
Interpretation of the Reform Plan of Compensation System for Ecological Damage

Wang Jinnan, president of the Chinese Academy for Environmental Planning (CAEP), academician of the Chinese Academy of Engineering and Yu Fang, director of the Center for Environmental Risk and Damage Assessment Research under CAEP were interviewed respectively by CCTV and the Central People's Broadcasting Station to interpret the related issues of the plan.

Ecological damage compensation system is an important part of ecological civilization system. The Central Party Committee and the State Council attach great importance to the compensation for the damage to ecological environment. The Third Plenary Session of the 18th CPC Central Committee has clearly put forward an effective system for claiming full compensation on those who inflict any damage to ecological environment. In 2015, the General Office of the Communist Party of China Central Committee and the General Office of the State Council issued a Pilot Reform Plan for the Ecological and Environmental Damage Compensation System (Zhong Ban Fa [2015] No. 57) and implemented the pilot reform in seven provinces and municipalities including Jilin, and achieved significant results. To further accelerate the construction of environmental damage compensation system nationwide, this plan was formulated in the light of the valuable experience of pilot reform in various regions.

I. Overall requirements and objectives

We aim to establish the nationwide pilot compensation system for ecological damage to further clarify the scope of compensation for the damage to ecological environment, the subject of liability, the principal of the claim and the solution of damages etc. and to form the corresponding appraisal management and technical system, funding and operational mechanism as a way to gradually establish the restoration and compensation system for ecological environmental damage and accelerate the construction of ecological civilization.

Starting on January 1, 2018, the system of environmental damage compensation will be implemented nationwide. By 2020, we will strive to establish a nationwide compensation system for environmental damage with clear responsibilities, smooth channels, standard technology, strong support, compensation in place and effective restoration.

II. Working principle

- Lawful promotion and innovation encouragement. According to relevant laws and regulations and based on national conditions and local realities, we will carry out the reform of the system for the compensation of the damage to ecological environment by easy to difficult and in a safe and orderly manner and propose the relevant policies and legislative proposals on specific issues that are not specified in the law.
- Valuable environment and damage compensation. It reflects the ecological function and value of environmental resources and prompts the obligor to restore the damaged ecological environment. If the damages to ecological environment cannot be restored, monetary compensation shall be implemented to replace the restore. If the obligor is required to assume administrative responsibility or criminal responsibility for an ecological damage, he shall have to shoulder the responsibility to compensate for his damage to ecological environment according to law.
- Active consultation and judicial guarantee. After the occurrence of damage to ecological environment, the obligee to compensation shall carry out an investigation, appraisal and evaluation for the damage to ecological environment and prepare the plans for the restoration of damage to ecological environment and actively negotiate with the compensation obligor. If the consultation fails to reach an agreement, the compensation obligee may file a lawsuit in accordance with the law.
- Information sharing and public supervision. We are committed to implementing information disclosure and driving the government and its functional departments to share information of the compensation of the damage to ecological environment. We strive to disclose major issues involving the public interest to the public and invite the experts and citizens, legal persons and other related organizations to participate in the investigation, appraisal and assessment, and preparation of the restoration plan for the damage to ecological environment.

III. Applicable Scope

The term " the damage to ecological environment " as mentioned in this plan refers to the unfavorable changes of environmental elements including atmosphere, surface water, groundwater, soil, forest and the biological elements containing plants, animals and microorganisms due to environmental pollution and ecological damage as well as the degradation of the function of ecological system constituted by the above elements.

(i) In any following circumstances, the person concerned shall be compensated for the damage to ecological environment according to the plan:

1. any significant and above emergent environmental events occur;

2. any events about environmental pollution and ecological destruction occur in key ecological function zones and exploitation-prohibited regions delineated in the planning of state and provincial main functional zones;

3. Where other events that seriously damage the ecological environment occur, the governments in all regions shall, in light of the actual conditions, take into account such factors as the environmental pollution, the extent of ecological damage and social impact, and clarify the specific circumstances.

(ii) This plan is inapplicable to the following situations:

1. Where the compensation for personal injury, personal and collective property losses is required to be claimed in accordance with the related provisions of the Tort Liability Law;

2. Where the compensation for damage to marine ecological environment is required to be claimed in accordance with the related provisions of the Marine Environment Protection Law and other relevant laws and regulations.

IV. Work Content

1. We are required to clarify the scope of compensation. The scope of ecological damage compensation including the cost of removing pollution and ecological restoration, the loss of service functions in the process of ecological restoration, the loss caused by the permanent damage of ecological functions, ecological environmental damage compensation investigation, appraisal evaluation and other reasonable expenses. The governments in all regions may, based on the progress and needs of the compensation for ecological damage, put forward suggestions on how to refine the scope of compensation. Moreover, the governments in all regions are encouraged to carry out exploratory research and practice of the compensation for the damages to environmental health.

2. We are required to determine the compensation obligor. Any institution or individual that infringes laws and regulations and causes damage to the ecological environment shall compensate for ecological and environmental damage. The compensation obligor may be exempted or mitigated his/her liability for damage to ecological environment according to the relevant provisions of the current Civil Law and Law on Resource and Environmental Protection. The governments in all regions may, according to the need to expand the scope of the obligations for ecological damage compensation, put forward the relevant legislative proposals.

3. We are required to determine the compensation obligee. The provincial and municipal governments (including the district and county governments under the jurisdiction of the municipalities directly under the Central Government, the same below) are designated by the State Council as the obligee of compensation for damage

to ecological environment in their respective administrative regions. The compensation for damage to ecological environment in cross-city area of a province shall be claimed by the provincial government; other duties shall be determined by the provincial government based on the actual situation in the region. Provincial and municipal governments may designate the relevant departments or agencies to be responsible for the specific affairs pertaining to the compensation for damage to ecological environment. Provincial and municipal governments and their designated departments or institutions shall have the right to file lawsuits. The damage to ecological environment occurred in the trans-provincial region shall be compensated by the relevant provincial governments.

In a sound pilot area of the national natural resources asset management system, the commissioned provincial government may designate departments that exercise the ownership of all the natural resources and assets owned by the whole people to be responsible for the specific affairs pertaining to the compensation for damage to ecological environment. Where the State Council directly exercises the ownership of all natural resources and assets owned by the whole people, the department entrusted with such ownership shall, as the compensation obligee, compensate for damage to ecological environment.

The governments of all provinces (autonomous regions and municipalities directly under the Central Government) shall formulate the conditions for initiating the claim for damage to ecological environment, verify the procedures selected by appraisal and assessment agencies and the disclosure of information and clarify the responsibilities for the compensation of the departments, of land and resources, environmental protection, urban and rural construction, water conservancy, agriculture and forestry. A supervision mechanism of compensation claim for damage to ecological environment shall be established. Where any compensation obligee, including person-in-charge or staff of the relevant designated department or agency who abuses his power, neglects his duties or practices favoritism in his claim shall be held accountable according to the law; the suspect who commits a crime shall be transferred to the judicial organs.

Where the obligee claims the compensation for ecological damage of citizens, legal persons and other organizations, he and the designated department or institution shall promptly study and respond to the claim.

4. We are required to carry out compensation negotiations. If the investigation result displays that the damage to the ecological environment needs to be restored or compensated, the obligee shall, based on the assessment report on the damage to the ecological environment, reach a compensation agreement with the obligor after consulting with the obligor on specific issues such as the extent of damage, time limit for restoration, and method and duration for shouldering compensation liability and

considering the technical feasibility of rehabilitation programs, cost-effective optimization, the obligor's ability to pay compensation, the feasibility of third-party governance, etc. The compensation agreement through consultation shall be sub to the people's court for judicial confirmation in accordance with the civil procedure law. Where the obligor fails to execute or incompletely execute the compensation agreement confirmed by the judicial party, the obligee and its designated departments or agencies may apply to the people's court for compulsory execution. If no agreement is reached through consultation, the obligee and its designated departments or agencies shall promptly file a civil action in respect of the compensation for damage to the ecological environment.

5. We are required to improve litigation rules. The local people's courts shall, in accordance with the relevant laws and regulations and relying on the existing resources, designate the environmental and resources tribunal or the special court to hear the civil cases of damage to the ecological environment and try out phased installments based on such factors as the obligor's subjective fault and operating condition, etc. and explore diversified methods of taking responsibilities.

The people's courts in all regions shall conduct the research in such systems for the preservation of evidence before prosecution, advance execution and supervision over execution in line with the requirements for the compensation for damage to the ecological environment. Suggestions on legislation and judicial interpretation for the litigation about the compensation for damage to the ecological environment based on the trial. The statutory organs and eligible social organizations shall be encouraged to carry out lawsuits on the compensation for damage to the ecological environment according to law.

The connection between the system of the compensation for damage to the ecological environment and environmental public interest litigation shall be clarified by the relevant departments of the Supreme People's Court based on the actual situation.

6. We are required to strengthen the implementation and supervision of ecological restoration and damage compensation. The compensation obligee and his designated departments or agencies shall evaluate the effects of ecological restoration after consultation or litigation as a way to ensure that the ecological environment is promptly and effectively restored. The use of compensation amount of damage to the ecological environment and the effect of the restoration of the damaged ecological environment shall be issued to the public and subject to public supervision.

7. We are required to standardize the appraisal and assessment of ecological damage. All localities and autonomous regions shall speed up the construction of professional forces for the appraisal and assessment of ecological damage and promote the establishment of qualified professional teams to conduct assessment as soon as possible. The appraisal and evaluation management system and work procedures shall

be formulated and the independent appraisal of ecological damage shall be made as a way to connect with the judicial procedure. The appraisal and evaluation institutions that provide identification opinions for consultation shall meet the relevant requirements imposed by the State; those who provide the appraisal opinions for the litigation shall abide by the relevant regulations of the judicial administration.

8. We are required to strengthen the management of compensation for ecological damage. If the obligor is determined by consultation or litigation, he shall, in accordance with the requirements of consultation or judgment, carry out the restoration of damaged ecological environment. If the obligor is incapable of carrying out restoration, he may entrust a qualified third-party agency to conduct the restoration. The funds for restoration shall be paid by the obligor to the entrusted third party. Where the obligor carries out restoration by himself or entrusts others to restore, the expenses of the investigation on ecological damage in the previous period, identification and assessment and remediation result appraisal shall be borne by the obligor.

If the damage to the ecological environment caused by the obligor cannot be restored, the compensation fund shall be paid in full to the state treasury at the same level as the non-tax revenue of the government and be included in the budget management. The obligee and his designated departments or agencies shall, according to the requirements of consultation or judgment, carry out alternative rehabilitation in the light of the damage to the ecological environment in the region.

V. Safeguard Measures

1. We strive to implement the reform. The party committees and governments of the provinces (autonomous regions and municipalities directly under the Central Government) and cities (districts, prefectures, leagues) shall strengthen the unified leadership of the reform of the compensation system for ecological damage, formulate plans for the implementation of the project in a timely manner, clarify the tasks and time limits for reform and boldly explore and make solid progress to ensure that all reform measures are completely implemented. The governments of provinces (autonomous regions and municipalities directly under the Central Government) shall set up a leading group for reforming the system of the compensation for ecological damage. The departments or agencies designated by the provincial, municipal and prefecture-level governments shall determine the personnel concerned who are responsible for the compensation for ecological damage. The pilot departments of the national management system for natural resources and assets shall clearly define their tasks and stipulate their responsibilities. The implementation plans in the 7 pilot provinces and cities including Jilin, Jiangsu, Shandong, Hunan, Chongqing, Guizhou

and Yunnan during the pilot period can be gradually adjusted and improved in accordance with the pilot projects and the requirements of this plan.

In the process of pilot reform, the governments of all the provinces (autonomous regions and municipalities directly under the Central Government) shall draw useful conclusions by their experiences in time and improve the related systems. By 2019, the report on of the reform of the system for the compensation for damage to the ecological environment in every administrative region of the previous year will be submitted to the Ministry of Environmental Protection and the Central Party Committee and the State Council before the end of March each year.

2. We strive to strengthen professional guidance. The Ministry of Environmental Protection and relevant departments shall offer detailed guidance as to the investigation, appraisal and assessment for damage to the ecological environment, formulation of restoration plan, post-restoration evaluation and other work s. The Supreme People's Court shall be responsible for the adjudgment of damage to ecological environment. The Supreme People's Procuratorate shall be responsible for the investigation of ecological damage. The Ministry of Justice shall be responsible for the administration of judicial appraisal of ecological damage. The Ministry of Finance shall be responsible for the management of compensation funds for ecological damage. The State Health and Family Planning Commission and the Ministry of Environmental Protection will conduct investigation and research on environmental health in various regions and strengthen the comprehensive monitoring and risk assessment of environment and health.

3. We strive to speed up the construction of technical system. The state shall establish and improve the technical standard system for the appraisal and assessment of ecological damage. The Ministry of Environmental Protection shall formulate and improve the framework and plan for technical standard system for appraisal and assessment of ecological damage. It shall, together with the relevant departments, issue or revise the special technical specifications for the appraisal and assessment of ecological damage and establish the data platform for serving the appraisal and assessment of ecological damage. The relevant departments shall conduct or strengthen the research in key technologies and standards based on baseline determination, causality judgement, damage quantification and other key links for damage identification.

4. We strive to offer necessary financial support. The funds necessary for the reform of the system of the compensation for ecological damage shall be allocated by the same level of financial departments.

5. We strive to encourage public participation. We shall continue to innovate the modes of public participation, invite experts and citizens, legal persons and other stakeholders to take part in restoring the damaged ecological environment or

consulting about the compensation. In addition, we shall disclose the information about the investigation, appraisal, compensation, judicial documents for damage to the ecological environment and the report on the restoration the damaged ecological environment to the public according to the law so as to defend the public's right to be informed.

