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# *Responses of the Ecological and Environmental Legal System to Climate Policy under the "Dual Carbon" Goals*

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***Abstract.*** Against the backdrop of the in-depth transformation of global climate governance and the full advancement of China's "Dual Carbon" strategy, climate policy is accelerating its shift from flexible guidance to rigid constraints, exerting sustained structural impacts on the ecological and environmental legal system. There exists a threefold relationship between climate policy and environmental law: homologous goals, complementary functions, and heterogeneous logic, which gives rise to inherent tensions in three dimensions: legitimacy, rights protection, and systemic coherence. This paper argues that the response of environmental law to climate policy should not remain at the one-way transplantation of policy legalization. Instead, it should take the "holistic systemic view" as the methodological guidance, establish total carbon emission control, climate risk prevention, and just transition as the normative core, and realize the leap from fragmented responses to systemic integration. The *Ecological and Environmental Code*, adopted in March 2026, dedicates a specific part to "Green and Low-Carbon Development", incorporating core systems such as total carbon emission control, carbon assessment, and carbon emission trading into the basic environmental law, marking a critical step toward systemic integration. On this basis, it is still necessary to formulate a specialized *Climate Change Response Law* to form a collaborative framework of "basic law + specialized law", so as to provide a logically consistent normative scheme for the full legalization of the carbon neutrality goal.

***Keywords:*** Dual Carbon goals, environmental law, climate policy, normative integration, Ecological and Environmental Code

## 1. Introduction

Climate change has transformed from a future risk into a present crisis, and global climate governance has thus entered the era of "nationally determined contributions" led by the *Paris Agreement*. China has put forward the "Dual Carbon" goals of peaking carbon dioxide emissions before 2030 and achieving carbon neutrality before 2060, and has incorporated them into the overall layout of ecological civilization construction, marking that climate governance has shifted from policy experimentation to comprehensive institutionalization. How can the environmental law system, which traditionally focuses on pollution prevention and ecological protection, undertake the climate governance tasks characterized by intergenerational, global and high uncertainty? What

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normative structure should be sought between the flexibility of climate policy and the stability of environmental law? These have become the core issues for the ecological and environmental legal system to respond to climate policy.

Existing studies have demonstrated the necessity of formulating a "climate change response law" from the perspective of legislative theory [1], discussed the legal attribute of carbon emission trading from the level of interpretive theory [2], and proposed the arrangement of climate norms from the perspective of environmental code compilation [3]. In March 2026, the *Ecological and Environmental Code* was deliberated and adopted by the National People's Congress, establishing green and low-carbon development as one of the basic value dimensions of the code, and providing a legal basis for the integration of climate systems into the ecological and environmental legal system. However, most studies still follow the one-way approach of "incorporating policies into law", with insufficient research on the logical tension between climate policy and environmental law. There is still a lack of normative analysis combined with new legislation on how to realize systemic responses through the opportunity of codification. Starting from the analysis of the relationship between climate policy and the ecological and environmental legal system, this paper proposes a normative reconstruction path with total carbon emission control and risk prevention as the core, and discusses possible schemes for forming a collaborative framework of "basic law + specialized law" in combination with the institutional arrangements of the *Ecological and Environmental Code*, so as to provide theoretical support for the legalization of the "climate change response" policy.

## 2. The divergence and integration of climate policy and ecological and environmental law

To understand the relationship between climate policy and ecological and environmental law, we cannot stay at the formal judgment that "climate law is a branch of environmental law", but must dialectically understand it from the levels of goals, functions, and legislative logic.

### 2.1. Homology of goals and asymmetry of tasks

Both climate policy and environmental law take "protecting the natural foundation on which human beings survive" as their ultimate goal, but their tasks have different focuses. Environmental law took shape in the era of industrial pollution, and its core paradigm is to solve "public nuisance-type" environmental problems with clear sources of harm, victims, and causal chains through means such as concentration control, total amount control, and pollution discharge permits. Climate policy, by contrast, addresses greenhouse gas emissions. The emission activities themselves are mostly socially acceptable behaviors, with damages scattered globally and long time lags, and the causal relationship is scientifically constructed rather than perceptible in daily life. This determines that traditional environmental regulatory tools dominated by command-and-control cannot be directly transferred to the climate field. The allocation of rights and obligations for climate change needs to transcend the traditional tort law thinking and enter the dimension of intergenerational equity and global justice [4].

### 2.2. Functional complementarity between policy flexibility and legal stability

Climate policy is characterized by the dynamic adjustment of "goals and pathways". Nationally determined contributions are updated every five years, the total quota of the carbon market can be adjusted moderately with the economic situation, and technical routes evolve with innovation. Such

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flexibility is a rational choice to cope with scientific uncertainty and political games. Environmental law, on the other hand, pursues the clarity, predictability, and equal application of rules, and imposes legitimacy constraints on administrative discretion. The two are not opposites. On the one hand, law transforms the goals of carbon peaking and carbon neutrality into legal obligations, stabilizes market expectations, and provides credibility for long-term policy commitments. On the other hand, policies authorize administrative organs to adjust the total quota and include new industries within a certain scope, which is itself a normative device designed by law and injects dynamic adaptability into law. The response of environmental law to carbon peaking and carbon neutrality must strike a balance between "framework legislation" and "enabling legislation" [5].

### 2.3. Logical heterogeneity: from "damage prevention and control" to "risk discipline"

Environmental law is built on the linear logic of "damage prevention and control": pollution acts cause environmental damage, and the law sets emission limits and holds liabilities. Climate governance, however, follows the non-linear logic of "risk discipline": there is no one-to-one causal chain between the rise in greenhouse gas concentrations and a specific extreme weather event, but model simulations by the scientific community show that the overall risk of inaction will be unacceptable. The goal of "well below 2°C and pursuing efforts to limit the temperature increase to 1.5°C" established by the *Paris Agreement* is essentially a political decision based on the precautionary principle, rather than a precise result of damage calculation. In climate change litigation, the judgment of the state's duty of care has shifted from "certainty of damage" to "irreversibility of risk" [6]. This shift challenges the institutional structure of environmental law premised on deterministic damage, and requires the introduction of climate risk prevention as an independent legal obligation.

## 3. Inherent tensions in the ecological and environmental legal system's response to climate policy

The establishment of the "Dual Carbon" goals has accelerated the process of legalizing climate policy. However, directly endowing policy goals with mandatory force may trigger three layers of tension.

First is the legitimacy of transforming policies into law. The transformation of policies into law must undergo constitutional and legality review. Total carbon emission control involves deep intervention in the production and operation autonomy of local governments and key enterprises. Without explicit legal authorization, relying solely on administrative normative documents to set quotas, implement collection and penalties will face the problem of insufficient authority for administrative sanctions. Although the current administration of carbon emission trading has been elevated to the level of administrative regulations, key matters such as the procedure for determining the total quota, the carbon market stabilization mechanism, and cross-provincial trading rules still leave considerable room for administrative discretion, making it difficult for judicial organs to conduct effective review [7].

Second is the hidden concern of rights protection. Climate policy inherently has a tendency of "efficiency first", aiming to achieve maximum emission reduction at the minimum cost. However, carbon price transmission may amplify energy poverty. Without institutional guarantees for the reemployment of workers in transitioning high-carbon industries, the "just transition" dimension of climate governance will be unrealized. Environmental law should bear the function of rights protection. If it only serves as an endorsement for policies without fair hearing procedures for the

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allocation of carbon emission quotas, public participation in climate impact assessment, and normative design of compensation mechanisms for transition regions, it may exacerbate social inequality. Therefore, the construction of China's climate change legal framework cannot be separated from the foundation of environmental justice, and must coordinate mitigation, adaptation, and loss and damage.

Third is the dilemma of systemic coherence. The promulgation and implementation of the *Ecological and Environmental Code* has formed a dual legal source pattern for China's ecological and environmental legal relationship system: "the code leads and separate laws elaborate". Pollution prevention and control law, natural resources law, ecological protection law, etc., each have independent purposes. If climate goals are "mounted" on various separate laws in a fragmented manner, they may bring short-term benefits but are prone to normative conflicts. For example, the full guaranteed purchase system for renewable energy and carbon emission trading may cause distortion of carbon price signals when incentives are superimposed. The carbon emission trading system overlaps with mechanisms such as energy use right trading and green certificate trading, which urgently needs to be sorted out from a systemic perspective.

## 4. Normative integration of law for "climate change response"

### 4.1. Code Integration: the systemic arrangement of the "Green and Low-Carbon Development" part in the *Ecological and Environmental Code*

The *Ecological and Environmental Code*, adopted in March 2026, adopts the legislative model of "moderate codification". It dedicates a specific part to "Green and Low-Carbon Development", integrating systems such as total carbon emission control, carbon assessment, carbon emission trading, carbon sink protection, and just transition into a unified whole, forming a normative structure of "general provisions establishing goals and principles – separate parts allocating institutional tools – legal liabilities ensuring implementation". The code explicitly stipulates that the state implements a total carbon emission control system, authorizes the State Council to formulate action plans for carbon peaking, and establishes a national carbon emission trading market. Meanwhile, it requires that new, reconstructed, and expanded high-carbon emission projects shall undergo carbon assessment, and incorporates climate risk assessment into planning and construction procedures. In addition, the code makes principled provisions on the legal attribute of carbon emission quotas, defining them as compound rights that combine public law obligations and property value, which provides a basis for transaction security and financial supervision in the carbon market. This legislative design has endowed the core systems of climate change response with rigid support at the level of basic environmental law, and to a certain extent alleviated the aforementioned slack legitimacy control and systemic coherence dilemma.

However, codification does not negate specialized legislation. The cross-domain and international nature of climate change issues determines that it is still necessary to formulate a *Climate Change Response Law* as a specialized basic law, focusing on regulating highly external matters such as the procedure for formulating national carbon emission goals, supervision of the carbon emission trading market, domestic transformation of international climate cooperation, and special rules for climate litigation. Meanwhile, energy law, industry promotion law, transportation law, etc., need to be revised in a climate-friendly "greening" manner. In this way, with the *Ecological and Environmental Code* and the *Climate Change Response Law* as dual basic laws, supplemented by climate clauses in various separate laws, a three-tier pyramid structure of "code

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leadership – specialized law support – separate law coordination" will be formed, which can not only avoid systemic conflicts but also reserve space for policy innovation [3].

### 4.2. Normative Reconstruction: constructing the institutional core of total carbon emission control and climate risk prevention

The core of legalizing climate policy is to transform political commitments into legally binding obligations. Among them, "total carbon emission control" and "climate risk prevention" should become the two pillars.

The total carbon emission control system is the legal hub of the "Dual Carbon" goals. The law should set the long-term carbon neutrality goal, authorize the State Council to formulate five-year carbon budgets in phases, and implement them after approval by the Standing Committee of the National People's Congress. The carbon budget shall be decomposed downward into total quotas for localities and key industries, and establish a three-level total amount control system of "state – locality – emitting entities". Compared with the current carbon market based on intensity reduction, the hard constraint of total amount control will reshape the scarcity of carbon quotas, so that carbon prices can reflect the real marginal cost of emission reduction. The legal regulation of carbon emission trading must transform from "intensity-based" to "total amount-based", and improve quota auction, borrowing and storage, and price stabilization mechanisms [8].

The climate risk prevention system points to the integration of adaptation and mitigation. The law should impose on the government the obligation to formulate and regularly update the *National Climate Risk Assessment Report*, and incorporate climate risks into territorial spatial planning, infrastructure standards, and financial prudential supervision. Major construction projects need to pass climate stress tests to prove that physical risks and transition risks are controllable under the 2°C warming scenario. Climate risk prevention can serve as an important normative support for the practice of environmental rights in climate change litigation [9]. Establishing the precautionary duty not only strengthens the state's protection obligation, but also provides a basis for claims in potential climate litigation.

## 5. Improvement of the ecological and environmental legal system under the "Dual Carbon" goals

Under the "dual legal sources" model, accelerating the revision of separate laws such as the *Renewable Energy Law* and the *Electric Power Law* on the basis of the *Ecological and Environmental Code*, and speeding up the formulation of the climate change response law, are the keys for the ecological and environmental legal system to respond to climate change policies.

First, deepen the legal relations of the carbon market. The definition of the right attribute of carbon emission quotas in the *Ecological and Environmental Code* provides a higher-level legal basis for solving basic transaction problems. On this basis, the future *Climate Change Response Law* and relevant lower-level laws should further clarify the rules for the acquisition, transfer, guarantee, and offset of quotas, and construct a regulatory framework for carbon financial derivatives. The positioning of carbon emission quotas as compound property rights requires equal emphasis on public law constraints and private law protection [2]. After the implementation of the code, it is necessary to guard against the speculative risks caused by excessive financialization of carbon quotas, and the law must establish stabilization mechanisms such as price circuit breakers and position limits.

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Second, promote the institutional implementation of green transition. The code establishes the principle of just transition in the "Green and Low-Carbon Development" part, requiring the state to establish an impact assessment mechanism and special fund for the transition of high-carbon industries, and support the reemployment of affected workers and community revitalization. This marks that just transition has moved from a political declaration to a legal obligation. The principle of "common but differentiated responsibilities" is reflected domestically in that high-carbon regions and vulnerable groups should receive reasonable compensation [9]. The sources, distribution, and supervision procedures of the transition fund should be detailed through specialized legislation, and incorporated into the "Dual Carbon" responsibility assessment of local governments to prevent new social injustice caused by climate governance.

Third, improve the normative channel for climate change litigation. Global climate change litigation is growing rapidly, and new types of cases such as disputes over carbon quota collection have also emerged in China. Environmental law should shift from end-of-pipe tort relief to risk-prevention-oriented justice, establish a carbon public interest litigation mechanism, and explore rules for alleviating the burden of proof for causal relationships [10]. The principled provisions on environmental rights and climate public interest litigation in the *Ecological and Environmental Code* provide a preliminary basis for procuratorial organs and social organizations to initiate carbon public interest litigation. The future *Climate Change Response Law* should dedicate a special chapter to stipulating the jurisdiction, plaintiff qualification, burden of proof, and liability bearing methods of climate litigation, forming litigation procedures that connect with the code.

## 6. Conclusion

Climate policy exerts a profound impact on the environmental law system. Sticking to the traditional pollution prevention paradigm can hardly accommodate the normative requirements unique to climate governance, such as risk prevention, total amount control, and just transition. Fully legalizing policy goals, however, may impair the stability and rights protection function of law. The adoption of the *Ecological and Environmental Code* in 2026 marks that China's environmental law has initially completed the systemic incorporation of climate policy through the "Green and Low-Carbon Development" part, and systems such as total carbon emission control, carbon assessment, and carbon market have thus gained a solid foundation at the basic law level. Nevertheless, the systemic integration of the code is not the end point. It is still necessary to promote the formulation of the *Climate Change Response Law* on the basis of code integration, and form a collaborative framework of "basic law + specialized law", so that environmental law can not only effectively support the realization of the carbon neutrality goal, but also contribute localized normative samples to the global process of climate rule of law.

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