compliance systems. Therefore, enterprise environmental criminal compliance of our country is only in its starting stage. On the system construction, we can refer to some existing practical experience, but we need to re-establish a customized compliance plan.

References

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