

Study on Negligent Crime of Polluter's Supervision in the Third-Party Treatment of Environmental Contamination

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Abstract: *The third-party treatment of environmental contamination leads to the separation of polluter and tackle polluter and even forms a complex structure of polluter, indirect tackle polluter and direct tackle polluter. In combination with practice, indirect tackle polluter collected waste given by polluter who made waste and then handed over to the direct tackle polluter for discharge, dumping and disposal of polluting substances. However, the judicial adjudication only punished indirect tackle polluter and direct tackle polluter for the criminal responsibility of environmental contamination. The polluter was not punished. There are mainly reasons for this issue. First, the third-party of environmental contamination has produced a complex structure of polluter, indirect tackle polluter and direct tackle polluter. Second, Criminal Law of the People's Republic of China lacks legal norms for polluter's supervision. Third, judicial adjudication is also difficult to prove the complex causality between supervisory negligence and environmental contamination. Regarding this issue, based on Objective Imputation Theory, polluter does not carefully perform the supervision obligation of pollutant, increasing in pollution risk, resulting environmental contamination. The negligent crime of polluter's supervision in the third-party should be punished as the crime of environmental contamination.*

Keywords: *Polluter's Supervision, Negligent Crime, Crime of Environmental Contamination, Objective Imputation Theory*

1. Introduction

At present, the third-party treatment of environmental contamination is the common pollution control method in the world. It has broken traditional model of "who pollutes and who governs" pollution governance and transformed into a way called "polluter pays and professional governance", so as to realize the separation of the main body of pollution manufacturing and pollution control. By signing a contract on environmental contamination, the polluter shall pay the cost to tackle polluter who provides the pollution control service. The tackle polluter shall ensure that it meets the emission reduction requirements agreed in the contract and bear the corresponding legal risks or responsibilities [1]. A series of policy documents actively promote the third-party treatment of environmental contamination and improve the environmental governance system. However, through the third-party treatment of environmental contamination supported by the policies, the polluter evade the criminal responsibilities of pollution control by paying the contract remuneration. While the Criminal Law of the People's Republic of China requires joint intent to commit the same joint crime, polluter usually have no joint intention to pollute the environment with indirect tackle polluter or direct tackle polluter. It leads to a theoretical dispute that polluter should or should not bear the criminal responsibility for polluting the environment in the third-party of environmental contamination. Based on Objective Imputation Theory, polluter should also bear criminal supervision responsibility for environmental contamination if it fail to perform their obligation of waste supervision carefully in order to establish a market operation mechanism in which polluter, indirect tackle polluter and direct tackle polluter urge each other and take joint responsibilities.

2. The Realistic Dilemmas of Negligent Crime of Polluter's Supervision in the Third-Party Treatment of Environmental Contamination

2.1. Systematic Problem: Separation of Polluter from Indirect Tackle Polluter or Direct Tackle Polluter

In judicatory practice, the third-party treatment of environmental contamination has formed a complex structure of polluter, indirect tackle polluter and direct tackle polluter. After acquiring waste made by polluter, indirect tackle polluter subcontracts waste to direct tackle polluter who are not qualified to tackle them. Direct tackle polluter implements discharge, dumping and disposal acts, resulting in harmful result of environmental contamination. Compared with "who pollutes and who governs", the third-party treatment of environmental contamination makes the causal relationship between polluter's supervisory negligence and environmental contamination complicated. Simultaneously, separation of polluter from indirect tackle polluter and direct tackle polluter redistributes the pollution control obligation. Although waste is handed over to indirect tackle polluter and direct tackle polluter, polluter still bears the supervision obligation to supervise the waste. As for indirect tackle polluter, it shall complete the legal disposal of the waste and inform the polluter of the transportation, utilization and disposal of the waste according to the requirements of the contract. If it's not a breach of contract, the indirect tackle polluter allows the direct tackle polluter to participate in the third-party treatment of environmental contamination by discharge, dumping and disposing pollutant. In addition, due to separation of polluter from indirect tackle polluter and direct tackle polluter, the breach of contract by the indirect tackle polluter may cause polluter to be subject to criminal punishment for polluting the environment. Take an example, an aluminum who are as polluter give waste to B company who are as direct tackle polluter. Aluminum company and B company signed a contract. Because of the contract, B company is responsible for disposing pollutant given by an aluminum company in return an aluminum company pay remuneration. When the contract has not expired, B company refused to continue to perform the contract. Aluminum company refused to bring back 1,736.05 tons of overhaul waste and let them be stacked nearby hillside. Prosecutors accused the aluminum company of crime of environmental contamination.

2.2. Defects of the Legal Norms: Supervision Obligation of Different Polluter

The Criminal Law of the People's Republic of China lacks the legal norms of waste, which makes the judicial judgment easily ignore the polluter's supervision obligation in the third-party treatment of environmental contamination. Consider the following two cases:

Case 1, November 2, 2017, a river appeared serious pollution. By investigation, Yao Mou, Xia Mou and other 4 people collected toxic and harmful solid waste from 5 businesses since 2015. Yao Mou and others know that Xu Mou does not have the qualifications for solid waste disposal. They still subcontracted solid waste to Xu Mou. More than 2,739 tons of toxic and harmful solid waste which were illegally disposed by Xu Mou organized Fang Mou, Duan Mou and other three people into a river, accumulating more than 5.6 million yuan of various losses. In the end, the court decided Yao and other 8 people for the crime of environmental contamination and the 5 polluter were jointly liable for tort liability.

Case 2: From June 2020 to September 2022, defendant Lu Mou and Wang Mou jointly operated a chemical plant. The two defendants repeatedly provided the waste to the defendant Nie Mou who had no hazardous waste business license. Defendant Nie Mou resold the hazardous waste to defendant Xu Mou. After identification, the waste weighing 574.60 tons were dumped in a mountain. Finally, the court punished Lu and others for the crime of environment contamination.

In Case 1, 5 solid waste polluter failed to fulfill their obligation of supervision to verify the qualification, technical ability and disposal certification. In Case 2, the polluter has a high obligation of supervision. Combining with judicial interpretation of the crime of environmental contamination, the hazardous polluter knows that direct tackle polluter or indirect tackle polluter do not have business licenses and provides them with hazardous waste. If acts of direct tackle polluter or indirect tackle polluter cause serious environmental contamination, polluter shall be punished as joint crimes of the crime of environment contamination.

2.3. Justification Difficulty: Complex Causality between Supervisory Negligence and Environmental Contamination

There are three main reasons in the causality between supervisory negligence and environmental contamination. First, Cumulative Theory avoids causality between supervisory negligence and environmental contamination. German environmental Criminal Law focuses on Cumulative Theory, which originates from the crime of water pollution in the German Criminal Code. The crime of water pollution can be summarized as: (1) those who pollute the water area or deteriorate the water quality without permission shall be sentenced to less than 5 years of free punishment or fine; (2) those who attempt to commit this crime shall also be punished; (3) Whoever commits this crime through negligence shall be sentenced to a free penalty of not more than 3 years or a fine [2]. Also, there is a classic example presented by Frank Saliger [3] surrounding the crime of water pollution. A, B, and C dump household waste into different parts of the lake and the amount of waste each throws away is below the slight limit. But the total amount of waste meets the criteria for the crime of water pollution. In order to achieve water protection, Cumulative Theory do not require a causal relationship between the each act and the harmful result of environmental contamination, so legislators ascribe the results of water pollution to act of A, B or C. By criminalizing act to avoid causation, Cumulative Theory cannot deal with the causality between supervisory negligence and the harm result of environmental contamination, so that the legitimate punishment basis of the Crime of environmental contamination is missing [4]. Second, judicial adjudication has ignored polluter' supervisory negligence indirectly leading to the result of environmental contamination, taking "Qingtian company environmental contamination case" as an example. On August 1, 2016, A environmental service company signed a commissioning operation agreement with Qingtian company. And A environmental service company was responsible for the sewage treatment of the electroplating park by using the sewage facilities of the Qingtian company. Since January 2018, the advanced treatment of sewage in Jiangbei sewage Treatment plant has been changed from free to chargeable. In order to save costs, the total amount of wastewater discharged by A environmental service company into the Oujiang River reaches 33,393.8 tons, resulting in 2,756,477 yuan of ecological and environmental contamination. Although A environmental service company' polluted act was punished for environment damage, Qingtian Company also had supervision negligence because of its facilities sewage facilities utilizing by A environmental service company. Obviously, Qingtian Company as a polluter have not fulfilled the obligation to supervise discharge facilities, resulting in act of the director tackle polluter to pollute the environment. Therefore, Qingtian Company should also bear the criminal punishment of polluting the environment for the important relationship between supervisory negligence and environmental contamination. Third, the contribution of supervisory negligence to environmental contamination is difficult to prove. In Case 1, the harmful result of environmental contamination is caused by the supervisory negligence of the polluter, illegal subcontracting of indirect tackle polluter and the pollution acts of direct tackle polluter. While these three factors may be proportional to environmental damage, guilt or innocence in Criminal Law of the People's Republic of China is absolute, not proportional [5]. In this regard, the specific pollution results can be easily classified as indirect tackle polluter and direct tackle polluter. However, it is difficult to judge the contribution of environmental contamination caused by supervisory negligence of polluter according to the pollution result.

3. Theoretical Causes of Negligent Crime of Polluter's Supervision in the Third-Party Treatment of Environmental Contamination

3.1. The Non-Criminal Warranty Obligation of Supervision Negligence

Although Criminal Law of the People's Republic of China does not provide for supervisory negligence of polluter, Non-Criminal Law norms have related supervision provisions such as "*Solid Waste Pollution Prevention and Control Law*" or "*Solid Waste Pollution Prevention and Control Law*". The purpose and scope of Non-Criminal Law norms are the same as the purpose and scope of crime of environmental contamination. When the negligent supervision of the polluter violates the Non-Criminal norms, it also violates the protection purpose and scope of the crime of environmental contamination.

Combined with Case 2, polluter of hazardous substances and other harmful substances have high warranty obligation. Hazardous polluter supply hazardous substances to indirect tackle polluter and direct tackle polluter, knowing those do not have a license. If acts of those cause serious environmental contamination, hazardous polluter with indirect tackle polluter and direct tackle polluter shall be punished as joint crime of environmental contamination. According to Case 1, warranty obligation of

polluter began with the generation of solid waste. Even though polluter handed solid waste to a third-party, polluter still needed to supervise the transportation and compliance of the solid waste. The polluter of infectious diseases shall also perform warranty obligation, take "illegal disposal of medical waste by a medical supplies recycling company in Chongqing" as an example. The business of medical supplies recycling company in Chongqing includes infusion needles and cotton swabs recovery, transportation and disposal. In August 2018, recycling infusion needles and cotton swabs from medical institutions, the company sold about 1,300 tons of infusion needles and cotton swabs at 320 yuan per ton to Li Moufang, Chen Moulin and other people who did not have license. Organized by Li Moufang, Chen Moulin and other people, workers buried 16.27 tons of waste such as needles and cotton swabs, causing serious environmental contamination. Since the agreement on waste recycling, the medical institution, as the polluter, shall entrust the company as the direct tackle polluter with the supervision obligation of the pollutant. Otherwise, the medical institution should bear the criminal responsibility for the crime of environmental contamination due to its supervision negligence.

3.2. The Specific Content of the Polluter's Warranty Obligation of Supervision Negligence

3.2.1. Foreseeable Possibility and the Consequent Avoidance Obligation of Supervision Negligence

According to New Negligence Crime Theory, the establishment of negligence crime includes obligation of foreseeing, obligation of necessary attention in social life and failure to take measures to avoid the occurrence of harmful result [6]. Different from common negligence crime, polluter's warranty obligation of supervisory negligence has its particularity. That is, polluter, indirect tackle polluter and direct tackle polluter have no common foreseeable possibility or the consequent avoidance obligation. First, polluter who are as the supervisors should foresee the harmful results of environmental contamination in the abstract. Especially, supervisory negligence may lead to environmental contamination acts of indirect tackle polluter and direct tackle polluter, resulting in harmful results. Second, the supervised polluter who are the indirect tackle polluter or direct tackle polluter shall specifically foresee that the breach will result in serious environmental contamination. Third, polluter should also be careful to perform the consequent avoidance obligation. The polluter urge indirect tackle polluter and direct tackle polluter to actively perform their consequent avoidance obligation and avoid the occurrence of the harmful result of seriously environmental contamination, rather than allowing them to pollute the environment with the help of supervision negligence.

3.2.2. The Distribution and Limitation of Polluter's Warranty Obligation by the Principle of Reliance

In order to ensure the efficient development of social economy, some risks should be allowed. Acceptable risk depends on practitioners trusting each other. Therefore, the principle of reliance comes into being. Roccacin and Jacobs both affirmed the importance of the principle of reliance to the determination of negligence crime [7]. The principle of reliance is mainly applicable to two kinds of cases: (1) actor carefully abides by the norm, but the victim and the third party's wrong acts lead to the harmful result; (2) actor and other acts simultaneously carried out acts violating the norm, which jointly caused the harmful result [8]. Thus, the principle of reliance also can be applied to this kind of environmental crime because the polluter, indirect tackle polluter and direct tackle polluter jointly cause environmental contamination. Based on a clear division of labor and a substantial trust relationship, the risk of polluting the environment is usually assigned to polluter, indirect tackle polluter and direct tackle polluter [9]. In practice, although the pollutant made by polluter is handed over to the indirect tackle polluter, polluter shall still undertake warranty obligation to supervise the pollutant. For illicit profit, indirect tackle polluter then subcontract the polluting material to the direct tackle polluter, which makes the direct tackle polluter also bear the pollution risk. As a result, the polluter may not know the direct tackle polluter. For this reason, the polluter's supervision of warranty obligation to supervise the pollutant should be limited. Based on the principle of reliance, the supervision obligation of the polluter is to supervise another party (the indirect tackle polluter) to the pollutant treatment contract until the pollutant reaches the compliant disposal environment, rather than to supervise act of direct tackle polluter.

4. Objective Imputation of Negligent Crime of Polluter's Supervision in the Third-Party Treatment of Environmental Contamination

4.1. Inadmissible Supervisory Negligence Increasing the Risk Probability of Pollution

The third-party treatment of environmental contamination separates the producer of pollutant from the final handler of pollutant, which makes the control of environmental crime more complicated. The polluter transfers warranty obligation to indirect tackle polluter, increasing the risk of pollutant treatment. Although third-party treatment of environmental contamination systems allow the increasing risk, it also creates supervision obligation of pollutant for producer until the pollutant reaches the qualified environment for implementing discharge, dumping and disposal acts. Otherwise, polluter violates the obligation of supervision obligation so that the polluting substances lack supervision. Even if indirect tackle polluter or direct tackle polluter intentionally carry out the pollution act, the supervisory negligence still increases the pollution risk contributing to pollution acts of indirect tackle polluter or direct tackle polluter. Considering that polluter's supervisory negligence increasing the risk of pollution instead of carrying out discharge, dumping and disposal acts, Objective Imputation Theory should be applied to polluter's supervisory negligence.

4.2. The Risk Realization of Supervisory Negligence

4.2.1. Conditional Fact Attribution of Risk Realization

Because the Condition Theory called "no former, no latter" will expand the scope of criminal punishment of supervisory negligence, Epidemiological Causality Theory can limit the scope of conditional fact attribution of supervisory negligence. Based on Epidemiological Causality Theory, Conditional factual attribution of supervisory negligence should be deduced at two levels: one is the Condition Theory. With the help of the negligent supervision of the polluter, indirect tackle polluter and direct tackle polluter carry out the pollution acts without being supervised. The second is the Epidemiological Causality Theory. When a pathogenic factor increases the probability of the occurrence of a certain disease, the causal relationship between them is basically established. Thus, the supervisory negligence of the polluter increases the probability of environmental contamination eventually becoming the harmful result of environmental contamination.

4.2.2. Result Imputation of Risk Realization

Condition Theory and Epidemiological Causality Theory solve the factual attribution of environmental crime. Under the premise of Conditional factual attribution, the causality of environmental crime needs to be judged normative judgment prevent the blind expansion of criminal circle [10]. Otherwise, this may make conditional fact attribution too thin to establish causality of environmental crime. Normative judgment of supervisory negligence includes three aspects. First, polluter's negligent supervision leads to the release of polluting substances from supervision, which increases the risk of polluting the environment by indirect tackle polluter and direct tackle polluter. Second, with the help of the supervisory negligence of the polluter, the polluter hopes or allows acts of indirect tackle polluter and direct tackle polluter resulting environmental damage. Those two aspects of normative judgment are based on Elevated Risk Theory and the Result Imputation Theory. Finally, it is supervisory negligence that indirectly causes the harmful result of polluting the environment. This aspect should accord with protection purpose of the crime of environmental contamination. When polluter's supervisory negligence cause pollution act carried out by indirect tackle polluter or direct tackle polluter, harmful result of environmental contamination is realized, which makes the protection purpose of crime of environmental can not be realized.

4.3. Polluter's Supervisory Responsibility for Pollutant Administration

The structure of supervisory negligence is usually classified as: negligent act of supervisor leads to the negligent act of the supervised and the negligent act of supervised leads to harmful results, thus supervisor should bear criminal responsibility for its negligent act. Even if the supervised intentionally commits a criminal act, the negligent act of supervisor is still established as supervisory negligence, take "fire at Itabashi Hospital in Tokyo" as an example. A third party arson caused the death of 6 patients. Six people, including the supervisor, were prosecuted for failing to develop fire prevention measures and conduct adequate evacuation training. Similarly, due to supervisory negligence of polluters, indirect tackle polluter deliberately subcontract polluting substances given by polluters to

unqualified direct tackle polluter carrying out the environmental pollution act. So in the third-party treatment of environmental contamination, not only the acts of indirect tackle polluter and direct tackle polluter constitute crime of environmental contamination but also supervision negligence of polluter may still constitute crime of environmental contamination, since polluter has a responsibility to manage pollution risk. In brief, by transferring pollutant, even if polluting substances are beyond the scope of supervision of polluter, polluter shall also supervise indirect tackle polluter to take measures to deal with the polluting substances in accordance with the agreement to avoid environmental pollution. Otherwise, improper supervision and management duties may cause polluter to bear risk of negligence crime.

5. Conclusion

The third-party treatment of environmental contamination makes polluter focus on production and operation, leaving the pollution control task to indirect tackle polluter and direct tackle polluter. Being roughly summarized as, pollutant is made by polluter in practice. Then indirect tackle polluter illegally gives pollutant to direct tackle polluter for discharge, dumping and disposal resulting in environmental pollution consequences. Both direct tackle polluter' act and indirect tackle polluter' act undoubtedly should be punished for the crime of environmental contamination. However, acts of direct tackle polluter or indirect tackle polluter take advantage of the polluter's supervisory negligence, resulting in harmful consequences of environmental pollution. According to Objective Imputation Theory, the polluter shall be punished for crime of environmental contamination if its supervisory negligence meets the following conditions : (1) when polluter breaches its warranty obligation of supervision negligence for polluting substances, it shall foresee the increasing risk of environmental pollution due to negligent supervision; (2) according to the subtracting contract, polluter shall supervise indirect tackle polluter' acts negligently leading to discharge, dump or dispose act of direct tackle polluter, which eventually develop into harmful consequences of environmental pollution; (3) the discharge, dumping and disposal of direct tackle polluter shall be within the scope of supervision obligation of the polluter.

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