

ISRG Journal of Economics, Business & Management (ISRGJEBM)



ISRG PUBLISHERS

Abbreviated Key Title: Isrg J Econ Bus Manag

ISSN: 2584-0916 (Online)

Journal homepage: <https://isrgpublishers.com/isrgjebm/>

Volume – II Issue - III (May – June) 2024

Frequency: Bimonthly



ECONOMIC OBLIGATIONS OF ENTITIES IN EXPLOITATION AND USE OF NATURAL RESOURCES

Nguyen Mong Cam^{1*}, Tran Hoang Tuan Dat², Huynh Thanh Tuan³

^{1,2,3} Faculty of Law, Nam Can Tho University

| **Received:** 13.03.2024 | **Accepted:** 17.03.2024 | **Published:** 18.05.2024

*Corresponding author: Nguyen Mong Cam
Faculty of Law, Nam Can Tho University

Abstract

Economic obligations in the exploitation and use of natural resources in order to ensure absolute responsibility of entities that have activities that pollute the environment or demand to use natural resources. From the perspective of studying the current status of legal regulations on tax collection for fuels and environmental protection costs for wastewater, the article focuses on pointing out inadequacies in relevant current legal provisions and proposing complete directions to contribute to improving the responsibilities of entities that carry out the activities aimed at exploiting and using natural resources by being strictly bound to economic obligations corresponding to their exploitation and use acts

Key Words: economic obligations, exploitation, use, environmental protection tax, environmental protection fee

1. To state the problem

In the trend of sustainable development, countries are increasingly aiming to develop economic policies associated with environmental protection policies. One of them, the issue of economic interests associated with environmental protection responsibilities of organizations and individuals is one of the prerequisites in any activity that affects the living environment, there must be an obligation to pay. During the 44th session of the National Assembly, the National Assembly Standing Committee basically agreed with the comprehensive amendment of the Law on Environmental Protection to overcome the outstanding shortcomings and update with the new situation. One of the

important guidelines of the process of amending the Law on Environmental Protection in 2020 is to strengthen the application of the principle of polluters¹. The principle that polluters must pay is essentially an economic principle of cost allocation. This principle has become popular to bind responsibilities to entities whose exploitation activities use natural resources that directly affect the environment, thereby regulating their exploitation and

¹ TS. Nguyen Cong Thanh, The principle of polluters paying in Vietnamese environmental law, Journal of Natural Resources and Environment, No. 05/2020

use acts within the limits permitted by law. In other words, making environmental pollution costs a part of revenues and expenditures, associated with the operation of organizations and individuals expressed through specific legal provisions and enforcement by State power, which are compulsory economic obligations for entities engaged in exploitation activities use of natural resources. In Vietnam, environmental law is still a relatively new field, environmental policies as well as environmental law go hand in hand with basic principles². Based on the analysis of environmental protection tax provisions in the Law on Environmental Protection Tax 2010 and guiding documents, as well as the collection of wastewater environmental protection fees adjusted by Decree 53/2020/ND-CP. The author focuses on pointing out the unreasonable points of the law, not ensuring that entities that exploit and use natural resources must have economic obligations according to the State's guidelines and make complete proposals.

2. Current status of environmental protection legislation in order to ensure the fulfillment of economic obligations of entities in the exploitation and use of natural resources

2.1. Collection of environmental protection tax on fuels according to the Law on Environmental Protection Tax 2010 and related documents

Firstly, regarding taxable subjects specified in Clause 1 Article 2 of Decree 67/2011/ND-CP detailing and guiding the implementation of a number of articles of the Law on Environmental Protection Tax 2010, specifically: "... For mixed fuels containing biofuels and fossil-based gasoline, oils and greases, only environmental protection tax shall be collected for fossil-based gasoline, oils and greases." According to the above regulations, the law is still open to determining which categories are considered biofuels, because according to the above regulations, mixed fuels must be fuels containing biofuels along with gasoline, oil, chemical-based greases. Therefore, in cases where the basis for determining the existence of biofuels in mixed fuels when compared with the above provisions, tax exemption cannot be applied to non-fossil fuels, oils and greases.

According to the Law on Environmental Protection Tax 2010, gasoline is subject to tax except ethanol³. According to that regulation, it can be understood that ethanol is a gasoline that is not subject to taxation. Thus, in the case of mixed fuels composed of ethanol, comparing the provisions of Clause 1 Article 2 of Decree 67/2011/ND-CP, it is difficult to determine whether ethanol belongs to the group of biofuels or a type of petroleum. Therefore, the determination of ethanol in mixed fuels falls under the exemption from environmental protection tax as prescribed in Article 2 of Decree 67/2011/ND-CP, the law is still missing. On the other hand, Circular No. 152/2011/TT-BTC guiding the

implementation of the Government's Decree No. 67/2011/ND-CP dated August 08, 2011 detailing and guiding the implementation of a number of articles of the Law on Environmental Protection Tax 2010: "Gasoline, oil and lubricants specified in Clause 1, Article 3 of the Law on Environmental Protection Tax 2010 are gasolines, fossil-based oils and greases (hereinafter collectively referred to as petroleum) sold in Vietnam, excluding biological products (such as ethanol, food oil, animal fat...). From there, it can be seen that Circular 152/2011/TT-BTC by the enumeration method has identified ethanol, vegetable oil, animal fat as biological products and not belonging to the group of fossil-based gasoline, oil and lubricants, corresponding to the provisions of Article 2 of Decree 67/2011/ND-CP, ethanol, Vegetable oils and animal fats in mixed fuels are considered tax-exempt ingredients because they are not fossil-based gasoline, oils and greases. However, Article 3 of the Law on Environmental Protection Tax 2010 stipulates that ethanol is not subject to tax, but does not mention vegetable oils and animal fats. On that basis, the issue of implementing environmental protection tax exemption as well as determining the exact taxable subjects is still difficult because there are no uniform regulations on biofuel lists.

Secondly, regarding the determination of the percentage of components in mixed fuels as prescribed in Clause 1, Article 2 of Decree 67/2011/ND-CP, there is still no written agreement on the responsibilities of entities in inspection and assessment as a basis for calculating environmental protection tax. Also according to Clause 1 Article 5 of Circular 152/2011/TT-BTC: "Based on technical standards for processing mixed fuels approved by competent agencies (including cases where there is a change in the percentage (%) of gasoline, oil, fossil-based lubricants contained in mixed fuels), taxpayers calculate for themselves, declare and pay environmental protection tax on the quantity of fossil-based gasoline, oil and grease; At the same time, it is responsible for notifying tax authorities of the percentage (%) of fossil-based gasoline, oil, and lubricants contained in mixed fuels and submitting them together with the tax return of the month following the month in which the sale (or rate change) of mixed fuels is available.". Thus, in some localities, the determination of the proportion of components in mixed fuels is mainly based on the reporting of taxpayers' declarations. However, pursuant to the provisions of Clause 4, Article 9 of the Law on Environmental Protection Tax 2010: "For gasoline and oil produced or imported for sale, the tax calculation time is the time when the focal point of gasoline and oil trading is sold", accordingly, in case the taxpayer at the time of sale has not yet made the declaration of the percentage of petroleum of fossil origin, At the time of sale of gasoline, there will be no practical basis for calculating tax on the amount of mixed fuel calculated from the time of actual sale to the time of making the declaration to the authorities. On the other hand, if there is a change in percentage but it has not reached the time of periodic declaration registration, at the time of declaring the tax difference, there is still no specific adjustment document.

From the above analysis, the author believes that the Legislator should specify the list as the basis for determining biofuels, as a basis for implementing tax exemption for the biofuel part in the mixture specified in Article 2 of Decree 67/2011/ND-CP. In addition, the law should agree generally on determining the properties of ethanol, aiming at uniformity in tax exemption for ethanol ingredients in mixed fuels specified in Article 7 of Decree 67/2011/ND-CP. On the other hand, in the issue of tax exemption for the proportion of ingredients in mixed fuels other than gasoline,

² Vo Trung Tin, Environmental Protection Tax - a form of implementing the principle of "polluters must pay" in environmental law, Legislative Research Press No. 16(272), August 2014

³ Point a, Clause 1, Article 3 of the Law on Environmental Protection Tax

lubricants and fossil bases, the law should provide for the responsibilities of specific agencies in the inspection work, and at the same time have specialized methods for determining the ratio, advanced in order to achieve general consistency in the matter of inspection and proper determination of the proportion of fuel exempted from duty according to regulations.

In addition, in order to ensure absolute economic obligations for entities engaged in the exploitation and use of fuels, the determination of taxes in gasoline trading, lawmakers need to add specific regulations on cases in which compensatory tax must be paid to authorities in some cases such as at the time of actual sale to the market the school is earlier than the time of declaration of the percentage of fuel components to the authorities, and at the same time it is necessary to bind some liability for delay in making the declaration of information to the State as the basis for the implementation of the tax calculation. Thereby, increasing the self-discipline of petroleum trading entities in tax declaration and payment, and strengthening the inspection and supervision from the authorities in order to well implement tax administration in petroleum trading business.

2.2. Issues of exploitation and use of water resources with collection of environmental protection fees for wastewater

Firstly, regarding the determination of the amount of environmental fees payable under Decree 53/2020/ND-CP on the regulation of environmental protection fees for wastewater: *"The amount of clean water used is determined according to the meter of clean water consumption of the fee payer. In case of self-exploitation of water, the quantity of clean water used shall be determined based on the scale of operation, business, services or permits for exploitation of surface water and groundwater self-declared and appraised by organizations, business households and individuals by the ward People's Committee, town"*⁴. According to the above provisions, there are two unreasonable issues, namely:

First, the use case is determined according to the meter of clean water consumption of the fee-payer being organizations, households and individuals discharging wastewater specified in Article 2 of Decree 53/2020/ND-CP⁵. The issue of paying fees for clean water consumption has the goal of ensuring the obligations of users for environmental protection and serving the remediation related to environmental problems from clean water consumption, not stopping with economic goals. According to Article 44 of Decree 80/2014/ND-CP stipulating the use of part of the proceeds to *"pay for services of collecting, assessing and sampling wastewater analysis to determine COD content"*, in which COD content in the environment is an indicator used to measure the amount of organic pollutants present in water⁶. Therefore, the accurate determination of the amount of water used is the basis for collecting fees to pay and take measures to compensate for the amount of water that has been exploited. However, during use, part of the water is lost, which does not pass through the meter's tally system. According to the annual report of water supply and

sewerage joint stock companies, the water loss rate at the units is still quite high, specifically: *" Vinh Long Water Supply Joint Stock Company has a water loss rate of 20%; Hau Giang Water Supply and Sewerage Joint Stock Company has a water loss rate of 16.51%; An Giang Electricity and Water Joint Stock Company, the water loss rate is 18.95%; Can Tho Water Supply and Sewerage Joint Stock Company, the water loss rate is 14.46%"*⁷. On this basis, it can be seen that according to the regulations on the amount of fees payable, the law is still open on the issue of liability for the portion of water loss that is not tallied by the meter. The authors believe that the problem of water loss is not only an economic benefit of companies, but it is related to environmental protection and overcoming the current situation of wasting national resources. Therefore, it is necessary to set out the responsibilities of the authorities in ending water loss by inspecting and sanctioning organizations and individuals that commit acts of causing water loss, forcing entities that commit acts of causing water loss to be obliged to pay absolutely only for the amount of water lost.

Second, the Enterprise Law stipulates: *"To exercise business autonomy and choose the form of business organization; actively select industries, trades, geographical areas and business forms; proactively adjust the scale and lines of business"*⁸. Accordingly, the law allows an enterprise to actively narrow and expand the scale of its production and business activities, and the enterprise is not obliged to notify the business registration agency of the change in scale according to Clause 1, Article 31 of the Enterprise Law 2020. Thus, the determination of the amount of fees payable to organizations, households and individuals that exploit water by themselves can determine the amount of water according to the scale of operation and business according to Clause 1 Article 7 of Decree 53/2020/ND-CP, according to the author group, is not absolutely guaranteed of the obligation to pay the fees in accordance with the amount of water that the organization, households and individual families used in the process of operation, production and business. The lack of specificity in the grounds for establishing a toll collection establishment in the term "scale of operation and business" of the lawmaker has caused a lack of uniformity in practice on the collection of fees, the absence of specific provisions on the grounds for determining the fee makes it difficult to determine the responsibility for coordinating the actual inspection of scale of operation and business for specialized agencies in coordinating with agencies responsible for collecting wastewater fees.

In addition, Article 31 of the Enterprise Law 2020 on cases in which enterprises must notify the Business Registration Office when changing one of the following contents: " i/ Business lines and lines; ii) Founding shareholders and shareholders being foreign investors, for joint-stock companies, except for listed companies; iii) Other contents in the enterprise registration dossier"⁹. According to the above regulations, the change in the scale of operation and business for enterprises does not fall into the cases where it is mandatory to register with the competent authority. Therefore, it is extremely difficult to determine the scale

⁴ Point a, Clause 1, Article 7 of Decree 53/2020/ND-CP

⁵ Clause 1, Article 4 of Decree 53/2020/ND-CP

⁶ According to the Digital Building Information page, Understanding the concept of what cod content is and its effects in the aquatic environment, <https://xaydungso.vn/blog/tim-hieu-khai-niem-ham-luong-cod-la-gi-va-tac-dung-cua-no-trong-moi-truong-nuoc-vi-cb.html>, [accessed 12/17/2023]

⁷ Mr. Giang Van Tuyen, a number of solutions and technologies in preventing clean water loss, Planning and Education Information of Western University of Civil Engineering, No. 44 - Second quarter of 2021

⁸ Clause 2, Article 7, Enterprise Law 2020

⁹ Clause 1, Article 31, Enterprise Law 2020

of business activities of entities, as well as changes in scale in the operation process of entities will not be honestly reflected in the declaration documents, making it difficult to manage, inspection by the competent authorities. On the other hand, the law assigns the appraisal of declared information of water exploitation entities to the People's Committee of the town ward, without stipulating the appraisal plans, the method of appraisal, the force responsible for appraisal, as well as the periodic time for appraisal. In addition, in fact, most ward and township governments often do not have a specialized environmental apparatus and do not have specialized officials to perform this task, so the collection of fees is not feasible and inefficient¹⁰.

Based on the analyses above, the author proposes several improvements regarding the environmental protection fee for wastewater, as follows: i) In determining the basis for levying environmental protection fees on wastewater, it is necessary to specify regulations regarding the responsibilities of relevant agencies in inspecting the actual water usage of water users compared to the information declared. Additionally, to ensure voluntary disclosure of accurate water extraction amounts and to enhance environmental awareness among organizations, households, and individuals, the author suggests establishing appropriate sanctions when the assessment results do not match the declared results of the aforementioned entities. This would strengthen legal education on environmental protection awareness and gradually enforce the principle that polluters must pay among organizations, households, and individuals extracting water, contributing to enhancing the effectiveness of the state's sustainable development policies. ii) For businesses, households, and individuals self-declaring water usage, specific regulations on the basis for determining fee levels are needed, ensuring that these bases directly impact water usage by organizations and individuals, ensuring uniformity in the state's fee collection. Furthermore, legislators should supplement obligations regarding notifying changes in scale as one of the bases for determining the fees to be paid by organizations, businesses, and individuals self-declaring water usage and impose accompanying sanctions for cases deliberately failing to notify the authorities. iii) In the process of assessing the declared information of water users, the law should regulate the allocation of assessment forces at local levels according to the water usage needs of each region and unify assessment methods and timeframes.

Additionally, Decree 02/2023/ND-CP stipulates the duration of water resource licenses as follows: *"The maximum term for surface water exploitation and use permits is 15 years, with a minimum of 5 years and can be extended multiple times, with each extension period being a minimum of 3 years and a maximum of 10 years; Groundwater exploration permits are valid for 2 years and can be extended once for a maximum of 1 year; Permits for groundwater exploitation and use have a maximum term of 10 years, with a minimum of 3 years and can be extended multiple times, with each extension period being a minimum of 2 years and a maximum of 5 years."* Therefore, organizations and individuals have the right to apply for license extensions, and the licensing authority must decide the specific duration of the license based on the conditions of each water source, the detail of information, data investigation,

¹⁰ Dao Nguyen Huong Duyen, Legislation on environmental protection fees for wastewater: current situation and applicability in practice, Journal of Human Resources in Social Sciences, No. 7-2021

resource assessment, and the application dossier of the organizations, individuals requesting the license or extension.¹¹ However, when compared with Article 7 of Decree 53/2020/ND-CP, which stipulates that water exploitation licenses are one of the bases for determining fees, the author believes that the issue of extending natural resource licenses cannot be automatically approved by the competent authorities because economic activities must go hand in hand with environmental protection, and polluters must pay. Therefore, license extensions must be approved through procedures similar to those for reviewing the initial decision on the license duration. This is the basis for evaluating the current state of water resources and environmental protection conditions before allowing organizations and individuals to continue using them. On the other hand, when the current state of water resources still meets the conditions for use by organizations and individuals, mechanisms must be established to determine environmental protection fees based on estimated costs for environmental restoration, rather than solely relying on the basis of water resource usage licenses within the specified period. This is because changes in water pollution issues are factors that should be considered in fee collection aimed at restoring water environments.

3. Conclusions

The economic obligation in exploiting and utilizing natural resources demonstrates the use of economic benefits to bind environmental protection responsibilities. However, to ensure the thorough implementation of the aforementioned economic obligations, specific legal provisions regarding the fees imposed by competent authorities for any environmentally damaging activities need to be implemented from two aspects. Firstly, there is an obligation from the individuals engaging in activities causing environmental pollution, and there is a responsibility for inspecting, monitoring the current situation, and applying measures to address any intentional concealment or incorrect declaration compared to the actual data obtained through inspections by the competent authorities. According to Vietnamese law, environmental taxes and fees are powerful tools for the state to control economic activities linked with resource protection, meeting the needs of sustainable development. From the regulations on environmental protection taxes for various fuels under the Environmental Protection Tax Law 2010 and related documents, as well as the regulations on water environmental protection fees under Decree 53/2020/ND-CP, it can be seen that in the absolute enforcement of economic obligations when exploiting and using natural resources, it is necessary to first enhance the role of the inspection agencies in assessing tax bases and determining the fees to be collected from organizations and individuals by supplementing regulations on specialized agencies, assessment methods, and permissible sanctions for tax and environmental protection fee violations. Next is to clearly define and unify tax bases for each specific case based on the nature of the industry, and the amount of resources used by organizations and individuals. Sustainable development is a crucial issue in both economic activities and the implementation of measures to minimize environmental pollution and natural resource waste. Therefore, the author believes that the fees paid by organizations and individuals to the state for activities causing environmental pollution or using national resources must be sufficient to compensate for the aforementioned activities, thereby firmly linking environmental

¹¹ Article 21, Decree 02/2023/ND-CP

protection responsibilities to the economic interests of organizations and individuals.

References

1. Law on Environmental Protection Tax 2010
2. Enterprise Law 2020
3. Decree 80/2014/ND-CP
4. Decree 53/2020/ND-CP
5. Decree 02/2023/ND-CP
6. Dao Nguyen Huong Duyen, Legislation on environmental protection fees for wastewater: current situation and applicability in practice, Journal of Human Resources in Social Sciences, No. 7-2021
7. According to the Digital Building Information page, Learn the concept of what COD content is and its effects in the aquatic environment, <https://xaydungso.vn/blog/tim-hieu-khai-niem-ham-luong-cod-la-gi-va-tac-dung-cua-no-trong-moi-truong-nuoc-vi-cb.html>.
8. TS. Nguyen Cong Thanh, The principle of polluters paying in Vietnamese environmental law, Journal of Natural Resources and Environment, No. 05/2020
9. Vo Trung Tin, Environmental protection tax - a form of implementing the principle of "polluters must pay" in environmental law, Journal of Legislative Studies No. 16(272), August 2014
10. Mr. Giang Van Tuyen, some solutions and technologies in preventing clean water loss, Planning and Education Information of Western University of Civil Engineering, No. 44 - Second quarter of 2021