

学校编码：10384

分类号_____密级_____

学号：X2010120088

UDC _____

厦 门 大 学

硕 士 学 位 论 文

检察机关提起环境公益诉讼的司法实践与完善

The Judicial Practice and Perfection of the Environmental Public
Interest Litigation Instituted by Procuratorial Organization

林晓慧

指导教师姓名：卢正敏 副教授

专业名称：法律硕士

论文提交日期：2014年03月

论文答辩时间：2014年05月

学位授予日期：2014年 月

答辩委员会主席：_____

评 阅 人：_____

2014 年 3 月

厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下，独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果，均在文中以适当方式明确标明，并符合法律规范和《厦门大学研究生学术活动规范（试行）》。

另外，该学位论文为（）课题（组）的研究成果，获得（）课题（组）经费或实验室的资助，在（）实验室完成。（请在以上括号内填写课题或课题组负责人或实验室名称，未有此项声明内容的，可以不作特别声明。）

声明人（签名）：

年 月 日

厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

1. 经厦门大学保密委员会审查核定的保密学位论文，
于 年 月 日解密，解密后适用上述授权。

2. 不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人：

年 月 日

内容摘要

雾霾天气、PM2.5、水资源污染等新闻字眼已成为时下社会公众日益关心的话题，环境污染的严重性越来越受关注，环境问题愈演愈烈。但现实中发生的环境纠纷大多无法得到有效解决，由此也引发了从法律层面惩治环境污染的探索，其中最引人瞩目的莫过于环境公益诉讼。环境公益诉讼是解决环境公益纠纷、保护环境的一种重要途径。近年来，环境公益诉讼案例在国内外层出不穷。由检察机关作为原告提起的环境公益诉讼案件在我国各地也呈现其燎原之势，并取得良好的社会效果。

但在司法实践中，也有一些检察机关的环境公益诉讼案件以败诉而告终。究其原因，一是我国环境公益诉讼制度尚未真正形成，案件审理中缺乏法律依据；二是传统原告资格理论限制了环境公益诉讼原告制度的发展。检察机关提起环境公益诉讼面临着原告主体资格模糊的境地。此外，检察机关在环境公益诉讼中还有受案范围不明确、诉讼成本分担不明的困扰。要想检察机关在环境公益诉讼案件中能发挥其公诉职能和法律监督职能，首先要明确其原告主体资格；其次要明确检察机关的受案范围、解决其诉讼成本。本文采用实证研究和比较研究的方法，从分析环境公益诉讼的内涵、特征、发展历程入手，结合国外典型环境公益诉讼的先进经验，解读我国检察机关在环境公益诉讼中面临的实际困难，最后借鉴国外检察机关提起环境公益诉讼的经验方法，从明确原告主体资格、受案范围、诉讼成本等方面作出分析、探讨，为我国检察机关完善环境公益诉讼作出有益的理论探索。

关键词：环境公益诉讼；检察机关；主体资格；司法实践

ABSTRACT

Nowadays, the public are getting more and more concerned about haze weather, PM2.5, water pollution and some other words in the news. The seriousness of environmental pollution has caused more and more attention in society, and the environmental problems are getting worse. However, in reality, most of the environmental dispute cannot be solved effectively, which leads to the exploration of punishment on the environmental pollution from the legal side. The most impressive one is the environmental public interest litigation, which is an important way to solve the environmental public interest dispute and protect the environment. Numerous cases of environmental public interest litigation are found both at home and abroad in recent years. The cases of environmental public interest litigation instituted by procuratorial organization as a plaintiff are on an overwhelming growth in China, which have achieved good social effects.

However, in the judicial practice, it is reported that some environmental public interest litigation cases instituted by procuratorial organization lose in the end. The reasons are as follows. Firstly, the environmental public interest litigation system has not yet established in our country and the case trials lack legal basis. Secondly, the traditional theory of plaintiff qualification has restricted the development of the plaintiff system in the environmental public interest litigation. The environmental public interest litigation instituted by procuratorial organization is confronted with ambiguous subject qualification of the plaintiff. Besides this, in the environmental public interest litigation, the procuratorial organization has the troubles of undefined scope of accepting cases and unknown litigation cost sharing. In order to fully exert the function of public prosecution and legal supervision, the procuratorial organization should firstly identify their subject qualification of plaintiff, and then their scope of accepting cases and find out the ways to solve the problems of the litigation costs. Based on empirical and comparative research, this article will firstly start with an analysis of the connotation, the characteristics and development of the

environmental public interest litigation; secondly combine with the advanced experience from foreign typical environmental public interest litigation and analyze the practical difficulties that the procuratorial organization in our country has confronted with in the environmental public interest litigation; finally, learned from the experience and solutions from the environmental public interest litigation instituted by foreign procuratorial organization, this article will make a beneficial theoretical exploration for the procuratorial organization in our country to perfect the environmental public interest litigation, based on the analysis and discussion on the aspects of defining the subject qualification of plaintiff, scope of accepting cases and litigation cost.

Keyword: Environmental public interest litigation; Procuratorial organization; Subject qualification; Judicial practice

前 言.....	1
第一章 环境公益诉讼概述	2
第一节 环境公益诉讼内涵	2
一、环境.....	2
二、公益.....	3
三、公益诉讼.....	3
第二节 环境公益诉讼特征	4
一、诉讼目的为社会公益.....	4
二、原告主体范围广泛.....	4
三、预防功能性.....	5
第三节 环境公益诉讼的发展历程	5
一、环境公益诉讼的起源.....	5
二、环境公益诉讼的发展.....	5
第二章 检察机关提起环境公益诉讼的司法实践.....	8
第一节 大陆法系的司法实践	8
一、法国司法实践.....	8
二、德国司法实践.....	9
三、巴西司法实践.....	9
第二节 英美法系的司法实践	10
一、英国司法实践.....	10
二、美国司法实践.....	10
三、印度司法实践.....	11
第三节 我国的司法实践	12
第四节 国外检察机关提起环境公益诉讼的借鉴意义	14
第三章 我国检察机关提起环境公益诉讼的困境分析.....	16

第一节 原告主体资格模糊	16
一、肯定说.....	17
二、否定说.....	17
第二节 受案范围定位不清	18
一、学术界的定位阐述.....	18
二、我国司法实践中认可的受案范围.....	19
第三节 诉讼成本的困扰	20
一、环境公益诉讼费用较高.....	20
二、无明确主体承担诉讼费用.....	20
第四章 检察机关提起环境公益诉讼司法实践的完善	22
第一节 我国检察机关提起环境公益诉讼的合理性分析	22
一、检察机关提起环境公益诉讼的法理基础.....	22
二、检察机关提起环境公益诉讼的必要性及可行性.....	23
三、检察机关作为原告主体的实践方式.....	24
第二节 明确检察机关提起环境公益诉讼的受案范围	25
一、应当受理的案件类型.....	26
二、不应受理的案件类型.....	26
第三节 检察机关提起环境公益诉讼的诉讼费设想	27
一、国外的经验借鉴.....	27
二、检察机关环境公益诉讼费用的制度优化.....	27
结 论.....	29
参考文献.....	30
致谢词.....	34

CONTENTS

Preface	1
Chapter 1 Summary of environmental public interest litigation	2
Subchapter 1 The connotation of environmental public interest litigation	2
Section 1 Environment	2
Section 2 Public interest	3
Section 3 Public interest litigation	3
Subchapter 2 The characteristic of environmental public interest litigation	4
Section 1 The litigation purpose for the public welfare	4
Section 2 A wide range of the plaintiff's main body	4
Section 3 Prevention function	5
Subchapter 3 Development of environmental public interest litigation	5
Section 1 The origin of environmental public interest litigation	5
Section 2 The development of environmental public interest litigation	5
Chapter 2 The judicial practice of the environmental public interest litigation instituted by procuratorial organization	8
Subchapter 1 The judicial practice of the continental law system	8
Section 1 The judicial practice of France	8
Section 2 The judicial practice of Germany	9
Section 3 The judicial practice of Brazil	9
Subchapter 2 The judicial practice of the common law system	10
Section 1 The judicial practice of England.....	10
Section 2 The judicial practice of the United States	10
Section 3 The judicial practice of India	11
Subchapter 3 The judicial practice of China	12

Subchapter 4	The reference of the environmental public interest litigation instituted by foreign procuratorial organization	14
Chapter 3	Analysis of dilemma in the environmental public interest litigation instituted by the procuratorial organization of China	16
Subchapter 1	Fuzzy subject qualification of plaintiff	16
Section 1	Positive theory	17
Section 2	Negative theory	17
Subchapter 2	The unclear orientation of the scope of accepting cases	18
Section 1	Amplification of the academic orientation	18
Section 2	The scope of accepting cases approved by the judicial practice in our country	19
Subchapter 3	Obsession of the litigation costs	20
Section 1	Higher expenses of environmental public interest litigation	20
Section 2	No specific subjects to bear the litigation expenses	20
Chapter 4	To perfect the judicial practice of the environmental public interest litigation instituted by procuratorial organization	22
Subchapter 1	The analysis of rationality about the environmental public interest litigation instituted by the procuratorial organization of China	22
Section 1	The legal basis of the environmental public interest litigation instituted by the procuratorial organization	22
Section 2	The necessity and effectiveness about the environmental public interest litigation instituted by the procuratorial organization	23
Section 3	Practice way of the procuratorial organization as a plaintiff's main body	24
Subchapter 2	Define the scope of accepting cases about the environmental	

public interest litigation instituted by the procuratorial organization	25
Section 1 The types of cases which should be accepted	26
Section 2 The types of cases which should not be accepted	26
Subchapter 3 The assumption of litigation expenses about the environmental public interest litigation instituted by the procuratorial organization	27
Section 1 Foreign experience for reference	27
Section 2 The system optimization of litigation expenses about the environmental public interest litigation instituted by the procuratorial organization	27
Conclusion	29
Bibliography	30
Acknowledgements	34

厦门大学博硕士学位论文摘要

前 言

在全球经济飞速发展的过程中，环境问题成为各国实现现代化面临的严重社会问题。改革开放以来，我国的经济社会建设取得了突飞猛进的发展，中国一跃成为全球第二大经济体，综合国力迅速攀升，取得了举世瞩目的成就。然而，伴随着经济的高速增长，环境污染与环境破坏的形势也日益严峻，沙尘暴、雾霾天气、水资源污染、噪音污染向我们的生存环境提出了严重挑战，也引发了许多社会矛盾冲突，因环境污染而集体上访的案例层出不穷。

近几年的“两会”上，社会各界有识之士纷纷对环境保护建言献策，奔走呐喊。随着依法治国观念日渐深入人心，社会公众运用法律手段维护权益的意识逐步增强，人们不仅运用法律来维护自身合法权益，当国家利益和社会公共利益受到不法侵犯时，许多正义之士也拿出神圣的法典与污染环境者对簿公堂！诚然，保障人类享有健康而舒适的生存环境，就必须加强环境保护，防范和制止一切侵害环境权益、破坏生态环境的行为。为此，社会各界强烈呼吁必须建立和健全环境纠纷的解决机制，特别是建立和完善环境保护司法制度。

2013年1月1日，新修订的《中华人民共和国民事诉讼法》在万众瞩目中开始施行，其第55条规定“对污染环境、侵害众多消费者合法权益等损害社会公共利益的行为，法律规定的机关和有关组织可以向人民法院提起诉讼”。这条规定在立法上确立了环境公益诉讼制度，开启了我国环境公益诉讼的新篇章，使我国公益诉讼制度实现了法律制度的破冰，但该条文在司法实践中仍然存在一些不足。笔者拟就新修订的《中华人民共和国民事诉讼法》第55条的理解、法律适用以及检察机关提起环境公益诉讼的司法完善提出探讨，以期能更好促进法治建设，为人与自然和谐发展探寻有力的司法途径。

第一章 环境公益诉讼概述

第一节 环境公益诉讼内涵

随着经济社会的快速发展,环境公益已经逐步成为人类关注的公共利益,世界各国已经达成共识,无论是发达国家还是发展中国家都不能以破坏环境、污染环境为代价发展经济,人与自然和谐发展才是科学发展,才是人类社会的共同追求。如果社会环境不断恶化,不但环境公益本身会受到破坏,某些私人的利益,甚至社会多数人的私人利益都将被破坏殆尽。如2010年的紫金矿业污水渗漏事件,“受到污染的水沿福建汀江顺流而下,已经进入广东境内,福建、广东两省跨界河段的水质可能超过了渔业标准。”^①同年,在大连,因为油管爆炸使得“大约有1500吨的原油进入海里,受污染的海洋面积达430平方公里,对当地的生态和渔业产生严重影响。”^②当前,社会各界对环境污染事件高度关注,对环境公益诉讼也越来越关心。但是,何谓环境公益诉讼,是一个较为模糊的术语,不同人对其的理解存在一定差异。本文的研究,就从环境公益诉讼的内涵开始展开。

环境公益诉讼是由“环境”、“公益”、“诉讼”等词汇组成的集合体名词,研究环境公益诉讼不妨对其组织的各个子概念作一番探究。

一、环境

作为环境公益诉讼客体的“环境”究竟是什么?《新华字典》解释为:“周围的情况和条件”。^③《新华字典》对环境这个词的解释是从其本义进行解释,涵盖的范围比较宽广。在司法实践中,这种解释太过宽泛,笔者认为应当采用《中华人民共和国环境保护法》关于“环境”的解释,《中华人民共和国环境保护法》第2条规定:“本法所称环境,是指影响人类生存和发展的各种天然的和经过人工改造的自然因素的总体,包括大气、水、海洋、土地、矿藏、森林、草原、野生生物、自然遗迹、人文遗迹、自然保护区、风景名胜区、城市和乡村等。”《中

^①中国环保网.紫金矿业污染福建汀江[EB/OL].

<http://www.chinaenvironment.com/view/ViewNews.aspx?k=20100802145553552>, 2010-08-02.

^②环球网.大连油管爆炸所致污染调查:游人锐减贝类死亡[EB/OL].

<http://china.huanqiu.com/roll/2010-07/955169.html>, 2010-07-24.

^③新华字典[Z].北京:商务印书馆,2011.200.

Degree papers are in the "[Xiamen University Electronic Theses and Dissertations Database](#)". Full texts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to etd@xmu.edu.cn for delivery details.

厦门大学博硕士学位论文摘要库