



Cross-Cultural Communication
Vol. 12, No. 5, 2016, pp. 21-24
DOI:10.3968/8433

ISSN 1712-8358[Print]
ISSN 1923-6700[Online]
www.cscanada.net
www.cscanada.org

An Analysis of the Responsible Parties of Inland Waters Oil Spill Damages

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Received 19 February 2016; accepted 13 April 2016
Published online 26 May 2016

Abstract

This paper mainly discusses the determination of the responsible parties of inland waters oil spill damages. Firstly, the article enumerates the legislative pattern of the regulations on inland waters pollution as well as comparison of the various paradigms. Secondly, it analysis the pollution sources which resulting in the inland waters oil spill. Finally, the article discussed the methods of determination of responsible parties in various inland waters oil spill accidents according to China's tort liability law and relevant laws and regulations.

Key words: Inland water; Oil spill; Responsibility subject

Tang, F. (2016). An Analysis of the Responsible Parties of Inland Waters Oil Spill Damages. *Cross-Cultural Communication*, 12(5), 21-24. Available from: <http://www.cscanada.net/index.php/ccc/article/view/8433>
DOI: <http://dx.doi.org/10.3968/8433>

INTRODUCTION

In recent years, the pollutions incidents in inland waters such as rivers, lakes occurred frequently, which resulting in serious environmental pollution and individual property losses. Reasons that resulting oil spill pollution of inland waters are complicated. Multiple party is always found in the incidents. It is hard to ascertain which party should resume the liability. The current laws that govern the oil spill pollution are mainly aimed at pollution occurred in the ocean. The regulations on inland river pollution are in deficiency. How to identify the responsible party of oil spill accidents is worthy of research and discussion.

1. LEGISLATION MODEL OF DETERMINATION OF RESPONSIBLE PARTY OF INLAND WATER POLLUTION

There are three kinds of paradigm in determination of oil spill responsible party in water areas. The first is to stipulate that “polluters” as the responsible party. In this model, the environmental law regulates the concept of “polluter”, the polluters are responsible for the damage of the oil spill. In China, at present, the marine environmental protection law and Tort liability law on environmental pollution are an example of this pattern. The advantages of this method are that an abstract concept makes the law with a certain degree of openness, all kinds of pollution sources are covered by the law regardless of the type of facilities. The disadvantage is when multiple facilities are involved in the complex incidents. It is hard to identify the “polluters”. For example, the oil spill caused by the collision of oil tanks or other ships, it involves a variety of subjects, it is not easy to determine the polluter, other law and regulations are needed in determination of the responsible parties.

The second pattern is to regulate the “owner” and “operator” as the responsible party. For example, in United States the *Oil Pollution Act* determines the responsible parties in accordance with the classification of different facilities. Facilities are classified in vessels, onshore facilities, offshore drilling facilities, oil pipelines, deep-water port, abandoned facilities. Responsible parties vary in different oil spill caused by different facilities. Among them, onshore facilities are a summary statement, it including but not limited to the facilities on ground and underground such as car, a variety of motor vehicles. In Onshore facilities caused an oil spill the main responsible parties are the facility owner or operators. However, *Oil Pollution Act* also regulates if federal, state and across state government agencies transfer or lease facilities to others in control, that government agencies are not

responsible for the incident. For the oil spill caused by pipeline, *Oil Pollution Act* regulates that pipeline owners or operators are responsible parties. In cases of deep water ports, the responsible parties are persons obtaining the permission of the deepwater port in accordance with the deep water port act. Abandoned facilities, including various abandoned vessels and drilling facilities, pipelines. In oil spill caused by abandoned facilities, responsible parties are persons immediately prior to the abandonment of the vessel or facility. The *Oil Pollution Act* involves broad water areas, it uses “navigable waters” concept to express the possible water pollution caused by the oil spill. According to the provisions of the oil pollution act that “navigable waters” include inland waters and ocean, so the Act illustrate the possible responsible party include not only vessels and drilling platform which was common facilities in the ocean ,but also the motor vehicles which could resulting river or lake pollution. Motor vehicles are one type of pollution sources of oil spill. According to an investigation report of Maryland state. In the state oil transportation, vehicle transport accounted for 20.5% of the total proportion. Vehicle accidents occur at between 20 to 30 each year, average quantity of oil spill in single accidents is about 2,500-8,000 gallons. Although oil spill volume in each accident is not very big compared to the vessel oil spill, but the accumulation of environmental hazards caused by the accident can not be ignored. Regulations on these sources are actually necessary move. The *Oil Pollution Act* illustrates the responsible parties according to the oil spill caused by different types of facilities. This enumeration method provides a clear guiding for the real oil spill cases on determination of responsible parties.

The third pattern is requiring the “carrier” as responsible parties. In this liability assumption model, that the carrier of oil bears the liability for damages. The typical legal norm of this kind of liability assumption is the Convention on civil liability for damage caused by dangerous goods on road, rail and inland navigation vessels (CRTD). The Convention governs damages caused by vehicles and vessels in the transport process. Damages including personal injury and property damages and environmental damages. From the regulation area of the CRTD it can be applied in oil spill pollution in inland waters. Oil belongs to the “dangerous goods” as provided for in the Convention, and the pollution of inland waters is in conformity with the scope of the water environment regulated by this convention. The responsible parties for damages in CRDT are the carrier. The eighth paragraph of the first article of the Convention describes the definition of the carrier. The carrier varies in different accidents caused by different transportation means. According to regulations, as to the damages caused by motor vehicles and vessels ,the carrier refers to the person in Control of transport facilities such as vehicles and vessels in carriage

of dangerous goods when accident occurs; persons who have the Vehicles and vessels registration in the name of them; or in the condition of lacking such registration the owner of vessels and vehicles will be presumed to control motor vehicles and vessels unless it can be demonstrated that the other people in the control of the vehicles and vessels and indicate the identity of those people. In addition, the owner can be exempted from responsibility if he or she can prove other people control the facilities without his permission and the situation could not be reasonably avoided. If the shipping goods were obtained by other vehicles, other vehicles will be regarded as the carrier for the control. For the Damages occurs in railway transportation, operators of railway line in which the incident occurs are considered as the carrier. Cooperators of the carrier who is responsible for incidents are also deemed as carrier which should assume the responsibility.

Meanwhile the CRTD regulates the persons without responsibility, they are: a) agents and service personnel of carriers, or staff of carrier; b) operator or non staff services provider for the vehicle and vessel; c) vehicle owner, charterer, user, manager, operator which are not as carrier; d) providing assistance and aid under the permission of the vessel owner; e) implement assistance and aid according to the instructions of the qualified public organizations; f) taking the circumvention measures to avoid damages to the people; g) agents and service staff of 2 to 6 persons listed in the agent and service personnel. In addition to persons of that receiving goods and third people, who resulting damages are responsible parties, the carrier can seek to recover from them.

2. DETERMINATION OF RESPONSIBLE PARTY IN INLAND WATERS OIL SPILL

Through comparing three patterns of regulation of the responsible parties, we found regulation in China environmental protection law for the compensation by polluters are relatively vague. Polluter can be an individual or legal person. If the pollution made by individuals, when they are performing the task appointed by company, that company is the polluter not the individual, but if the pollution is not related to the task of company, individuals are the polluters. Therefore, the definition of polluter needs to enunciate in combination with related laws. The *Oil Pollution Act* regulates owners or actual operators as responsible parties. CRTD rules that dangerous goods carrier as the responsible parties. Operators in OPA are similar to carriers in CRTD. Both of them are persons in control of facilities caused an oil spill. The person who actually controls the oil facilities. It is believed to take responsibility. The difference between the two is that if the owner and operator of the facility are coexist should the owner assume the liability. The CRTD excludes owners

responsibility, according to the 7 paragraph of article five: In the case of another carrier exist, the owner and lessee shall not bear the liability for compensation. This excludes persons with property relations to facilities that resulting pollution. Just take control of facilities as basis of responsibility. In OPA, the relation between owner and operator is not clear. Who should be to assume liability is not clarified when owner and operator coexist.

The general provisions of the responsible party in the oil spill are not clear in "China environmental protection law". That *China Tort Liability Law* could be used to analyze the responsible party. Crude oil and petroleum products belong to the dangerous goods. In tort law the management of dangerous goods is clarified in to hazardous liability, Article 72 of *Tort Liability Law* regulates that in the cases of possession or use hazardous goods which causes any harm to other persons, the possessor or user should bear tort liability. This provision is the principle of hazardous goods in torts. Here, the possessor shall be a broad subject, he may be the owner of hazardous goods and may also be other persons that obtain goods as managers, supervisor. It also including possessor who illegally acquired goods. The legal basis of the provisions is that the person in possession of dangerous goods brings about the risk to society and should have ability to control the risk. In addition, the possessor usually can get more profit from controlling the goods. The possessor taking the burden of responsibility is the embodiment of fairness and justice. In addition, article 74 regulates the liability of lost or abandoned hazardous goods, according to the article, owner or manager of the goods shall bear tort liability, owner is jointly and severally liable for the fault. The owner or manager refers to possessor in the Article 72, because of losing of possession of goods, owner or manager should not be called possessor. But the duty of care would not be exempt, responsibility still should be assumed by the owner or manager for the damages caused by risks. The way of possession of oil in the transport process is loaded by specific transport vehicle. Risk control of oil spill through the control of the transport vehicle. Rights to vehicles can be divided into different types according to means of control, such as control by owner, lessee or other legal possessor of the vehicle. Owing to diversity of rights of control, it is unreasonable letting the owner assume all responsibility. When the owner of vehicle transfer the right of control to others, neither the vehicle nor oil loaded by the vehicle can be controlled by the owner. Although these rights of control are different, all persons with actual control of a vehicle can be regarded as the carrier. When the carrier transports oil with his own vehicle, the carrier is the owner. If carrier transports oil with leased vehicle, carrier is the lessee. Carrier is more capable to control the risk of oil spill than others. It is reasonable for the carrier to assume responsibility of damages resulted by pollution.

The oil spill may be results from defects of the transport vehicles. If defects originate from production, it belongs to product liability, which should be borne by the producer. If defects originate from using vehicle, the owner should take liability. It is worth discussing whether these two kinds of liable parties should assume joint and several liability for oil spill damages. Assuming joint and several liability is favorable for the protection of victims, but the product liability and oil spill liability are liabilities of different nature. Oil spill liability is environmental liability, specific person should be responsible for the pollution or damages according to the law. In product liability of the producer should be responsible for victims as user. Owners of vehicles are responsible for defects base on fault. In oil spill cases that victims of pollution are not users, so if carriers resulting from the oil spill, they are responsible for the pollution. Carriers can pursue recovery from a producer that is faulted for defects which lead to an oil spill.

Whether owners of petroleum products are responsible for oil spill damages in the course of transportation? From the perspective of the international treaty and the foreign legislation, less legislation expressly require owner of petroleum be responsible for an oil spill. In the legislative process of *Oil Pollution Act* of the United States, the owner of petroleum was considered to be responsible for oil spill damages. But the bill finally failed to pass the discussion. *China Tort Liability Law* the Article 74 regulates the owner of hazardous goods which were lost or abandoned shall bear tort liability for damages. Does this regulation conflict with international practice? There is no conflict in essential. The provision of *China Tort Liability Law* was aimed at the situation that dangerous goods were lost or abandon instead of conferring the right control to others. In the latter situation, according to *China Tort Liability Law*, the persons who control or manage the hazardous goods are responsible party. Oil in transport vehicles can be transported by two ways. The first is transporting by owner with their own vehicles. The other one is transporting by persons who were entrusted by owners. With the first method the owner is also the carrier, the carrier liability is assumed by the owner in essential. With the second method the oil was delivered from owner to other carriers. In accordance with *China Tort Liability Law*, administrators rather than owners should bear tort liability. Legal reason of the regulation might be that in this damage accident, the owners are also victims of property damages. On the other hand, it is hard to control the harm of an oil spill when the owners conferring right of control to others.

CONCLUSION

In general there are three types of legislation in regulating the responsible party for the pollution of inland water

area. In current china environmental protection law. The polluters are responsible for pollutions. But polluters are a vague notion, when multiple party involves to pollution it is not easy to ascertain polluters. In oil spill cases, if the pollution was resulted by vehicles, carriers assuming responsibility is convenient and reasonable regulation of in the determination of the responsible party.

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