

A Comparative Study on the Application of Group Liability in the Field of Environmental Torts between China and the United States

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Abstract. As the biggest developing country, China is relatively lagging in the development of laws on environmental protection. With the increasing impact on the environment brought by the enterprises, the application of group liability in the field of environmental torts has become an urgent legal issue to be solved. This paper uses the case study method, the comparative method, and literature study method, taking Comprehensive Environmental Response Compensation and Liability Act in the United States as an example, to compare the cases, legislation, and judicial practice of China and the United States in this problem. It is concluded that the current Chinese legislation on group liability and corporate environmental responsibility is insufficient, which affects the application of group liability in environmental tort cases. Based on these shortcomings, this paper draws on the experience of CERCLA and proposes suggestions for improving China's legislation on this issue. A relatively detailed two-step plan is arranged, including improving and perfecting the existing system of piercing the corporate veil and introducing the Environmental Liability Law.

Keywords: Environmental Tort, Group Liability, CERCLA.

1. Introduction

In recent years, corporate environmental tort cases have occurred frequently all over the world. Although limited liability is the foundation of modern enterprises, it also determines the limited compensation for the actual loss brought by the subject of liabilities for the environmental tort. Shareholders often use their limited liability and the company's independent legal personality to isolate risks while making huge profits through high-polluting industries. It is difficult for victims of environmental pollution and the government to receive full compensation, let alone achieve the environmental governance goals and social equity.

In the context of strengthening the social responsibility of the enterprises and the socialization of environmental responsibility, the application of group liability in the field of corporate environmental torts is being explored all over the world. However, the purpose of group liability is different from that of environmental tort liability. The former is based on the principle of equity to balance the interests of creditors and the company, and the latter is to break through the limitation of limited liability as much as possible, to protect the infringers' interests. Therefore, for China, applying the system of piercing the corporate veil in the Company Law to the field of environmental tort directly lacks legal support. At the same time, the feature of the application of piercing the corporate veil--modesty cannot fully meet the needs of the practice [1].

In 2010, in Guangdong, China, influenced by the typhoon, Guangdong Xinyi Zijin Mining Co., Ltd. (Xinyi Zijin) Yinyan tin mine Gaoqiling tailings dam overflowed and the Shihuadi, the hydroelectric dam collapsed, causing 22 deaths and extensive property damage. Xinyi Zijin is a wholly-owned subsidiary of Zijin Mining Group. The government, more than 800 local villagers and the waterworks sued Xinyi Zijin, Zijin Mining Group, designers, constructors, supervisors, and other subjects, with a total claim amount of 401 million yuan. All other plaintiffs except the government believed that Zijin Mining Group should be jointly and severally liable for compensation because it is the sole shareholder of Xinyi Zijin and Xinyi Zijin had not fully paid up its registered capital, established financial books, and had no independent business autonomy. Therefore, Xinyi Zijin has no independent personality rights, and Zijin Mining Group should be jointly and severally liable for

compensation by piercing the corporate veil. In the end, under the auspices of the Xinyi Primary People's Court, the local government, on behalf of the affected villagers and relevant companies, reached an agreement with Xinyi Zijin on the compensation for the disaster, and the final compensation amount was 245 million yuan. The agreement did not clarify clearly the liability, but judging from the parties who signed the agreement, Zijin Mining Group was not included, which means that they failed to apply to pierce the corporate veil in this environmental infringement case [2].

In the case of *United States v. Kayser-Roth Co.*, however, the court took a different approach. Stamina Mills, a wholly-owned subsidiary of Kayser-Roth Co., was responsible for \$660,612.71 in costs paid by the U.S. Environmental Protection Agency (EPA) for cleaning up the contamination caused by its spill of trichloroethylene. There is also a total of \$185,879.62 incurred by the Department of Justice and \$25,846,492.33 in total incurred and paid by the government. The district court ruled that Kayser-Roth Co. should bear the corresponding liability for compensation. Based on the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) on the meaning of "owner" and "operator", it is determined that the parent company Kayser-Roth Co. is indirectly responsible for the pollution behavior of its subsidiary "owner" and the direct responsibility as the "operator".

The district court clarified that for purposes of CERCLA, Kayser-Roth was definitely an "operator". Kayser-Roth controlled over Stamina Mills all-round and excessively through, among other things: 1. its overall currency control; 2. its limitation on Stamina Mills' financial budget; 3. its directive that subsidiary-governmental contact, including environmental matters, be guided directly through Kayser-Roth; 4. its demand that Stamina Mills' dealing of real estate firstly accepted by Kayser-Roth; 5. its requirement that Kayser-Roth approves any monetary transfer or expenditures more than \$5,000; and finally, 6. its arrangement of Kayser-Roth personnel in almost all Stamina Mills' director and officer positions, so as to completely ensure that Kayser-Roth corporate policy was exactly implemented and precisely carried out [3].

What is it that makes the two countries have completely different solutions to the problem of environmental liability of parent companies in environmental infringement cases, and thus bring about different judgment results and social impacts? The legislation and practice of China and the United States on related issues will be compared so as to find an improved way for China.

2. Comparison between China and the United States on the application of group liability in the field of corporate environmental tort liability

2.1. System overview

China's current liability for environmental torts mainly applies provisions in the tort liability part of the Civil Code, and the environmental tort liability is constructed with natural person tort as the paradigm. This system does not make any special provisions for companies as legal persons to bear environmental tort liability. Moreover, at present, China's method of group liability is only piercing the corporate veil and it is confirmed by Article 20 of the company law, a guiding case by the Supreme Court, and the 9th conference minutes.

The American legal system features the common law as its main source of law, but its statute law plays an important role in environmental protection. Among the legislation on environmental tort liability in the United States, the most far-reaching one is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Super Fund Act, which was promulgated and implemented in 1980. The Act has also been rated as "the most stringent and controversial environmental legislation in the history of environmental law in the United States, yet most widely supported by the federal courts" [4]. The theoretical basis for group liability in this act is not piercing the corporate veil, but the direct liability. The act breaks through the behavior-centered responsibility principle in environmental responsibility and directly stipulates the corresponding responsibility of the parent company or controlling shareholder through their identity of the "owner"

or the “operator”. Unlike “piercing the corporate veil”, direct liability is a general path of imputation in civil law rather than an exception. In the case of environmental tort, under the direct liability route, the parent company is always liable in tort to the subsidiary’s involuntary creditors based on the fact that the parent company was at fault in supervising and managing the subsidiary and that fault caused the subsidiary to act in tort. Specifically, a parent company owes a duty of care to its subsidiary when it actually controls the operations of the subsidiary or sets the rules followed by the subsidiary. In other words, the parent company is responsible for the security of the subsidiary’s actions. And a party injured by the actions of the subsidiary may therefore seek compensation from its parent company [5].

2.1.1. The background of the U.S. system

The U.S. Congress passed the CERCLA in December 1980 for two main reasons. On one hand, in the mid-1970s, a series of hazardous waste spills broke out in the United States, the most influential of which was the “Laffer Canal” incident in Niagara Falls, New York. In the 1940s and 1950s, the Hooker Chemical Company dumped 218,000 tons of industrial waste into the unused Laver Canal. By the mid-1970s, buried industrial waste began to leak, and some toxic chemicals spread to residential homes and basements. The New York Board of Health then declared a state of emergency in the area, and residents made emergency evacuations. At the same time, there are thousands of hazardous waste landfills similar to the Laver Canal in the United States, posing a serious threat to public health and ecological security. On the other hand, the federal environmental legislation in the United States at that time was relatively limited, and there were deficiencies in environmental obligations and management procedures. This act has established a relatively complete response mechanism for the environmental release of hazardous substances and a liability mechanism for environmental damage and has established a well-known “Super Fund” to provide financial support for the federal government’s response actions and the cleanup of hazardous wastes.

2.1.2. The present situation of the two systems

Since CERCLA was enacted, the Act has become one of the most active federal environmental legislations in the United States [6]. In the more than 40 years since the revision of the law, the part on liability has also changed. In order to adjust the negative effects of CERCLA, the United States Congress has made numerous amendments to CERCLA, especially its overly stringent liability standards. Including the Superfund Amendments and Reauthorization Act of 1986, the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, The Superfund Recycling Equity Act of 2000, and the Small Business Liability Relief and Brown fields Revitalization Act of 2002. At the same time, how to interpret or apply CERCLA’s liability clauses, such as the confirmation of the identity of the responsible subject, the establishment of strict liability, and the joint and several liabilities of potentially responsible persons and the sharing of liabilities, often result in different interpretations of CERCLA clauses by different courts. verdict [7]. The end of the so-called CERCLA case is usually just to find a responsible subject and start another litigation procedure, and the next round of compensation for response costs and the next determination of attribution of responsibility is just that. The issue of CERCLA’s liability is arguably one of the most contentious issues in US environmental law.

The amount of compensation in CERCLA lawsuits is usually very large. Therefore, after the implementation of CERCLA, business entities in various industries began to spontaneously create various hedging measures [6].

In China, there is considerable controversy among scholars on whether piercing the corporate veil can be applied in environmental tort litigation. In judicial practice, there are very few cases where this has been realized. Generally speaking, China lacks a system that can effectively solve the problem of environmental tort group liability of corporate legal persons.

2.2. Legislation comparison

2.2.1. Legislative content comparison

Table 1. The Relative Legislation in the People's Republic of China

Legislation	Level of Authority	Date Issued	Main Content
Civil Code of the People's Republic of China (Civil Code)	Laws	05-28-2020	Article 1229 If any damage or harm is caused by the environmental pollution or ecological destruction, the infringer shall bear the tort liability.
Company Law of the People's Republic of China (2018 Amendment) (Company Law)	Laws	10-26-2018	Article 20 Paragraph 3 If any one of the shareholders in a company abuse the company's independent status as a legal person or the limited liabilities of the shareholder in order to evade its debts, and at the same time it seriously damage the interests of the company's creditor, it shall be jointly and severally liable for the company's debt.
Several Provisions of the Supreme People's Court on the Trial of Cases on Compensation for Damage to the Ecological Environment (for Trial Implementation) (2020 Amendment)	Judicial Interpretation	12-29-2020	Article 1 The subjects who can be the plaintiffs to file a lawsuit for compensation for damages to the ecological environment include: the provincial, municipal or prefecture-level people's governments, their designated relevant departments and agencies, and the departments entrusted by the State Council to exercise ownership of natural resources owned by the whole people. Under the following circumstances, the subjects above can file a lawsuit: (1) Relatively serious, serious, or particularly serious environmental emergencies occur. (2) Environmental pollution or ecological damage events happen in the key ecological functional or prohibited development zones delimited in the national and provincial plans. (3) Other serious consequences affecting the ecological environment occur.

Table 2. The Relative Legislation in the United States of America

Legislation	Level of Authority	Date Issued	Main Content
Comprehensive Environmental Response, Compensation, and Liability(CERCLA)	Federal Statutes	03-23-2018	42 U.S.C.A. § 9607(a) The liable subjects mainly include: (1) the owner or operator of the facility related to the disposal of hazardous substances, (2) people who owned or operated the facility when the disposal of hazardous substance happened, (3) people who have the duty of disposing or treating or transporting the hazardous substances because of a contract, agreement or other arrangement, no matter who owns these substances, (4) people who accept or accepted the hazardous substances for transport to disposal, treatment facilities, incinerators, or sites chosen by themselves, and cause a release or a threatened release leading to response costs The subjects above are liable for: (A) all costs for the removal or remedy paid by the government or state; (B) other inevitable costs for responding paid by any other person follows the national contingency plan; (C) damages for harm, destroying of, and loss of natural resources, including all reasonable costs used on assessing the harm, destroying, or loss resulting from such a release; and (D) the costs on health assessment or health effects study carried out under the related regulation.
			42 U.S.C.A. § 9601(20)(A) The meaning of the “owner or operator” above includes: (i) people own, operate or rent a vessel; (ii) people own or operate the onshore or offshore facilities; (iii)if the ownership or control of the facility was conveyed because of bankruptcy, foreclosure, tax delinquency, or abandonment, people who owned, operated the facility immediately beforehand.

Table 1 above lists China’s relevant regulations on environmental tort liability and the company’s group liability. In addition, in order to compare with the CERCLA in the United States, a similar system in China, that is, the corresponding provisions on compensation for ecological and environmental damage has also been added.

Among them, the provisions on environmental tort liability are contained in the tort liability section of the Civil Code, and the regulation of the only kind of group liability in China-piercing the corporate

veil is contained in the Company Law. The provisions in both areas are very brief, which is not detailed and sufficient. For the detailed regulations on the compensation system for ecological and environmental damage, there is only legislation at the level of judicial interpretation, and all the above-mentioned regulations on environmental liability only list the scope of responsible subjects as a natural person, legal person, or any other organization, but different liability rules are not formulated for different subjects.

Table 2 shows that in the CERCLA of the United States, the liable subjects are subdivided. These include owner, operator, etc. Based on Articles 101(20)(A) and 107(a)(3) of CERCLA, US courts have evolved what is known as the control test. This standard means that an individual company manager or the parent company is considered liable when it comes to controlling the company's hazardous waste treatment and disposal activities. In some jurisprudence, courts have held that direct control over waste disposal need not be demonstrated as long as it can be demonstrated that there is control over the overall business operations of the company [8].

2.3. Judicial application comparison

In China's current judicial practice, there is no precedent that successfully applies to pierce the corporate veil to make the parent company or group enterprise bear the environmental tort liability of the subsidiary. The main obstacles lie in the following points. Firstly, the application of piercing the corporate veil is relatively immature in China. At present, China's regulations on piercing the corporate veil are only a paragraph in the Company Law, a Guiding Case of the Supreme Court, and some regulations of Minutes of the National Court of Civil and Commercial Trial Work. These have not set the clear conditions that piercing the corporate veil should apply. Therefore, piercing the corporate veil itself is applied cautiously in China.

Secondly, in China's environmental infringement issues, there are three ways of litigation, namely environmental infringement litigation, environmental public interest litigation, and ecological and environmental damage compensation system. However, only the subjects of ordinary environmental infringement lawsuits--a natural person or corporate legal person are in the scope of the "creditors" that can propose piercing the corporate veil.

Thirdly, the purpose of piercing the corporate veil is different from that of environmental tort liability. The principle of equity does not match the purpose of letting the enterprises take the environmental liability actively. Therefore, in most cases, the parent companies' actions do not meet the condition that can apply to piercing the corporate veil.

In contrast, the United States has actively applied CERCLA to solve the environmental problems of hazardous substances discharge and has gradually formed a common-law applicable standard for joint and several environmental liabilities in practice. After 30 years of CERCLA application, the federal courts have formed a series of joint liability applicable standards based on the "Restatement of American Tort Law" (the second time) but with a breakthrough: The person who is the subject of liability shall be jointly and severally liable even if there is no causal relationship with the disposal, disposal or release of the hazardous substance. At the same time, in judicial practice, the U.S. federal court has made an expansionary interpretation of the subject of liability defined by CERCLA, breaking through many traditional concepts and principles of common law or corporate law. For example, the Federal Court's interpretation of the concept of "owner" makes it possible for lenders, trustees, or trustees to assume the "owner" responsibility of CERCLA under certain conditions. The Federal Court's breakthrough in the principle of limited liability of companies makes it possible for individual shareholders or company employees to become the subject of CERCLA's liability together with the company. This makes almost any subject associated with a polluted site or facility likely to be a CERCLA responsible person [6].

3. Suggestions on China's improvement based on the experience of the United States

According to the requirement of letting group companies take the group liability on environmental issues and the realistic background of the traditional company law, this section will suggest the two-stages approach that China could use to solve the problem of environmental tort liability of group companies. Improving and perfecting the piercing company veil system is more consistent with China's existing legal basis, and the reform would be easier. Then introduce an independent environmental liability law as the second step, which is a great breakthrough in the traditional principle of environmental liability. It may protect the environment and infringe from the environmental tort caused by the group companies to a greater extent, although it still needs some time to develop for actually applying.

3.1. Improve and perfect the existing system of piercing the corporate veil

Given the exceptional way of liability in China, the revolution needs to be carried out in stages. In the first stage, the present rules of "piercing the corporate veil" should be improved in three aspects. First of all, clarify the scope of the subject that should take the joint and several liabilities. At present, in China's Company Law Article 20, the subject is expressed as "the company's shareholders". However, according to the Guiding Case of the Supreme Court and the new regulations of Minutes of the National Court of Civil and Commercial Trial Work, other sister companies controlled by the same shareholders and the actual controllers are also included in the scope of the subject. The scope of the subject that should take the joint and several liabilities in "piercing the corporate veil" needs to be identified through judicial interpretation, which is clearer and more stable compared to the guiding case and the minutes. It should include the company's shareholders, actual controllers, and sister companies, so as to create a path in which the infringed party can reach a wider subject, just like what CERCLA has done to include more subjects to take the environmental tort liability.

Secondly, clarify and expand the scope of the "creditor". "Piercing the corporate veil" only applies between private parties now. However, environmental infringement has a distinct public interest in addition to the citizens' personal rights and interests. As has been described above, there are three ways of litigation in China's environmental tort issues. The subjects of ordinary environmental infringement lawsuits are a natural person or corporate legal person; The subjects of environmental public interest lawsuits are procuratorates and social organizations such as NGOs; The subjects of ecological environmental damage compensation are governments at all levels. According to this feature, the scope of "creditors" in "piercing the corporate veil" should be increased by procuratorates, governments at all levels, and social organizations that can file environmental public interest lawsuits [9]. Through this improvement, it can make up for the problem that China currently cannot apply piercing the corporate veil in public interest litigation and ecological environmental damage compensation.

As a comparison, CERCLA allows the governmental entities or private parties who clean up those hazardous waste sites voluntarily or under the direction of the United States Environmental Protection Agency to get their cleanup costs back from the owners and operators of the sites or other potentially responsible parties [10]. The government and environmental protection organizations are set as the main creditors of the litigation.

Finally, clarify and expand the scope and specific application of the "piercing the corporate veil" system. The existing identification norms in the company law of China are too general and vague [11]. Combined with the relevant laws and regulations of "denial of legal personality" in China, it can be specified to provide a standard for "abuse of the independent status of a legal person and shareholders' limited liability", such as the extent to which the parent company controls its subsidiaries beyond the normal range, property confusion or business confusion and so on in the form of judicial interpretation. Besides, the cases of investigating shareholders' responsibility for piercing the corporate veil are mainly contracted debt in practice. It needs a double standard to meet the contract debt and tort case.

For example, in US jurisprudence, the court needs to examine whether the parent company dominates the subsidiary; and whether the parent company has committed fraud, illegal and other improper and unfair consequences in contract cases. However, in tort cases, the court mainly examines the degree of control the parent company has over the subsidiary. If the parent company exercises control over the subsidiary and the parent company's actions are morally reprehensible and cause damage, the corporate veil will be pierced.

3.2. Further development: introducing Environmental Liability Law

In addition to improving the existing system of piercing the corporate veil, introducing Environmental Liability Law will be a good choice in the second stage.

China can specially legislate on environmental liability issues. First, the Environmental Liability Law needs to clarify the subjects of environmental responsibility, including natural persons, corporate legal persons, parent companies, group enterprises, shareholders, trustees, regulators, etc. Second, it needs to clarify the way of assuming environmental responsibility, and determine the circumstances of independent responsibility, joint, and several responsibilities, and supplementary responsibility respectively. The possibility of the group company's joint and several liabilities should be clearly established in legal form. The specific circumstances of the joint and several liabilities of the group companies of the system should be determined through judicial interpretation or practical judgment. Third, it can expand the participants in environmental governance through the Environmental Responsibility Law. With reference to the legislative purpose of CERCLA, all subjects can take the initiative to participate in the disposal of environmental pollution. After disposal, they can be held accountable to the corresponding responsible persons through a complete accountability system.

The form of independent legislation, compared with the existing piercing of the corporate veil, can avoid the conflicts between the purpose of piercing the corporate veil itself—principle of equity and the purpose of environmental tort liability--protecting the public interests of the environment and the interests of the infringed as much as possible. The Environmental Liability Law can also add more innovative regulations according to the needs of environmental protection, strengthen the intensity of environmental supervision, and urge enterprises to assume social responsibilities.

4. Conclusions

In conclusion, this essay expounds on China's insufficiency in the application of group liability in the field of environmental torts by comparing it with CERCLA in the United States. On the basis of combining the current system of group liability in China with the special requirements of an environmental tort, it puts forward two-stage solutions to improve the existing "piercing the corporate veil" system and introduce Environmental Liability Law for China. It is noteworthy that no matter what improvement method is adopted on the legal liability of environmental tort, China needs to take into account the original relevant legal background and the purpose of protecting the environment and maintaining justice. Even the ideal conditions under Environmental Liability Law also have their defects. Therefore, how to protect the infringed more fairly and effectively under specific circumstances should be a subject to be studied for a long time. Moreover, after the legislative improvement of the system of group company liability in environmental torts, how to operate in judicial practice to make it play a better role is also a problem that needs to be deeply considered. Both legislative and practical improvements are vital to promoting Chinese enterprises to take environmental responsibility and protect the victims of environmental torts as well as the environment itself.

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