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THE ENVIRONMENTAL RESPONSIBILITY OF THE COMPANY AND ITS REALIZATION IN CHINA'S LAW

***Key words:** company, social responsibility, environmental responsibility, legislation model*

In the voice of the decompose to the significant pollution accident by Jilin Subsidiary company of China National Petroleum Corporation,¹ the company's social environment responsibility has not become the focal point question. In fact, in front of detonation pollution accident, China National Petroleum Corporation was already adopting the HSE management standard,²

¹ November, 2005, Jilin Subsidiary Company of China National Petroleum Corporation double benzene plant had an explosion, in course of explosion and fire fighting, more than 100 ton benzene pollutants in flowed into Songhua River, an 80-kilometers pollutants agglomerate drifts down the river, Songyuan City in Jilin Province and Haerbin City in Heilongjiang Province have a serious impact. Songyuan City has cut off the water supply for one week; Haerbin City has done for 4days. The environment of Songhua drainage area got great damage, and moreover, the pollutants agglomerate's incidence touch the downriver country Russia, making a bad International impact.

² HSE is the shortened form of Health, Safety and Environment Management System. HSE Management System is the whole of all kinds of the Health, Safety and Environment Management elements, such as structural organization, function, modus operandi, procedure and resource. These elements synthesize into an organic whole with an advanced, scientific and systemic mode, come into being a dynamical management System. HSE Management System is

which formulated by its own. One of this standard cores is enterprise's management must consider the factor of the environmental protection. Speaking of the China National Petroleum Corporation, it already noted the production exist environment risks. What a pity is, malignant accident still unceasingly.³ All these as if indicated that, perhaps enterprise's environmental pollution accident is not the pure management standard and the legal regime can cease. Regarding this, I think, we need introduce the concept of company's society responsibility; expand the company personality ethics connotation. In this foundation, stimulates the company's sense of social responsibility, thus undertakes the more environment responsibility. This endeavor has been carried through since the 20th century 70's, Modern business is viewed as an aggregation of contracts between shareholders, creditors, management, employees, supplies, governments and the public rather than a kind of organizations seeking solely profits. According to such idea, the responsibility of business shall include its social responsibility. Environment responsibility is one of the main categories of that social responsibility. After the severity opposability by Friedman⁴ 'contrarily companies' social responsibilities theory gains the consensus all over the world. Quite a few countries have formulated a couple of rules or standards; either of

put forward first by the international well-known petroleum industry business at the beginning. ISO/TC67's SC6 Subsidiary Committee issue *ISO/CD14690, Petroleum and Natural Gas Industry Health, Safety and Environment Management System*, in January of 1996. According to the ISO/CD14690, China National Petroleum Corporation constituted enterprise criterion *SY/T 6276 - 1997 Petroleum and Natural Gas Industry HSE Management System, SY/T 6280 - 1997 Petroleum Earthquake Team HSE Management Criterion, SY/T6283 - 1997 Petroleum oil well HSE Management manual*. In February of 2001, China National Petroleum Corporation constituted *China National Petroleum Corporation HSE Management System, Oil Field Corporation HSE Management Criterion, Oil refining Corporation HSE Management Criterion, Construct Corporation HSE Management Criterion, Vendition Corporation HSE Management Criterion, Oil Field Corporation Infrastructure HSE operation to program manual, Oil refining Corporation manufacture plant HSE operation to program manual, Vendition Corporation Oil storeroom, gas station HSE operation to program manual, Construct Corporation Project Item HSE operation to program manual, Management Department Function HSE operation to program manual*. All the criterions above make up of a systemic HSE Management System.

³ China National Petroleum Corporation's blowout accident in Kaixian of Chongqing City made a serious aftermath. 243 persons died because of sulfured hydrogen poisoning, 2142 persons were in hospitalization, 65000 persons were evacuated peremptorily.

⁴ Milton Friedman. *The Social Responsibility of Business is to increase its profits* [N]. *The New York Times Magazine*, 1970-9-13. Milton Friedman makes a point that "the corporation has only one social responsibility that it should take advantage of the resources by the rules of the game to engage in the profitable business operations". If the corporation takes the social responsibility, it will lose its way of management, cost more and it will not beneficial for stockholders to gain most benefits and keep their competitive position. Milton Friedman denounces that the theory of social responsibility is the destruction in the free society and the credendum of the worst society.

law or morality that business shall comply with to satisfy its social responsibility. China has accepted with few or no colliding course, maybe it relates to China's history of company taking the social work. However, most Chinese companies are still developing in their early days and, in view of China's distinct history and its current economic reform, there are inevitably barriers of both law and fact to have them satisfy their social responsibility, especially the environmental responsibility. The depressing fact notwithstanding, it has been generally accepted that business should be responsible for environmental protection. This idea has been written into the recently amended China's *Company Act* and *Solid Waste Prevention and Disposition Act*. Which legislative model is practicably and effectively? It's a problem needing for more reflection. In the following main part of this article, I will analyze China's Legislation on Environmental Responsibility of companies in brief, and then point out flexible legislative model is more advisable than the rigorous legislative model.

Part I. Relevant rules in China's *Company Act*

The environmental responsibility of business under China's *Company Act* takes the form of the social responsibility. The *Company Act* was enacted in 1993 when market economy system had been just established in China. At that time many companies sprang out and on the other hand, the state-owned enterprises had begun to be reformed in a big scale. Thus, it was how companies should be initiated and how state-owned enterprises' reform could be promoted that the lawmakers then were most concerned about, rather than how the social responsibility of business should be satisfied. It is Article 14 of the act that governs the environmental responsibility of business. It provides that: "The Company shall be subjected to the supervision of the government and the public abide by law and professional morality and improve spiritual civilization." "To improve spiritual civilization" can be interpreted as the social responsibility including the environmental protection. Article 14 is mandatory. In other words, under the *Company Act* 1993, companies can no longer increase profits without limitation but in a due way. Despite Article 14, the concept of the social responsibility of business was then obscure in that act. In the last 12 years of development, China has got a better understanding of the nature of business. In particular, as environmental crisis is getting heavier and heavier, the public has become more conscious of how important it is to protect environment. Additionally, upon China's entry into the WTO, due to the green barriers in trade, it has been believed that business shall take its social responsibility by both the public and business itself. In such that circumstance, on October 27,

2005, the amended Company Act was passed by the Standing Committee of China's National People's Congress. The amended act not only summarizes experiences in the last 12 years but also borrows advanced practices of other countries, including their legal rules concerning the social responsibility of business. Article 5 of the amended act provides that: "Companies shall, in good faith and credit, be subjected to the supervision by the government and the public, comply with law, administrative regulations and social morality, and take the social responsibility." It appears in the Chapter of General Rules of that recently amended act. The rule described in Article 5, viewed as a fundamental rule, is generally considered as the primary source of law that burdens companies with the social responsibility.

Generally speaking, this amendment is popular with the academics, advanced and contributive. The rules, which uses the phrase, shall, shows that companies must take the social responsibilities including the environment protection responsibilities and haven't no compromise ways. Companies must do as the constitution rules, or they break the basic doctrine of the constitution. Companies are organizations that aim to charge the profit. If there's no charging profit, companies have no legislative authority to existence. Profit is also most objective to the stockholders of the company. The managers must try their best to get the maximize profit of the company, according to the duties to stockholders. As someone promised, if bearing environment responsibilities can get much more benefits in the end, the managers could easily accept the responsibilities, for it is only the profit choice between the short-term benefits and the long-term one, the smaller and the bigger one. Now the important thing is, if the promise couldn't or usually couldn't cash in, what could the managers of companies to comply with for bearing environment responsibilities by sacrificing the stockholders' benefits? Which factor could they think about in the decision-making proceeding? What kind of procedure and organization could they use to finish the decision? If the stockholders aren't satisfied, how could they vindicate the rationality of their behaviors? After all, the potential beneficiary from that companies bear the environment responsibilities are much more uncertainly, however, the benefit-injured party, which is the same mean as stockholders in this situation, is certainly.

On account of these reasons, some of the Chinese scholars propose to introduce Stakeholder statutes in America's legislation of company. Stakeholder statutes appeared in the *Pennsylvania State Company Act 1983* firstly. The Act authorize directory of enterprise considering the benefit of persons except for the stockholders, when they are making a decision or doing their

management business. The persons except for the stockholders, it is the same meaning as other constituency, including employees, creditors, customers, even the common community. This kind of articles is generally called Other constituency statutes in America academia. So far from then on, 29 states in America has revised their company act and established the Other constituency statutes. This statute suffers many criticisms since it appeared. Its blemishes could be reduced to that, it's had not considered how to solve the interest conflicts between the non-shareholder interior member; enlarged the cost of board of directors to make a management decision; to a certain extent, will dampen investor's investment enthusiasm; the fuzzy standards has increased the difficulty of supervising and managing the trustee; this provision lacks the right of suit the safeguard and so on. Some scholars even believe that, lets the senior decision-makers responded to all benefit counterparts equals to lets them be irresponsible.⁵

There are no reasons that these difficulties are easier to come over on the social background in China than in America.

Actually, except the general rule described in Article 5, the amended act does not provide any specific rule to make companies satisfy that social responsibilities, let alone the liability for failure in doing so. As the matter of fact, it is still in the sense of morality that we say business shall take the social responsibilities. For the decision-makers of companies, however, such that ambiguous rule as Article 5 is much confusing, leading more difficulties in making a decision.

Well, without Article 5, is there anything else could be done to enforce the responsibility of business? In fact, there are lots of rules on environmental protection in China that can be applied to do so. Where Article 5 is enforced, the environmental responsibility it means should be, in theory, the one more desirable than that enacted in the environmental law. In other words, Article 5 provides a more demanding responsibility instead of a legally minimum one. Such responsibility, an expectation rather than a duty, thus looks like more a moral responsibility. Looking into the future, we find that it will be a lasting mission to make effective systematic arrangement within the framework of Company Act that compels companies to fulfill their environmental responsibility.

⁵ Ma Li, Zhang Qian, Liu Xingguo, Comment on Occident Company Social Responsibilities Theory, Jianghuai forum, 5,2005.

Part II. Relevant rules in China's environmental law

In China, law of environment and resource protection is a category of law, like economic law, civil law and criminal law. In recent years, legislations on environmental protection have kept emerging and a large body of environmental legislations has come into being. The Environmental Protection Act 1989 creates a couple of legal systems concerning the environmental responsibility of business including those of target responsibility of environmental protection, waste emission registration, environmental effects assessment, emission fee and so on.⁶ Nowadays, rules consisting in these systems have become fundamental legal rules that companies shall comply with to fulfill their environmental responsibility. The floods in parts where Yangtze River runs in 1998, warned us how important it is to protect environment. Since then, China's government has had an unprecedented grim determination to protect environment. Quite a few bills and acts of environmental protection have been enacted or amended. These acts show more concern about the legal responsibility of business to protect environment.

⁶ *Environmental Protection Act 1989*, Article 13 Units constructing projects that cause pollution to the environment must observe the state provisions concerning environmental protection for such construction projects. The environmental impact statement on a construction project must assess the pollution the projects is likely to produce and its impact on the environment and stipulate the preventive and curative measures; the statement shall, after initial examination by the authorities in charge of the construction project, be submitted by specified procedure to the competent department of environmental protection administration for approval. The department of planning shall not ratify the design plan descriptions of the construction project until after the environmental impact statement on the construction project is approved. Article 24 Units that cause environmental pollution and other public hazards shall incorporate the work of environmental protection into their plans and establish a responsibility system for environmental protection, and must adopt effective measures to prevent and control the pollution and harms caused to the environment by waste gas, waste water, waste residues, dust, malodorous gases, radioactive substances, noise, vibration and electromagnetic radiation generated in the course of production, construction or other activities.

Article 27 Enterprises and institutions discharging pollutants must report to and register with the relevant authorities in accordance with the provisions of the competent department of environmental protection administration under the State Council.

Article 28 Enterprises and institutions discharging pollutants in excess of the prescribed national or local discharge standards shall pay a fee for excessive discharge according to state provisions and shall assume responsibility for eliminating and controlling the pollution. The provisions of the Law on Prevention and Control of Water Pollution shall be complied with where they are applicable.

Clean Production Promoting Act 2001 distinctly requires that companies be responsible for environmental protection. Under this act, companies shall keep innovating design, using clean power and raw materials, adopting advanced techniques and equipment, improving management and synthetic utilization measures so as to cut down pollution from its root, to reduce or avoid producing or letting out pollutants during manufacturing, supplying service and using products, and to ultimately lessen or eliminate pollution against people's health and environment.

Where an engineering project is started without permission by the competent environmental protection administration, Article 31 of the *Environmental Effects Assessment Act 2002* authorizes that administration command that the construction unit stop the project at once and submit the relevant documents for check and approval within the given days; in case of failure in doing so, that unit will be fined at least 50,000 but no more than 200,000 RMB; the chief officer in charge of that project and other responsible officers shall be punished under administrative law. But regrettably, Article 31 neglects the potential pollution that project may produce. It should have been required that in case of pollution, something shall be done to make the polluted surroundings as clear as it was before. The lawmakers were only concerned about economic punishment but ignorant of ecological benefits from environmental protection.

Solid Waste pollution Prevention and Disposition Act 2004 (amended in 2004 but coming into force on April 1, 2005) further provides that goods not be packed luxuriously and wrap page be compulsorily called back.

Besides the acts promulgated by the Standing Committee of China's National People's Congress, there are lots of regulations about the environmental responsibility of business made by China's Central People's Government and its agencies, especially China's State Environmental Protection Administration.

It should be said that, China has generally had a fine legislation on the environmental responsibility of business. The remaining problem is how to enforce it. The academics have uttered an urgent call for strict enforcement of law and the government also shows a fierce determination for it but up till now, difficulty in enforcing law has still been troubling China.

Part III. The hierarchy analysis of the company's environmental responsibilities

The company's environmental responsibility can be classified into three levels at least: juristic, moral, and strategic. The lowest level is legal responsibility. Any companies should discharge the environmental responsibility in this level; otherwise it will take the adverse legal consequence. The environmental responsibility in this level is mandatory. Managers of the Companies have no alternative but undertaking the obligation, for example, the obligation of discharging pollutants under the prescribed discharge standards. If the company discharges pollutants in excess of the prescribed discharge standards, not only must it undertake the civil liability, also undertake the administrative liability, though there is no harmful consequences.⁷ China's law has prescribed extremely expressly concerning this behavior. Furthermore, there are still Environmental Protection Law and other rules and regulations of environmental protection, violate the legal system such as the system of three concurrencies,⁸

⁷ *Environmental Protection Act 1989*, Article 37: A unit which dismantles or leaves idle the installations for the prevention and control of pollution without prior approval by the competent department of environmental protection administration, thereby discharging pollutants in excess of the prescribed discharge standards, shall be ordered by the competent department of environmental protection administration to set up the installations or put them to use again, and shall concurrently be fined.

Law of the people's Republic of China on the Prevention and Control of Atmospheric Pollution 1995, Article 48: Whoever, in violation of the provisions of this Law discharges pollutants to the atmosphere in excess of the national or local discharge standards shall make treatment thereof within a time limit, and shall also be imposed upon a fine or not less than 10,000 yuan but not more than 100,000 yuan by the administrative department of environmental protection under the local people's government at or above the country level.

Law of the People's Republic of China on the Prevention and Control Environmental Noise Pollution 1996, Article 50, If anyone, in violation of the provisions of Article 15 of this Law, dismantles or leaves idle the facility for the prevention and control environmental noise pollution without prior approval by the environmental protection department and thereby discharges environmental noise in excess of the prescribed standards, the environmental protection of the local people's government at or above the country level shall order him to make corrections and concurrently impose a fine.

⁸ *Environmental Protection Act 1989*, Article 50 If anyone, in violation of the provisions of Article 15 of this Law, dismantles or leaves idle facilities for the prevention and control of environmental noise pollution without prior approval by the environmental protection department and thereby discharges environmental noise in excess of the prescribed standards, the environmental protection department of local people's government at or above the country level shall order him to make corrections and concurrently impose a fine.

and the system of pollution accident crisis management,⁹ legal liability that enterprises should bear.¹⁰

Moral respectability is a result of people's moral prospect of protecting the environment. The breach of such respectability may not cause unfavorable consequences – opportunism on being moral or not always exists. In contrast, the commitment of such respectability also may not have any chance of being praised by public or any practical benefit. The root is that the public need time to judge the necessity of fulfilling the moral respectability. Because of the existence of pluralism on morality, the decision maker's judgment on what is morality may not be coincident with certain public's. It may also because the company hasn't demonstrated the moral implication of her activities to the public properly or in time. Furthermore, there is even the possibility that the misunderstanding is caused by the company managers' lacking of certain abilities – the ability of making moral inference and demonstration. This kind of phenomenon has amplified the decision makers' psychological pressure on fulfilling the moral respectability. In regard to the high-tech background and complexity of environmental problem, to avoid such a risk is not an easy job for the decision makers in the company.

From strategic angle, environment responsibility refers to the responsibility the company considers the influences of the decision to the environment when they make strategic decisions, and makes macroscopic and the long-term

⁹ *Environmental Protection Act 1989*, Article 31: Any unit that, as a result of an accident or any other exigency, has caused or threatens to cause an accident of pollution, must promptly take measures to prevent and control the pollution hazards, make the situation known to such units and inhabitants as are likely to be endangered by such hazards, report the case to the competent department of environmental protection administration of the locality and the departments concerned and accept their investigation and decision. Enterprises and institutions that are likely to cause severe pollution accidents shall adopt measures for effective prevention.

¹⁰ *Environmental Protection Act 1989*, Article 35 Any violator of this Law shall, according to the circumstances of the case, be warned or fined by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management for any of the following acts: (1) refusing an on-site inspection by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management, or resorting to trickery and fraud while undergoing inspection; (2) refusing to report or submitting a false report on items for which declaration is required by the competent department of environmental protection administration under the State Council; (3) failing to pay, as provided for by the state, the fee for the excessive discharge of pollutants; (4) importing technology or a facility that fails to meet the requirements specified in the state provisions concerning environmental protection; or (5) transferring a production facility that causes severe pollution for use by a unit that is unable to prevent and control pollution.

strategic arrangement. In contrast to moral responsibility, strategy responsibility has more uncertainty and more fuzziness. Green manufacture is one kind of business decisions. For the company, deciding the degree of “Greenness” of its products and crafts is very important. It can affect the status of strategy and cost. Therefore, any decision-making must consider the prospect of cost/benefit rate. In other words, all costs and benefits considered with environment responsibility must be appraisal and evaluated; its goal is making the marginal cost and benefit of the investment in the manufactures to be approximately equal. Coalition of Environmentally Responsible Economies is a famous agency, which is devoted to impetus enterprises, undertakes their strategic responsibilities. It is a nonprofit alliance of the biggest investor in North America, environment organization and other public interest agencies, which devotes to environmental protection and sustainable development, including impetus alleviating global warming and so on.

The legal responsibility and the moral responsibility are what the companies shall do, and then, the strategy responsibility is what the companies can do. As far as it goes, the lowest level as the legal responsibility level still has many barriers in implementation, the expectation that company should undertake the higher level as the moral responsibility and strategic responsibility nearly have no way. The reasons, that include not only the company growth level factor, but also factors about system and consciousness, are extremely complex. Considering the legislative situation, the most important problem is fitting implementation measures’ absence. Actually, the notion that companies should undertake social responsibilities had infiltrated into the legislation before the *Company Act* revised. January 7th 2002, China's Securities Regulatory Commission and State Economic and Trade Commission issued *Code of Corporate Governance for Listed Companies in China*. Chapter 6 has the criterion of Stakeholder statutes.¹¹ This kind of stipulation in the *Code of Corporate Governance for Listed Companies in China* manifested the idea that the company has to undertake social responsibility, but it stipulated as norm in principle, lacking in the feasibility. And as well it is only limited to listed company. As a demonstrative criterion, *Code of Corporate Governance for Listed Companies in China* should be regarded as an earlier preparation for the company act legislating or revising. But this stipulation implementation effect is not extremely ideal.

¹¹ *Code of Corporate Governance for Listed Companies in China*, Article 81. A listed company shall respect the legal rights of banks and other creditors, employees, consumers, suppliers, the community and other stakeholders.

Part IV. Conclusion

Without the drive within business but only under pressure without, business would fail to fulfill its environmental responsibility. Evidence shows that there is correlation between the social responsibility of business and its economic interests.¹² But that is not necessarily true all the time. Business has its own considerations. For the purpose of drawing business to fulfill its environmental responsibility, with a view to analyzing the different levels of the company's environmental responsibility, more flexible measures should be adopted and more options should be offered before business. A rigid rule appears more enforceable but actually, in case of its failure to be enforced, dignity of law may be impaired more severely, which has been recognized by many academics. Academics are trying to have more flexible rules adopted and we have good reasons to believe that such effort will achieve something.

¹² [U.S.] Originally written by Stephen·R·Robins, translated into Chinese by Huang Wei, Management, Press of Renmin University of China, the fourth edition, 1997.

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Abstract

China's Company Act 2005 borrows advanced practices of other countries, including their legal rules concerning the social responsibility of business. Article 5 of the amended act provides that: "Companies shall, in good faith and credit, be subjected to the supervision by the government and the public, comply with law, administrative regulations and social morality, and take the social responsibility." It appears in the Chapter of General Rules of that recently amended act. The rule described in Article 5, viewed as a fundamental rule, is generally considered as the primary source of law that burdens companies with the social responsibility. In China, law of environment and resource protection is a category of law, like economic law, civil law and criminal law. There are lots of rules on environmental protection in China that can be applied to enforce the environmental responsibility of business. Where Article 5 is enforced, the environmental responsibility it means should be, in theory, the one more desirable than that enacted in the environmental law. In other words, Article 5 provides a more demanding responsibility instead of a legally minimum one. Such responsibility, an expectation rather than a duty, thus looks like more a moral responsibility. Without the drive within business but only under pressure without, business would fail to fulfill its environmental responsibility. For the purpose of drawing business to fulfill its environmental responsibility, with a view to analyzing the different levels of the company's environmental responsibility, more flexible measures should be adopted and more options should be offered before business. A rigid rule appears more enforceable but actually, in case of its failure to be enforced, dignity of law may be impaired more severely, which has been recognized by many academics. Academics are trying to have more flexible rules adopted and we have good reasons to believe that such effort will achieve something.

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Резиме¹³

Кинески Закон о трговачким друштвима из 2005. године преузима напредну праксу других земаља, укључујући и њихова правна правила која се тичу друштвене одговорности бизниса. Члан 5 измењеног закона прописује: «Трговачка друштва ће, у доброј вери и поверењу, бити подвргнута надзору од стране владе и јавности, поступати у складу са правом, административним прописима и друштвеним моралом и водити рачуна о друштвеној одговорности.» Ово се налази у Одељку о општим правилима овог недавно измењеног закона. Правило описано у члану 5, посматрано као опште правило, се уопштено сматра примарним извором права који обавезује трговачка друштва друштвеном одговорношћу. У Кини, право заштите животне средине и природних ресурса представља грану права, као економско, грађанско или кривично право. Постоје бројна правила о заштити животне средине у Кини, која могу да буду примењена, да би се обезбедила еколошка одговорност бизниса. Када се члан 5 буде спроводио, еколошка одговорност би требало да буде, у теорији, значајнија од оне која је прописана у еколошком праву. Другим речима, члан 5 обезбеђује виши степен одговорности, у односу на законски минимум. Таква одговорност, која је пре очекивање него дужност, личи више на моралну одговорност. Без улажења у сам бизнис, већ само под притиском, бизнис не би испунио еколошку одговорност. У сврху омогућавања да он испуни ову врсту одговорности, са анализирањем различитих нивоа компанијске

¹³ Резиме превео Бојан Тубић, асистент-приправник Правног факултета у Новом Саду.

еколошке одговорности, треба да буду усвојене флексибилније мере, као и да буде понуђено више опција. Чини се да је ригидно правило лакше спровести, али, заправо, у случају немогућности да буде спроведено, углед права може више ослабити, што су потврдили многи теоретичари. Они се труде да се усвоје флексибилнија правила и постоје добри разлози да верујемо да ће такав напор постићи неки резултат.