

COMPLETING THE LEGISLATION ON CONTROL AND TREATMENT OF ENVIRONMENTAL POLLUTION OF WATER FAR AWAY FROM INDUSTRIAL PARKS IN THE CONTEXT OF ADAPTATION TO CLIMATE CHANGE APPLICATION

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Abstract- *Controlling and treating water pollution in industrial parks is one of the important activities in environmental protection. However, currently, the implementation of this activity still has certain limitations and inadequacies, which seriously affects the quality of human life. The article focuses on analyzing, evaluating, and pointing out the limitations and inadequacies in environmental legal regulations on the issue of controlling and treating water pollution in industrial parks, as well as pointing out the Limitations in the application of these regulations in practice, from which a number of suggestions and recommendations for improvement are made.*

Keywords: *Control and treatment of environmental pollution, water environment, industrial parks*

1. RESEARCH METHODS

In the content of the article, to clarify the issues that need to be researched, the authors used specific research methods such as:

- Methodology of dialectical materialism, historical materialism of Marxism-Leninism: this method aims to study problems in a state of movement, constant change and placement in the overall relationship, interaction between the phenomenon to be studied and other phenomena. Furthermore, the research object is considered and evaluated in a "dynamic" state..., making research issues rich and diverse, both traditional and modern. In addition, the author also uses the following research methods:

- Exploratory research method: in this method, the authors have clarified the issue of the legal status of water resources protection in industrial parks and industrial clusters, this is the premise method used to generalize the problem in a comprehensive way before analyzing the content of the problem.

- Analytical method: The method is deployed and used throughout the entire article, when evaluating the operational mechanism to protect water resources in industrial parks and industrial clusters in Vietnam.

- Statistical and synthetic method: This method is used by the author group to statistically and synthesize important and necessary documents directly related to the scope of the research topic, for example, statistics on the number of industrial parks and environmental pollution in the introduction/problem statement section.

2. RATIONALES

According to statistics from the Ministry of Natural Resources and Environment of Vietnam, the proportion of industrial parks with centralized wastewater treatment stations accounts for only 66%, many industrial parks have come into operation but have not implemented building a wastewater treatment system or having one but not operating, or operating ineffectively or degraded. Meanwhile, it is estimated that about 70% out of more than one million cubic meters of daily and nightly wastewater generated from industrial parks is discharged directly into the receiving source without treatment (Ngoc Han 2021). Besides, every year in Vietnam, up to 9,000 people die and 100,000 cases of cancer are caused by using polluted water sources. In Vietnam,

there are currently 37 communes named "cancer villages" with 1,136 people dying from cancer. In addition, 380 people in neighboring communes also died from cancer (Ta Thi Thuy Trang 2019). In Vietnam, the law on water pollution control in general and industrial parks in particular is not specifically stipulated in a specific law, but is scattered in many different laws and documents such as: Law on Handling of Administrative Violations 2012, Criminal Code 2015, Law on Environmental Protection 2020, Law on Water Resources, Law on Fisheries 2017 and many other Decrees and Circulars. In general, these documents have adjusted regulations related to issues of responsibilities and obligations of subjects in prevention, detection, containment and methods related to water pollution treatment (Nguyen Thi Bao Nga 2019, 33). However, in reality in the application of the law, it is found that there still exist many related inadequacies such as: many violations have not been specifically guided, the level of punishment for many acts is not consistent and still low, there are some violations without punishment prescribed... This not only degrades the quality of the water environment but also threatens human life and health, causing negative impacts to socio-economic development and frustration for people. Therefore, research, analysis, and evaluation pointing out limitations and inadequacies in regulations and practical application of the law is important.

3. STATUS OF THE REGULATIONS ON HANDLING VIOLATIONS IN WATER POLLUTION CONTROL IN INDUSTRIAL PARKS IN VIETNAM

3.1. Control water pollution in industrial parks through administrative measures

From a practical perspective, handling violations of the law on water pollution control in industrial parks is a popular measure today based on legal documents such as: (i) Law on handling Administrative Violations 2012 (amended and supplemented in 2020); Environmental Protection Law 2020; (ii) Decree No. 45/2022/ND-CP dated July 7, 2022 regulating penalties for administrative violations in the field of environmental protection. Accordingly, the maximum fine for an administrative violation in the field of environmental protection is 1,000,000,000 VND for individuals and 2,000,000,000 VND for organizations stipulated in Article 4 of the Decree No. 45/2022/ND-CP dated July 7, 2022 (Banh Quoc Tuan & Nguyen Son Ha 2023). However, during the implementation process, it shows that the regulations on handling violations on controlling water pollution in industrial parks through administrative measures still have problems and need to have solutions including:

Firstly, in industrial clusters and parks, it is required to have a logbook to monitor the operation of the centralized wastewater treatment system, this helps the management of industrial park clusters to easily monitor abnormalities in wastewater treatment operations of enterprises located in industrial zones. If the industrial clusters do not monitor the operation of the centralized wastewater treatment system, based on Point d, Clause 3, Article 15, the authorities will impose fines from 50,000,000 VND to 60,000,000 VND for not having a logbook of operation of the centralized wastewater treatment system. However, many people believe that this regulation is necessary, but if industrial park clusters have a logbook but do not record relevant parameters or do not record them fully and accurately, what are the penalties? There are still major gaps in this, and guidance documents need to be issued to remove difficulties in the application process.

Secondly, Point b, Clause 2, Article 11 of Decree 45/2022/ND-CP states a fine of 10-15 million VND for failure to disclose environmental permits according to regulations. However, up to now, there has been no document regulating issues related to specific guidance on acts considered to be non-disclosure of environmental permits, so that competent agencies and units implement. Regarding environmental permits and licenses in industrial zones will include many different types of documents, which can be listed as: Environmental Impact Assessment Report (EIAR) or Environmental Protection Plan (EPP); Confirmation of completion of environmental protection work; Register of hazardous waste source owners (hazardous waste source owner logbooks); Hazardous waste delivery contract for organizations and individuals licensed to manage hazardous waste if the industrial park does not have environmental protection works to handle and treat hazardous waste itself; Prepare, use, store and manage hazardous waste records, documents and

logbooks related to hazardous waste management for 5 years; Report the hazardous waste situation to the Department of Natural Resources and Environment annually; Report to the Department of Natural Resources and Environment every 6 months on the storage of hazardous waste in the industrial park in case it cannot be transferred. Accordingly, the current Decree only regulates a part of these types of licenses such as: Environmental impact assessment reports, logbooks related to hazardous waste management..., but does not regulate penalties. If the industrial parks and industrial clusters lack environmental protection plans, certificates of completion of environmental protection work, and contracts for delivery and receipt of hazardous waste to organizations and individuals, etc. This can easily lead to cases of non-compliance and also to inconsistencies in the application of the law, when there are no specific regulations.

Thirdly, although the norms of penalty for violations for causing water pollution in industrial parks in Vietnam have been many adjustments over time, with a maximum fine for one administrative violation on water protection in industrial zones and clusters are only 1,000,000,000 VND for individuals and 2,000,000,000 VND for organizations. In general, the initial penalty norms are more deterrent. However, practical application still faces many difficulties. Because we realize that there will be many businesses in industrial zones that accept waste discharge into the environment and pay fines instead of finding ways to overcome the causes of environmental pollution. In this case, the issue can be illustrated by the case of Vedan Vietnam Joint Stock Company discharging waste directly into the Thi Vai River (October 2008), this enterprise was sanctioned for administrative violations with a fine. is 267 million VND, along with the requirement that the Company invest 33 million USD to upgrade technology and ensure wastewater meets environmental standards (Ta Thuy Trang 2019, 42). It can be seen that the investment in equipment to overcome consequences and upgrade technology to ensure sustainable development for this business is too high. Therefore, businesses choose to be punished and continue to discharge the waste, because based on Point đ, Clause 5, Article 15 of Decree 45/2022/ND-CP, businesses are only fined from: "40,000,000 VND to 50,000,000 VND for failure to stop discharge, make adjustments, make connections, and discharge treated wastewater into the collection system". This shows that there are still many cases where the penalty level is lower than the level required to manage consequences according to the provisions of law.

Fourthly, Article 15 of Decree 45/2022/ND-CP adjusts issues related to "Violation of regulations on environmental protection at establishments, zones of production, business and service, industrial clusters, craft villages". The acts include not having on-site wastewater and exhaust treatment facilities and equipment that meet environmental protection requirements; not having environmental protection rules for industrial clusters in accordance with environmental protection requirements according to regulations; not arrange the green area to ensure the ratio according to regulations; not arrange independent electricity meters at the centralized wastewater treatment plant; not construct and install the rainwater collection and drainage system of the operating industrial cluster to meet environmental protection requirements..., However, the remedial measures in Clause 7, Article 15 of Decree Decree 45/2022/ND-CP does not focus on the construction of works, completing the construction and installation of works..., aiming to manage the consequences caused by violations, but focuses on the measures to force the demolition of works and equipment built and installed in contravention of regulations on environmental protection to discharge untreated waste into the environment in cases of violation of regulations; it is forced to demolish works and equipment to dilute waste and businesses must treat waste to meet technical regulations on waste within the time limit set by the person with sanctioning authority in the decision to sanction administrative violations. From the above problem, it is necessary to make adjustments in remedial measures, focusing on completing and building auxiliary works for waste treatment corresponding to the violations.

Fifthly, in terms of enforcement organization, implementing coercive measures to enforce decisions on sanctioning administrative violations faces many difficulties. According to the provisions of the Law on Handling of Administrative Violations in 2012 and related documents, there are no regulations on enforcement of additional sanctions and remedial measures such as

suspension of operation, forced remediation, forced relocation of facilities causing water pollution, forced construction of environmental protection works according to the provisions of the decision on sanctioning administrative violations; form of coercion against the subject being coerced but not implementing the coercion decision;... this leads to difficulties in issuing coercion decisions by competent authorities, because in the coercion decision enforcement must clearly state the enforcement measures applied. Therefore, it is easy to lead to cases of repeat violations with subjects who commit administrative violations. This can be evidenced by the case of Long My Phat Alcohol Sugar Factory, Hau Giang province, which discharged wastewater into the Cai Lon River, causing serious pollution in 2019. On July 23, 2019, People's Committee of Hau Giang province issued a decision to fine Long My Phat Alcohol Sugar Co., Ltd. 714 million VND and the additional penalty is to suspend operations for 4.5 months from July 23, 2019. However, according to the Inspection Minutes prepared by the Interdisciplinary Environmental Protection Inspection Team in the province on December 9, 2019, Long My Alcohol Sugar Co Ltd continues to operate the Sugar Factory and has discharged into the environment without completing the contents according to the Inspection Conclusion of the General Department of Environment and the decision to sanction administrative violations of the Provincial People's Committee (VOV, 2019).

3.2. Handling violations of the regulations on water pollution control in industrial parks through criminal measures

The Criminal Code 2015 amended and supplemented in 2017 in Chapter XIX stipulates 12 types of environmental crimes. However, this law does not have direct provisions for crimes related to violating water pollution control in industrial parks. Therefore, to prosecute criminal liability for this act, competent authorities must rely on other environmental crimes such as the crime of polluting the water under Article 235; Crime of violating regulations on preventing, responding to, and overcoming environmental incidents according to Article 237. According to statistics from the Environmental Crime Prevention Police Department (C05) of the Ministry of Public Security, in the period of 2010 - 2020, the entire force detected 170,875 cases of environmental violations; Administratively handled 141,000 cases, prosecuted 2,624 cases with 4,357 defendants; sanctioned 97,000 administrative violations with a fine of 1,166 billion VND (Phu Yen Electronic Information Portal 2021). In particular, many environmental crimes have been investigated and handled, focusing on the fields of mineral resources and food safety. Data from the Supreme People's Court shows that in 11 years, from 2010 to 2020, the people's court system has handled 2,842 environmental cases with 4,445 defendants. Of these, 2,237 cases were tried with 4,145 defendants committing environmental crimes, accounting for 0.37% of the total number of criminal cases (Banh Quoc Tuan & Nguyen Son Ha 2023).

Implementation practice has found that criminal handling of violations on water pollution control in industrial parks still has many limitations and inadequacies:

Firstly, in crimes related to the environment, the classification of crimes does not have particularly serious crimes, accordingly, the maximum penalty frame for crimes related to the environment is only at 10-year in prison, this is still not enough to deter incidents with serious consequences. Typically, the violation of Vedan Company discharging wastewater into Thi Vai River in 2008, and the discharge of wastewater polluting the Central region's sea water in 2016 by Hung Nghiep Formosa Company, although causing particularly serious consequences. It lacks regulations so there is no criminal liability for individuals or legal entities in the above cases.

Secondly, the new point of the Criminal Code 2015 amended and supplemented in 2017 recognizes that the subject of criminal responsibility is a legal entity in Article 76 with 33 crimes; including acts of polluting the water. However, implementation practices from the period when the Criminal Code 2015 took effect until 2023, it has recorded only 1 case of a commercial legal entity being convicted. As for environmental crimes, up to now, no commercial legal entity has been handled according to criminal proceedings for acts of polluting the water, even though the water pollution violations happen nationwide (Ha Le Thuy & Tran Cong Thiet 2022). Therefore, there is no practical experience of litigation-conducting agencies and litigators in resolving cases involving commercial legal entities committing crimes, especially for closely organized legal entities, using sophisticated

steps to commit and conceal crimes are even more difficult; When dealing with cases where commercial legal entities violating water pollution control in industrial zones, confusion will inevitably arise, resulting in different ways of understanding and applying the law, making it very difficult to fight with this subject (Vu Van Tu 2023).

4. CONCLUSION AND SOLUTIONS TO IMPROVE THE REGULATIONS

In today's integrated economy, industrial parks have become a popular model, used by many countries, including Vietnam, to attract investment, promote economic development, as well as serve security and defense. In addition to the benefits brought by the industrial park, the production and business activities are conducted centrally with many production lines and modern technology, a large number of workers are employed, leading to a large number of waste often discharged into the environment. If not managed and treated well, the risk of polluting the water is very high (Nguyen Son Ha 2020). Through assessing the current status of the legal framework on handling violations on water pollution control in industrial parks by administrative and criminal measures, the authors found that there are still many problems and obstacles in the regulations on handling violations on water pollution control in industrial parks need to continue to be improved such as:

Firstly, Point d, Clause 3, Article 15 of Decree 45/2022/ND-CP needs to be amended in a specific direction that the government agencies will have the authority to impose fines when there is no logbook of the operation of the centralized wastewater treatment; not record relevant information, or recording but not fully. In addition, it is necessary to issue any documents to regulate issues related to specific instructions for actions considered to be non-disclosure of environmental permits, so that competent agencies and units will implement them.

Secondly, Article 15 of Decree 45/2022/ND-CP adjusts issues related to "Violation of regulations on environmental protection at establishments, zones of production, business and service, industrial clusters, craft villages". However, the remedial measures in Clause 7, Article 15 of Decree 45/2022/ND-CP do not focus on building works, completing the construction and installation of works..., aiming to overcome the consequences caused by violations, but focus on measures to force the demolition of works and equipment built in contravention of environmental protection regulations to discharge untreated waste into the environment in case of violation of regulations; it is forced to demolish works and equipment to dilute waste and must treat waste to meet technical regulations on waste within the time limit set by the person with sanctioning authority in the decision to sanction administrative violations. From the above problem, it is necessary to make adjustments in remedial measures, focusing on completing and building auxiliary works for waste treatment corresponding to the violations and regulations. This will reflect the true nature of overcoming consequences caused by violations of water pollution originating from industrial zones.

Thirdly, regarding the level of administrative sanctions, administrative sanctions for acts of environmental pollution in recent years have been continuously revised in the direction of increasing the penalty framework. Accordingly, Decree No. 45/2022/ND-CP on penalties for violating environmental laws still has many penalties that are not really reasonable for violations. Therefore, it is not uncommon for subjects to be willing to pay fines for discharging pollutants, and Vedan's discharge causing water pollution is a typical example. To overcome this shortcoming, it is necessary to continue to increase the severity of administrative penalties for violations on water pollution control in industrial parks to ensure deterrence (Nguyen Thi Cam Anh 2019). In addition, it is necessary to develop and supplement regulations on enforcement of decisions on sanctioning administrative violations in the field of water pollution control in industrial parks; ensure that subjects who commit violations fully comply with handling measures.


Fourthly, it is concerned about the penalty framework for environmental crimes. According to the provisions of the Criminal Code 2015 amended and supplemented in 2017, environmental crimes specified in Chapter XIX have a maximum penalty of 10 years in prison, although the dangerous nature of this type of crime is very huge, leaving long-term and serious consequences that are very expensive to overcome. Therefore, lawmakers need to consider classifying environmental crimes

according to crimes of causing environmental pollution in Article 235, crimes of violating regulations on preventing, responding to, and overcoming environmental incidents in Article 237 into a particularly serious crime, with a maximum prison sentence of up to 20 years to enhance deterrence and strictly handle organizations and individuals whose acts of polluting the water causing serious consequences (Vu Van Tu 2023).

In addition, it is necessary to increase the level of fines for environmental crimes. Environmental crimes committed by legal entities often pollute and destroy the environment on a large scale, causing damage and impact on many aspects of nature, human life and society. Currently, the maximum fine for legal entities committing crimes is 20 billion VND, which is a high fine in the Vietnamese legal system, but cannot be commensurate with the consequences of the acts committed by environmental crimes. Legal entities cause harm to society and the environment. Besides, it can be seen that the amount of 20 billion VND is still not a big problem for many legal entities with large organizational scale and economic potential. Therefore, it is necessary to consider the level of punishment corresponding to the level of consequences caused by the legal entity. At the same time, there should be additional sanctions forcing those legal entities to have remedies to manage the consequences of damage to the environment (Banh Quoc Tuan & Nguyen Son Ha 2023).

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