

## Article

# Corporate Environmental Compliance in China: From Social Responsibility to Soft Law

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**Abstract:** The environmental compliance of Chinese corporations is promoted in two main dimensions. On the one hand, based on external pressure from the legal system surrounding national environmental protection, corporations need to adjust their production and operations to comply with environmental law requirements. On the other hand, environmental compliance is based on the consensus of the whole society in regards to environmental protection. The members of corporations, due to their awakening to the idea of environmental protection, independently achieve the goal of environmental protection through ecological operation. The latter is mainly developed from the perspective of corporate social responsibility. However, environmental protection compliance based on corporate social responsibility faces problems, such as conflicts between multiple values, the misalignment of compliance subjects, and the lack of binding force. In fact, the perception, participation, and implementation of environmental protections by employees, communities, and other stakeholders has a significant impact on corporate environmental compliance. Soft law can bring together corporate employees and other stakeholders for the ethical consensus on environmental protection and achieve the purpose of environmental compliance.

**Keywords:** corporate environmental compliance; soft law; corporate social responsibility; value consensus; corporate governance; pluralism governance

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## 1. Introduction

### 1.1. A Brief History of China's Corporate Environmental Compliance System

Although China's legal system imposed environmental protection obligations on enterprises early on, the compliance system was created by corporations out of their environmental motivation after the year 2000. In the early days, China's environmental protection system mainly focused on auditing and monitoring of environmental protection targets at the national level in an attempt to force companies to assist the government in its environmental management tasks [1]. However, in the context of the progress of the state's governance philosophy and the increase in enterprises' environmental demands, the position of social forces in environmental protection has gradually increased, and the willingness of enterprises to achieve environmental protection goals on their own through industrial chain optimization and employee incentives has also gradually increased. It is no longer entirely up to the government to deal with the environmental problems, as diversified environmental compliance mechanisms consist of different organizations and individuals play more and more important role. This shift has occurred with the aim of enabling as many social bodies as possible to participate in the environmental governance.

The environmental compliance system of Chinese enterprises is being promoted in two main dimensions. On the one hand, due to the external pressure of the national legal system, enterprises have to adjust their operation processes to meet legal requirements concerning environmental protection. On the other hand, environmental compliance is

based on the consensus of the whole society in regards to environmental protection. Based on their environmental protection ideas, the members of the enterprise independently achieve the goal of environmental protection through ecological operation. At the same time, due to the market-oriented operation of enterprises, environmental protection can become an important way of attracting stakeholders with the same values. The pursuit of a corporation's own environmental image can even lead to excessive compliance [2]. The thoroughness of a corporation's practices in terms of environmental protection goals is under scrutiny from market participants. Commercial operation always faces a dilemma between the pursuit of economic interests and the adherence to environmental interests. It is also a competing concept that the environmental damage and benefits should be shared by the whole society, which is manifested in the confrontation and cooperation between subjects with different interests. Therefore, in order to obtain more economic benefits, market entities have to sacrifice environmental quality and formulate various environmental standards to define the boundary of environmental quality that may be consumed by economic and social activities. For this reason, people spontaneously formulated environmental protection standards, rules, and models to maintain a harmonious balance between economic development and environmental protection. The thoroughness of a corporation's environmental protection objectives is constantly being reviewed by market participants.

The development of China's environmental protection compliance system has undergone a complex evolutionary process. In coordination with the development of the legal regime for environmental protection, the early environmental compliance of Chinese companies was mainly at the first level of compliance, i.e., internal adjustments based on the external stimuli of national laws. Since the legal provisions regarding environmental protection were abstract and limited, environmental protection laws could not cover all aspects of production and business activities. Therefore, in terms of achieving environmental protection goals, compliance based on national laws is strengthened with the help of national coercive power, though its effect is limited and incomplete [3]. As environmental awareness increases at the societal level, stakeholders from supply chains, the community, customers, and shareholders are positively influencing corporate ownership of environmental compliance [4]. Compared to environmental compliance based on legal regulation, the autonomous compliance of companies in the development process is more efficient. Compared to environmental compliance based on laws and regulations, a corporation's independent compliance efficiency is higher, and it can also lead to better control of the environmental legal risks of the enterprise and prevent huge economic losses caused by environmental accidents. The internalization of environmental protection into the consciousness of enterprises and the transformation to some extent of environmental protection into a mode of cooperation between governments and enterprises not only solves the environmental protection problems of enterprises from the source, but also avoids the negative impact caused by punitive measures.

### *1.2. Environmental Compliance Based on Corporate Social Responsibility*

Environmental protection is a matter concerning all members of the society. The traditional view regards profit as the primary motivation of environmental compliance, and emphasizes that corporate social responsibility (CSR) does not guarantee positive action [5]. It has been documented that CSR covers many aspects, such as community welfare and social justice [6], as well as human rights protection. Environmental protection is only one of the areas of CSR. Chinese companies' social responsibility in terms of environmental protection has also undergone a process of development and has been influenced by various factors. In 2011, a study on the transparency of CSR reporting in China showed that 41% of the sample firms failed to provide any information regarding the 42 CSR activities that allow outside stakeholders to understand their CSR actions, and environmentally sensitive industries and state-owned enterprises were significantly more committed to environmental information disclosure [7]. A study on CSR relating to

environmental protection for listed Chinese petrochemical companies from 2013 to 2018 showed that a U-type relationship exists between CSR and corporate environmental protection investment. That is, the influence of corporate social responsibility on environmental protection investment has an “interval effect”, and corporate performance plays an intermediary role in the relationship between CSR and environmental protection investment. The higher the degree of marketization, the more investment in environmental protection and the more social responsibilities taken by corporations [8]. When the source of social responsibility changes from external pressure to internal motivation, the form and content of environmental compliance naturally changes.

The essence of CSR is the relationship between the business activities of the corporation and the interests of external stakeholders. The operation of an enterprise is in fact a social resource allocation process, and the objects of transactions, members of the enterprise, and even all members of society will be affected by the operation of the enterprise. Therefore, enterprise operation should assume the social obligation of using resources reasonably without harming public interests. CSR is an important part of the mechanism of corporate value activities as it establishes a “win-win” environmental relationship that realizes the social value of enterprises and maintains their economic value [9]. The frequent ecological disasters of the last century, such as global warming, the destruction of tropical rainforest, and other climatic events that have affected the world, have made the villagers of the global village deeply aware of the real need for environmental protection. The oil crisis, industrial pollution, and waste discharge associated with business operations have further increased the public’s concern about the environmental pollution caused by corporate production and operation activities. When external stakeholders such as suppliers, customers, employees, consumers, and competitors share the same environmental benefits, companies need to achieve their own development while shaping common values through social responsibility in order to balance their own interests with those of external stakeholders [10].

Therefore, in the context of CSR, the motivation for corporate environmental compliance stems from the endogenous dynamics of corporate operations. Corporate environmental compliance reflects the response of a corporation to the societal need for environmental protection. Through environmental compliance, companies can maintain a competitive advantage in the market in terms of the branding process, differentiation, and interactions with other related companies, such as upstream and downstream companies. More importantly, within a corporation, shareholders and employees together constitute the internal decision-making and implementation system for business operations. The implementation of environmental protection compliance affects the cohesiveness of the corporation.

### *1.3. The Environmental Perception and Action of Employees in Corporate Environmental Compliance*

According to the research results of industrial organizational psychology studies, employees are important stakeholders in corporate organizations. The environmental perception and actions of employees are not only important indicators related to the effectiveness of corporate compliance, but are also the driving forces of corporate environmental compliance.

On the one hand, as members of the enterprise organization, the perception and execution of employees’ social responsibility in terms of environmental protection are tests of the enterprise’s environmental compliance. Employees’ perceptions of environmental protection can be analyzed in three dimensions: their own, their neighborhood’s, and from the perspective of a third party [11]. For the employees themselves, recognition of the value of environmental protection is the basis for the effectiveness of the environmental compliance system. The attitudes of colleagues, supervisors, customers, and other surrounding entities regarding environmental protection also influence employees’ attitudes towards environmental compliance. At the same time, how the corporation as an organization treats other interested third parties will affect how corporate employees perceive environmental protection. Employee perception and action in terms of environmental protection are a consequence of the corporation’s promotion of environmental compliance. If companies

implement the need for environmental compliance in their organization and human resource management and strengthen employee awareness of their social responsibility to protect the environment through training, assessment, and reward, employees' perception and execution of behaviors that protect the environment will be effectively improved.

On the other hand, employees are the core of the corporation's operation, and their perception and execution of environmental protection behaviors is an important factor affecting the effectiveness of environmental compliance. Environmental compliance based on legal compliance, the surrounding environment, or the corporation's own environmental compliance ultimately needs the perception and implementation of employees' environmental protection behaviors. The corporation is in an intermediary position. In order to achieve environmental compliance goals, companies need to establish a compliance enforcement system that focuses on employee perception and execution of environmental protection behaviors in different areas, such as organizational goals, performance evaluation, employee training, and the work environment.

## **2. Challenges to Corporate Environmental Compliance: A Perspective Based on Internal Corporate Management**

### *2.1. Limitations of Corporate Environmental Compliance Based on CSR*

CSR plays a very important role in promoting corporate environmental compliance. On the one hand, within companies, the public morality of social responsibility drives shareholders, employees, and other subjects to consider environmental protection as an important value in social life. Since social responsibility affects corporate image and corporate reputation, promoting and achieving corporate responsibility, including environmental protection, is an integral part of corporate survival and growth. On the other hand, outside of the corporation, the community, the government, and other subjects related to the common behavior of environmental protection also affect the internal management of the corporation. In this process, companies can meet the government's requirements for environmental protection through environmental compliance, and they can also connect with like-minded parties by adopting environmental protection as a corporate value.

However, it is important to note that environmental compliance is based on the normal operation of a corporation. As a market entity, the pursuit of economic interests is a prerequisite for the survival and development of an enterprise. Therefore, economic responsibility is the primary social responsibility of enterprises, while CSR related to environmental protection is secondary. Environmental responsibility can promote but not replace economic responsibility, and the realization of environmental social responsibility must be built on the basis of economic responsibility. The value ranking of different corporate social responsibilities suggests that environmental protection as a moral proposition is not unique. One effective way of transforming value involves environmental compliance based on CSR, which facilitates improved operational performance. External evaluations of corporate environmental protection affect the value of a corporation's output. However, the diversity of sources of external evaluations makes it difficult to identify a stable evaluation and measurement metric based on corporate environmental compliance. For example, for investors, long-term institutional investors tend to be more interested in corporate social responsibility, while short-term institutional investors have no clear preference for corporate social responsibility.

Environmental compliance based on CSR faces many uncertainties, such as corporate leaders having low awareness of the need for environmental protection. In the modern Western corporate management system, the decisions of corporate officers are influenced by many external factors, such as shareholders, employees, creditors, and consumers. These factors limit the decisions that can be made by corporate officers. Therefore, it is difficult for the head of a corporation to exert decisive influence on the corporation's environmental compliance efforts because of their low awareness of environmental protection. Additionally, social responsibility to protect the environment, as a social consensus, can be affected by other members of society. However, Chinese companies have not yet fully

adopted the modern corporate model of operation. In the case of state-owned enterprises, administrative bureaucracy is generally used, and the assumption of social responsibility to protect the environment depends mainly on the environmental awareness of the corporation's leaders and governmental performance assessments. Most small and medium-sized private enterprises adopt the family business model and lack the ideas of modern business operation and environmental protection. As a result, they are often not very active in terms of their social responsibility to protect the environment.

More importantly, the public goods nature of environmental resources leads to a weak foundation for environmental compliance based on CSR. Environmental resources are public goods that belong to all human beings. Environmental resources are shared by human beings. The consequences of their consumption are often shared by all members of society, though the profits are often exclusive to those who consume them. If the consumption of environmental resources brings lucrative profits to the enterprise, the enterprise will insist on the self-interested behavior regardless of the environmental damages. The social value of environmental protection behaviors is a typical manifestation of the "tragedy of the commons" that occurs in collective action [12]. Environmental resources, as public goods, are difficult to allocate effectively in the market through market instruments alone. The incentive of market profits only leads to the frenzied plundering and consumption of environmental resources by enterprises. The public goods attribute of environmental resources leads to a more prominent contradiction between individual interests and group interests. Therefore, promoting corporate environmental compliance purely through CSR faces an insurmountable institutional challenge.

## *2.2. Internal Multi-Level Management in Corporate Environmental Compliance*

Even if companies internalize environmental compliance as an institutional goal of their companies, they still face great challenges due to the multi-layered structure of their organizations and the complex internal management content of their organizations, institutional systems, and corporate cultures. For enterprises, their composition cannot be viewed only from the perspective of atomic individuals. Corporate employees often exist in specific departments or teams, which in turn belong to specific organizations that belong to specific industry clusters. Therefore, the effectiveness of corporate environmental compliance also depends on numerous factors at each level, as well as the relationship between activities of different levels.

Teams belong to the intermediate level of the enterprise system, bridging the employee as an individual and the enterprise as a whole while providing good perspective on the impact of internal corporate management on environmental compliance. As an intermediate level, the corporate team is required to accomplish the environmental protection performance assigned by the corporation and becomes the actual target of government and legal regulation concerning corporate environmental compliance. Although the target of governmental regulation concerning the environment is the entire enterprise, the enterprise as a legal organization does not specifically perform environmental compliance operations, often leaving it to internal teams. The legal consequences of a team's environmental compliance behaviors are borne by the entire enterprise. At the same time, teams are made up of individual employees, and factors such as employees' identification with the value of environmental protection, the team's work atmosphere, and employees' abilities all have an impact on the team's behavior. There are differences in the performance of different teams on these issues. Some studies have shown that leader-member exchange partially relates to individual performance through individual empowerment, leadership climate partially relates to team performance through team empowerment, team empowerment moderates the relationship between individual empowerment and performance, and individual performance is positively related to team performance [13]. The complex relationships involved in team building will affect the effectiveness of a team's environmental protection compliance.

The multiple variables faced by teams in internal management are also very common. The multiple variables at different levels make it difficult to delineate the functions of each level of the organization in terms of environmental compliance, while also making it challenging to establish a uniform and effective environmental performance assessment standard. In CSR-based corporate environmental compliance, groups, as internal component modules, are hardly influenced by ambitious social responsibility policy goals. Groups lack both incentives and the motivation to perform in a socially responsible manner. Conversely, compared to such explicit assessment indicators as productivity and economic efficiency, the fulfillment of social responsibility hardly reflects the group's core competence in the enterprise and may instead affect the group's operational performance. Therefore, it can be difficult to achieve the purpose of environmental protection through CSR alone.

### *2.3. Collective Efficacy of Corporate Employees and Psychological Intervention*

From the perspective of individual employees, the role and function of corporate employees in the collective affects the effectiveness of corporate compliance. A single employee or a few employees alone cannot achieve the task of corporate environmental compliance. As individuals, employees need to work with other employees in their group. The achievement of corporate environmental compliance goals is still largely dependent on the environmental awareness and shared beliefs of the organization's members. Shared values gradually generate collective efficacy and have a positive effect on the actions of the organization's members.

It has been suggested that efficacy belief is a key mechanism for individual, organizational, and even national behavior change [14]. The behavioral choices of individuals or organizations are influenced by the strength of collective efficacy beliefs. The success of behavior in a group requires a foundation of beliefs that can be shared by the group. Through shared beliefs, group members strive to perform group tasks, use available resources efficiently, seek concerted action together, and maintain confidence when faced with difficulties [15]. Collective efficacy is derived from three main forms: (1) acquisitive experiences, i.e., the perceived success of group behavior so that future success can be expected; (2) vicarious experiences, i.e., the influence of other teams' success on the members of the group; and (3) social persuasion, i.e., encouragement from superiors or colleagues [16]. In the field of environmental compliance, collective efficacy beliefs can stimulate the group's ability to act collaboratively through belief sharing.

In addition, employee behavior is influenced by more diverse factors. Studies have shown that CSR has a positive impact on organizational commitment [17]. Developing employee autonomy at work is an important strategic implementation tool in strengthening team spirit and building good employee relations. The trust, care, and support of the organization influence the employee's sense of identity. When testing the impact of social responsibility on employees, one study found that the extent to which corporate employees identify with CSR depends on their perceptions and experiences of the sense of support from the corporation [18].

The response of companies to social responsibility varies in different corporate climates. In the instrumental ethical climate, companies pursuing self-interest at the expense of their employees can become the norm. At this point, employees would put their own interests first and would not care about the interests of others or the organization. Additionally, they certainly would not care about their social responsibility to protect the environment. In the caring ethical climate, employees put the interests of others and the organization first and positively perceive the organization's ethical and humanistic concerns. Mutual understanding and care expressed between members of the organization is conducive to communication and exchange between them. In this case, the employees' spontaneous sense of social responsibility to protect the environment can lead to positive results in terms of promoting environmental compliance. In the rule-based ethical climate, employees work under rules and regulations, and the organization treats each employee fairly in accordance with uniform norms and standards when making decisions. This will reduce employees'

perceptions of uncertainty about the organization and help increase employees' trust in the organization. Environmental performance reviews from the business organization will drive progress toward environmental compliance [19].

Under the concept of CSR, employees' motivation to protect the environment is conditional. On the one hand, the subjective motivation of an employee is an important foundation that needs to be understood in companies seeking to achieve their environmental protection goals, and their commitment to environmental protection responsibilities ultimately depends on employees fulfilling them as members of the corporation. On the other hand, in order to harness the motivation of employees regarding the realization of environmental goals, it is necessary to create an atmosphere of equal interaction based on rules. As an organizational structure, business operations are different from everyday social interactions in terms of object selection, freedom of will, and rules of interaction. As the core of the corporate organizational structure, the function of employees in terms of environmental protection depends mainly on the rules of organizational operation and nothing else. Therefore, we need to think further about how to translate the elements of the concept of CSR that contribute to the achievement of environmental protection goals into rules with practical impact.

### **3. A Soft Law-Based Environmental Compliance Regime**

#### *3.1. The Role of Soft Law in Corporate Governance*

Soft law was a controversial concept initially. Soft law is not law because it does not have the coercive power of the state, though it is often generally adhered to by relevant subjects, thus producing a binding effect. Some scholars have defined soft law, from the perspective of international law, as international norms that are deliberately non-binding in character but still of legal relevance and thus located in the twilight between law and politics [20]. Soft law can be expressed as a non-legally binding agreement or recommendation issued by a state, social organization, or other entity. Inherent in the very concept of soft law is the uncertainty and vagueness of the watershed between law and non-law, as well as the legal ambiguity of these instruments [21]. For many of these documents, although they do not have the coercive power of the state to guarantee their implementation, they have a normative effect based on some form of social constraint that obtains general compliance from members of the community. Thus, these normative documents are not law in the traditional sense, though they do affect people's behavior in a real way.

The soft law norms in environmental compliance have both similarities and uniqueness compared to legal norms in terms of formulation, implementation mechanisms, and relief channels. Both soft law norms and legal norms are formal norms designed by human beings and are formulated through certain procedures. Among them, normative documents formulated by official institutions are very similar to legal norms (especially laws and regulations) in terms of formulation subject and method. However, they are not as standard or normative as legal norms in terms of the formulation subject's authority, specific procedures, names, or specific expressions. Due to numerous differences and the large number of soft law norms, the contents of which are good and bad, they must be sorted and integrated. It is naive to blindly believe that environmental soft law will promote modern sustainable development. We should realize that it is meaningful to evaluate the rationality of any soft law [22].

Formally, the 1982 World Charter for Nature, the Environmental Perspective to the Year 2000, the 1992 Rio Declaration on Environment and Development, and the 2002 Johannesburg Declaration are soft laws. International law is an important form of soft law related to environmental protection. The principle of sovereignty established after World War II made states the subjects of international law. On the one hand, states are equal in matters of national sovereignty. However, on the other hand, they are also required to abide by certain basic rules in international affairs. This means that international law faces a dilemma. If international law is to exert greater influence, more countries need to join this

international order. However, because of the political, economic, and cultural differences among countries, as well as the sovereign independence of each country, this international law norm needs to seek common ground as much as possible in order to attract more countries to join. If the rules on the validity of international law are too strict, it will lead to a decrease in the number of signatory countries. This would not contribute toward increasing the influence of this international norm. On the one hand, the development of soft law in international environmental governance has benefited from the increased voice of emerging developing countries in international rule making, which has resulted in changes to national rules in the form of soft law. On the other hand, the process of globalization has contributed to the increased interdependence of countries [23]. Economic and technological interdependence has made increased consultation and the development of soft laws a common choice for consensus building.

As for corporate governance, there are also documents that go beyond mere intrinsic moral constraints that have the same nature as soft laws. These documents clearly go beyond the realm of private behavior and take on the substantive element of law that is power. In the course of producing sustainability reports (SR), in addition to their own rules, some social organizations evaluate and reward these reports, while some companies intend to dictate the subject matter and structure of SR [24]. Research views the environmental protection reports of corporations as de facto laws for businesses [25], which implies that environmental protection goals are achieved through special legal forms in corporate management activities. CSR reporting is not a substitute for soft law, and one important reason for this is the former's lack of credibility, which is very representative in China [26].

The function of soft law in corporate governance is manifested in two main ways. On the one hand, soft law achieves common goals in a form that is not legally binding, thereby aligning legal goals with corporate governance goals. Soft law concretizes legal goals through a form of internal consensus, making full use of the psychological constraints and incentives related to hard law. Based on trust in national laws or government policies, employees and other stakeholders are more likely to agree on corporate governance issues. On the other hand, soft law provides a normative mechanism for communication and consultation. By making soft laws for governance, enterprises reflect their trust in employees and other subjects, which is conducive to fully mobilizing their participation in corporate governance. Therefore, soft law, despite being considered aberrant and pathological, performs a positive function [27].

### *3.2. Corporate Governance and Environmental Compliance through Soft Law*

Most modern corporate governance is rule-based governance. It enables employees to develop trust in the corporation through clear management rules and performance appraisal criteria so that they can successfully complete their work tasks. The previous analysis shows that rule-based corporate governance is efficient, but there are unavoidable problems. One important challenge faced by rule-based governance is that mechanical performance appraisal struggles to cover all areas of work. The emphasis on employee compliance with corporate rules in fact treats employees as robots on a production line, ignoring the positive effects of employees identifying with corporate values.

Corporate governance through soft law can avoid these problems to a certain extent. Soft law is considered to have some specific advantages compared to the legal field. For example, soft law negotiation mechanisms provide legitimacy, expertise, and value recognition beyond norms and are an effective means for individuals to participate directly in the achievement of community goals [28]. In the area of environmental compliance, environmental compliance through soft law also provides a mechanism for negotiation. Consensus regarding environmental protection between the corporation and upstream and downstream companies, as well as the alignment of values concerning environmental protection among employees within the corporation, provide soft law an internal psychological constraint and an external moral constraint. These advantages are important complements to rules-based environmental compliance. Soft law can harness the autonomy



of corporate employees, communities, and other social actors to support environmental compliance, while abandon the weak binding force of CSR. Just as soft law plays an important role in international environmental governance [29], the role of soft law in corporate environmental governance should not be underestimated.

In 1993, the International Organization for Standardization (ISO) established the ISO/TC3207 Technical Committee on Environmental Management to develop a series of standards for environmental management. In 1996, the ISO 14000 environmental management system was officially promulgated by ISO, which requires organizations to control the factors affecting the environment during the whole process of product design, production, use, and recycling. Although this standard is voluntary, it has objectively promoted enterprises to pay attention to environmental issues and fulfill their responsibility to protect the environment. The development of a similar standard system provides a standard for environmental compliance for various enterprises in different countries. Third-party certification urges enterprises to continuously promote environmental compliance in order to meet the requirements of the standard and thus develop a broader international market.

### *3.3. Control of Employee Environmental Behavior under the Soft Law*

In fact, soft law is present in all aspects of enterprise management. In corporate management, soft law is guided by shared values and consistent action with the aim of realizing excellent corporate operation through the mobilization of internal work motivation, such as employees' sense of mission and responsibility, and external work motivation, such as recognition by others and social relationships.

In terms of internal management, soft law becomes a flexible evaluation and motivation tool that companies can use in addition to environmental protection performance evaluations. On the one hand, by strengthening internal communication and consultation, companies can incorporate employees' demands on environmental compliance and increase their sense of participation and initiative. A previous analysis of corporate organizational psychology showed that the community environment, group work climate, and employees' trust and involvement in organizational management affect employee contributions to environmental compliance. Behavioral control through soft law treats employees as thinking subjects, whereas traditional administrative orders and assignments treat employees as tools that are used to achieve a certain goal. On the other hand, soft law also presents a stronger binding force compared to the moral incentives related to the social responsibility of employees. Because soft law is based on the values and participation of employees, soft law incorporates employees' perceptions of environmental issues. At the same time, soft law in the area of environmental compliance is often based on national environmental laws and policies, and therefore receives the force of law. Soft law thus demonstrates a binding effect beyond mere moral responsibility.

More importantly, because of the natural proximity of soft law to hard law, there is a realistic guarantee that corporate employees will comply with soft laws related to environmental protection. From the internal logic of soft law operation, the effectiveness of soft law stems from the moral superiority of the rules themselves. The morality of soft law content may arise both from the fact that the norms themselves are an expression of social morality and from the consistency between soft law norms and the community members' own value identities. At the same time, the more important source of the effectiveness of soft law is the norm as a form. One of the important differences between soft law and ordinary moral codes is that soft law represents rule-based morality. For corporate employees, a social code of ethics certainly constrains their behavior; however, there is a difference between violating a code of ethics and violating a soft law norm as the latter behavior faces a greater psychological barrier. Soft law will be significantly more effective than ethical norms.

#### 4. Discussion: Soft Law Applications for Corporate Environmental Compliance

For a long time, China has attached great importance to the function of hard law in social governance and has advocated the use of hard law to solve serious environmental problems. During certain periods of time, in response to public demand for environmental protection, joint enforcement teams were formed by multiple departments to carry out special environmental pollution remediation, which was called “campaign-style law enforcement”. Abnormal environmental governance is a manifestation of hard law taken to extremes. Hard law also plays an important role in the normal rule of law environment. According to statistics from the Ministry of Ecology and Environmental Protection in 2021, China issued 132,800 environmental administrative penalty decisions nationwide under the Environmental Protection Law and related laws, with fines totaling CNY 11.687 billion, and an average fine of CNY 88,000 for each case [30]. The huge environmental fines illustrate the disciplinary function of hard law, but also show that violations of environmental hard law still exist. Relying on state coercion alone will not lead to environmental protection goals being achieved. Soft law, with corporate moral awareness and social restraint as core elements, has an enormous scope of action.

However, soft law differs from CSR. Many people view soft law as a form of social responsibility. Analysis of corporate environmental compliance shows that the two are different. Corporate environmental compliance through soft law differs from environmental compliance through CSR in a number of ways.

On the one hand, because the binding power of soft law stems from value recognition and concerted action, it exhibits better operational efficiency than social responsibility. In the course of business operations, national laws and regulations such as environmental protection laws, labor protection laws, and energy laws form the basis of corporate environmental compliance behaviors. However, all of these laws are hard laws, and violations of these laws will result in civil liability, administrative liability, and even criminal liability. Furthermore, compliance with these laws cannot be considered moral, as the laws only define the moral bottom line. As a result, corporate compliance with environmental protection laws as a value pursuit does not provide group cohesion based on a sense of moral nobility. Social responsibility provides moral goals that go beyond the standards required by law, though they are scattered similar to sand. The plurality of social responsibility in terms of value goals, ambiguity in terms of achievement criteria, long periods of time, and a lack of behavioral constraints make it difficult to effectively achieve the goal of environmental compliance.

On the other hand, environmental compliance based on CSR has a different understanding of employee subjectivity than environmental compliance based on soft law. The subject of CSR is the enterprise itself as an organization, not the enterprise employees who are members of the organization. Environmental compliance based on social responsibility, on the other hand, is a process driven by the corporation for its own developmental reasons. As with other corporate development goals, corporate employees become the means and tools to achieve the goal. Soft law is different. Since the binding force of soft law comes from the members’ common pursuit of the values they want to achieve, the adoption of soft law implies the members’ empirical participation in the process of soft law development. Therefore, environmental compliance based on soft law is the concerted action of corporate employees based on a common value goal. Different from the centuries-old concept of national centralism, China has led the construction of a community with a shared vision for mankind and a development path characterized by holistic thinking [31].

In addition, since soft law can be seen as a commitment to one’s own behavior, violation of soft law is subject to negative moral evaluation. More importantly, the proximity of soft law to hard law also has an impact on employee behavior. However, it is important to note that the advantages of soft law in corporate environmental compliance are not a substitute for the role played by CSR. We need to establish the role of CSR in corporate environmental compliance according to industry sectors, corporate cultures, and different management structures in order to better achieve the goal of environmental protection.

Soft law is rooted in the autonomy of the parties involved and is mainly implemented according to the principle of good faith or estoppel. Soft law can use a more flexible alternative dispute settlement mechanism rather than relying on the hard law enforced by the state [32].

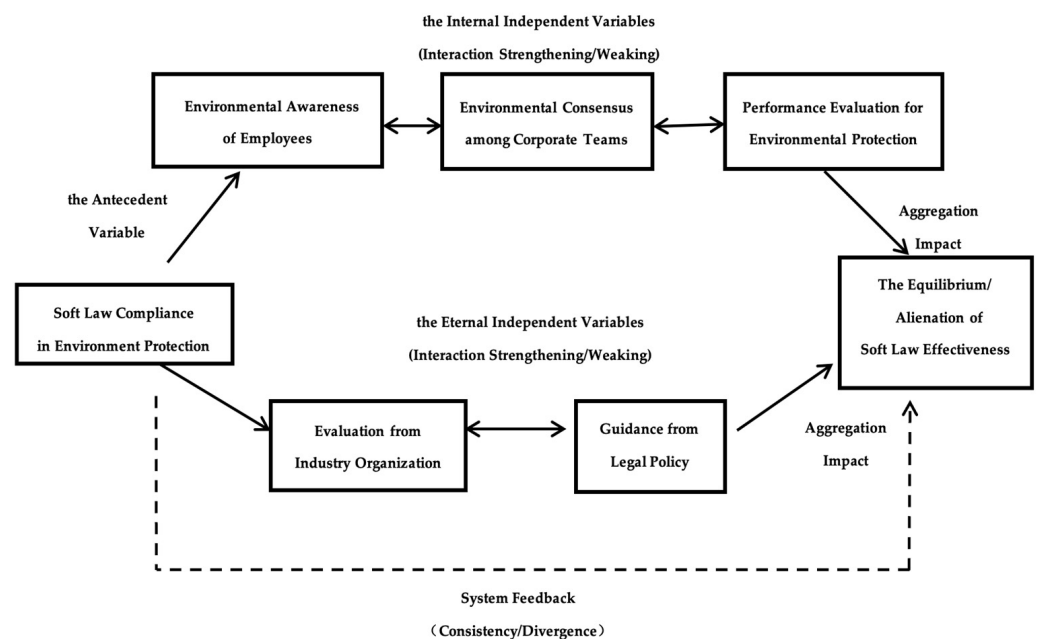
This also means that although there is no substantial difference between environmental protection based on CSR and environmental protection based on soft law in terms of content, soft law has a more obvious advantage due to the differences between the two in terms of intrinsic logic, binding effectiveness, and implementation effects. This provides two important insights into environmental protection in China. On the one hand, in order to achieve the goal of environmental protection, the state should not only focus on the law as a policy tool, but also focus on the institutional environment of soft law to achieve a balance between soft law and hard law. On the other hand, companies need to transform ethical norms into soft law in their daily operations and arouse the enthusiasm of employees, groups, and other subjects in environmental protection compliance.

China's environmental protection laws contain a large number of soft law norms. For example, Article 6(4) of the Environmental Protection Law of the PRC states that citizens should enhance their awareness of environmental protection, adopt a low-carbon and frugal lifestyle, and consciously fulfill their environmental protection obligations. Article 9 of the Energy Conservation Law of the PRC stipulates that any unit and individual should fulfill their energy conservation obligations in accordance with the law and have the right to report acts of energy waste. The news media should publicize energy conservation laws, regulations, and policies and play a supervisory role in informing public opinion. Although the above provisions set some obligations nominally, they do not provide for corresponding legal responsibility. Therefore, the above provisions are only soft laws related to advocacy. However, these soft laws have an impact on the operation of enterprises. Many industry associations have developed industry self-governance norms based on the advocacy norms stipulated in law. According to Table 1, social organizations such as the China Association of Environmental Protection Industry, the China Society for Environmental Sciences, and the All-China Environmental Protection Federation guide industries toward achieving environmental protection compliance goals by developing standards or technical specifications that do not have legal force.

The function of soft law in corporate environmental compliance can be analyzed in two dimensions: internal dependent variables and external dependent variables. Soft law practice in corporate environmental compliance is the antecedent variable, which is the starting point of logical derivation when analyzing soft law environmental compliance. Evaluation from industry organizations and legal policy guidance constitute the external dependent variables for the effectiveness of soft law, while the environmental awareness of employees, environmental consensus among corporate teams, and environmental performance evaluation are internal variables. The effectiveness of corporate environmental compliance is the dependent variable, which is affected by different permutations of the antecedent, external, and internal variables. Together they form a pluralistic system of governance based on soft law. We will follow this framework for the analysis in Figure 1.

**Table 1.** Self-governance of environmental organizations in China.

Organization Name	Soft Law Norms of the Environmental Organization
China Association of Environmental Protection Industry	Accelerate the high-quality development of the ecological and environmental protection industry, deepen the fight against pollution, and fully support the carbon peak and carbon neutral work action plan (2021–2030)
	Technical guidelines for ultra-low emission retrofitting of iron and steel enterprises
	Requirements for the operating service capability of environmental protection facility operators
	Rules for dynamic management of the credit evaluation of environmental protection enterprises (for trial implementation)
China Society for Environmental Sciences	Technical specification for the storage and exchange of big data for basin water environment management
	Technical guidance on regional environmental health risk classification (draft for comments)
	Technical specification for environmental health risk monitoring
	Guidelines for the recycling of industrial wastewater (draft for comments)
	Catalog of data resources from the big data platform for watershed environmental management
All-China Environmental Protection Federation	Carbon-neutral design guidelines for industrial parks
	Guidelines for the safe disposal of medical waste in small and medium-sized medical institutions involved in COVID-19 pandemic outbreaks
	Technical regulations for integrated monitoring and intelligent management of urban drainage systems



**Figure 1.** The multi-factor linkage mechanism of soft law in corporate environmental governance.

According to Figure 1, the path to balancing soft law compliance in relation to environment protection should involve re-assessing the environmental awareness of employees, environmental consensus among corporate teams, performance evaluation for environ-

mental protection, evaluation from industry organizations, and guidance from legal policy so that the confrontation between internal and external factors in the multi-factor linkage mechanism is weakened, thus maximizing the effectiveness of the limited combined resources. When these factors are alienated and lead to an aggregation of negative effects, a state of confrontation between internal factors and external factors is formed.

Based on value consensus concerning environmental protection, soft law plays an important role in environmental compliance. Employee awareness, team consensus, and performance evaluation influence the internal operations of corporations. When employees are more aware of environmental protection in a rules-based team atmosphere, performance evaluation of environmental protection can accurately present the actual situation. They factors can be linked with each other to improve the effectiveness of environmental compliance. At the same time, the assessment of environmental compliance by various industry organizations and policy guidance on issues such as industrial policy constitute the independent variables of environmental compliance. If the government's industrial policy can effectively promote the influence of business decisions and the environmental assessment of industry organizations can influence the industry, then they can also exert influence on the environmental compliance behaviors of corporations in the form of soft law.

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## References

1. Anwar, H.A.; Stover, J. Environmental audit experiences in China. In Proceedings of the Air and Waste 92nd Annual Meeting and Exhibition, St. Louis, MO, USA, 1 July 1999.
2. Downing, P.B.; Kimball, J.N. Enforcing pollution control laws in the United States. *Policy Stud. J.* **1983**, *11*, 55–65. [[CrossRef](#)]
3. Xu, Z.; Dai, Y.; Liu, W. Does environmental audit help to improve water quality? Evidence from the China National Environmental Monitoring Centre. *Sci. Total Environ.* **2022**, *823*, 153485. [[CrossRef](#)]
4. Zhang, B.; Bi, J.; Yuan, Z.; Ge, J.; Liu, B.; Bu, M. Why do firms engage in environmental management? An empirical study in China. *J. Clean. Prod.* **2008**, *16*, 1036–1045. [[CrossRef](#)]
5. Margolis, J.D.; Walsh, J.P. Misery loves companies: Rethinking social initiatives by business. *Admin. Sci. Quart.* **2003**, *48*, 268–305. [[CrossRef](#)]
6. Crowther, D. *Introduction: Perspectives on corporate social responsibility*, In *Perspectives on Corporate Social Responsibility*; Crowther, D., Bacchus, L.R., Eds.; Ashgate: Aldershot, UK, 2004.
7. Kuo, L.; Yeh, C.; Yu, H. Disclosure of corporate social responsibility and environmental management: Evidence from China. *Corp. Soc. Responsib. Environ. Mgmt.* **2011**, *19*, 273–287. [[CrossRef](#)]
8. Wang, G.; Liu, Y. On the influence of social responsibility of petrochemical corporations on environmental protection investment. *J. Chang. Univ. (Soc. Sci. Edn.)* **2021**, *22*, 59–65.
9. Liu, G.; Sun, Y. Analysis of the environmental effects of the implementation of corporate social responsibility in Japan. *Contemp. Econ. Japan* **2016**, *6*, 80–91.
10. Porter, M.E.; Kramer, M.R. Creating shared value. *Harv. Bus. Rev.* **2011**, *89*, 62–77.
11. Rupp, D.E. An employee-centered model of organizational justice and social responsibility. *Organ. Psychol. Rev.* **2011**, *1*, 72–94.
12. Hardin, G. The tragedy of the commons. In *Green Planet Blues: Critical Perspectives on Global Environmental Politics*, 6th ed.; Geoffrey, D., Dabelko, K.C., Eds.; Routledge: New York, NY, USA, 2019.

13. Chen, G.; Kirkman, B.L.; Kanfer, R.; Allen, D. A multilevel study of leadership, empowerment, and performance in teams. *J. Appl. Psychol.* **2007**, *92*, 331–346. [CrossRef]
14. Bandura, A. *Self-Efficacy: The Exercise of Control*; Freeman: New York, NY, USA, 1997.
15. Bandura, A. Exercise of human agency through collective efficacy. *Curr. Dir. Psychol. Sci.* **2000**, *9*, 75–78. [CrossRef]
16. Wang, P.; Gao, F.Q.; Sui, M.R. Collective efficacy: A subjectivity perspective for group research. *Adv. Psychol. Sci.* **2004**, *12*, 916–923.
17. Gupta, M. Corporate social responsibility, employee–company identification, and organizational commitment: Mediation by employee engagement. *Curr. Psychol.* **2017**, *36*, 101–109. [CrossRef]
18. Ditlev-Simonsen, C.D. The relationship between Norwegian and Swedish employees' perception of corporate social responsibility and affective commitment. *Bus. Soc.* **2015**, *54*, 229–253. [CrossRef]
19. Yan, A.M.; Shan, L.; Xu, T. A Study on the mechanism of the role of employee perceived corporate social responsibility on advocacy behavior. *Soft Sci.* **2017**, *31*, 76–88.
20. Dupuy, P.-M. Soft law and the international law of the environment. *Mich. J. Int. Law* **1991**, *12*, 420–435.
21. Ingelse, C. Soft Law. *Polish Y.B. Int. Law* **1993**, *20*, 77.
22. Bosselman, F. The choice of customary law. In *The Role of Customary Law in Sustainable Development*; Orebeck, P., Bosselman, F., Bjarup, J., Callies, D., Chanock, M., Eds.; Cambridge University Press: New York, NY, USA, 2005; p. 435.
23. Ahmed, A.; Mustofa, J. Role of soft law in environmental protection: An overview. *Glob. J. Pol. Law Res.* **2016**, *4*, 1–18.
24. Bebbington, J.; Kirk, E.A.; Larrinaga, C. The production of normativity: A comparison of reporting regimes in Spain and the UK. *Account. Organ. Soc.* **2012**, *37*, 78–94. [CrossRef]
25. Larrinaga, C.; Bebbington, J. The pre-history of sustainability reporting: A constructivist reading. *Account. Audit. Account. J.* **2021**, *34*, 131–150. [CrossRef]
26. Wei, G. A brief introduction to road to transparency: The status, trends and challenges of corporate social responsibility report. *Assn. Mgt. Stud.* **2010**, *12*, 56–58.
27. Handl, G.F.; Reisman, W.M.; Simma, B.; Dupuy, P.M.; Chinkin, C. A hard look at soft law. *Proc. Annu. Meet. (Am. Soc. Int. Law)* **1988**, *82*, 371–395.
28. Kirton, J.; Michael, J. *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance*, 1st ed.; Ashgate: London, UK, 2004.
29. Segger, M.C.C.; Gehring, M.W. The WTO and precaution: Sustainable development implications of the WTO asbestos dispute. *J. Environ. Law* **2003**, *15*, 289–321. [CrossRef]
30. Ministry of Ecology and Environmental Protection. The Ministry of Ecology and Environment Reported on the Environmental Administrative Penalty Cases from January to December 2021 and the Implementation of Supporting Measures of the Environmental Protection Law. Available online: [https://www.mee.gov.cn/ywtdt/xwfb/202201/t20220122\\_967946.shtml](https://www.mee.gov.cn/ywtdt/xwfb/202201/t20220122_967946.shtml) (accessed on 7 September 2022).
31. Shaffer, G.; Gao, H. A new Chinese economic order? *J. Int. Econ. Law* **2020**, *23*, 607–635. [CrossRef]
32. Dasser, F. *“Soft Law” in International Commercial Arbitration*; Brill Nijhoff: Leiden, The Netherlands, 2021; pp. 29–30.

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