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A study on the legal status of removal costs of oil pollution from ship under Chinese Maritime Law

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A Study On the Legal Status of Removal Costs of Oil Pollution From Ship Under Chinese Maritime Law

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DECLARATION

I certify that all the materials in this dissertation that are not my own work have been identified, and that no material is included for which a degree has previously been conferred on me.

(Signature):

(Date):

Supervised by:

Professor

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Assessor: _____

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ABSTRACT

The removal costs of oil pollution are“in any case in which there is a substantial threat of a discharge of oil, the costs to prevent,minimize,or mitigate oil pollution from such an incident”. However,currently in Chinese judicial practice,there is no unified understanding about the scope and legal status of removal costs. Especially when the Maritime Safety Administration of China takes action according to relevant laws, a lot of controversies arise around how the removal costs should be defined and who should take the responsibility to such removal costs.There are a lot of different opinions about these issues in Chinese judicial practice and academia.

This thesis aims to provide a framework for the solutions to such problems by defining the legal status and the scope of removal costs and by thoroughly discussing about the removal costs caused by different clean-up measures under different circumstances. In this thesis,I hope to provide guidance for Chinese courts on how to identify removal costs. Furthermore,I wish to help different parties of the clean-up industry to have a better understanding about their rights and obligations in such cases.Consequently,different parties may get a clear knowledge about the legal status,risks,costs and benefits of their actions.And in the long term,I hope that different parties involved in such cases can learn to choose claims and defenses from which they can benefit most.

Key words: Removal Costs,Compulsory Clean-up Measures, Administrative Substituted Fulfillment.

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Introduction

1.Rising of question

In recent years, with the development of marine transportation industry, large-scale ship oil pollution accidents occur from time to time.With the frequent occurrence of large-scale ship oil pollution accidents, the prevention and control of oil pollution is becoming more and more important, and the requirements of cleaning operation are also higher and higher.In order to prevent and reduce the damage to the natural environment, all countries take oil pollution accidents at sea seriously.In recent years, Chinese maritime transportation industry has developed rapidly, but the relative pollution accidents have also increased. Under the background of the increasing requirements for pollution clearance, Chinese legal system on pollution clearance has not made much progress.Due to the lack of relevant supporting laws and different judicial practices, the courts have different views on the issue of clean-up fees, which leads to certain restrictions on the development of clean-up industry in China.After the occurrence of the marine oil pollution accident, the parties involved in the case shirk responsibility for the payment of the clean-up fee, which sometimes takes a long time to get the clean-up fee.This also leads to the strange situation that who cleans up will suffer losses in practice, which leads to the low enthusiasm of the cleaning companies for cleaning up, especially when the maritime administrative departments take compulsory cleaning measures, and makes the natural environment suffer more unnecessary losses.

These situations are caused by the fact that there is no unified understanding of the concept, scope and nature of the clean-up fee in Chinese judicial and theoretical circles.The purpose of this paper is to sort out the laws of China for a long time, refer

to the legislative reality of foreign countries and the situation of international conventions, and clarify how China should define the clean-up fee, so that the parties involved in the case have a clear understanding of their legal status and the legal relationship involved, so as to correctly measure the legal consequences and risks of taking actions,Better guide the operation of all parties, and ultimately make the oil pollution cleaning system more perfect and standardized in the future, so as to maximize the control of environmental damage caused by ship oil pollution accidents.

2. A review of research in China and abroad

At present, based on the 1992 <International Convention on Civil Liability for Oil Pollution >and <International Convention on Civil Liability for Bunker Oil Pollution >other relevant conventions, as well as the legal provisions and practice of various countries, the research abroad is more comprehensive, and there is a more in-depth study on the concept and scope of the clean-up fee.Although there are differences in the identification of some minor issues due to the differences in domestic laws of various countries, generally speaking, there are similar mature systems<The International Fund for compensation for oil pollution damage claims manual> even has a very detailed list of the scope of clean-up fees, although the list is only for the scope of compensation supported by the 1992 International Fund for compensation for oil pollution damage.But for our judicial practice, there is still great significance.

In Chinese legal system, there is no unified definition of clean-up fee at present, and the scope of clean-up fee is unclear.There are more or less loopholes in various views on this issue in Chinese theoretical circles, which can not be unified with Chinese current effective legal system, and can not provide clear guidance for the decontamination industry and the parties.For example, for the nature of the clean-up fee arising from the mandatory adoption of clean-up measures by the maritime authorities in accordance with Article 71 of the 2013 sea environment law, the views of the academic circles include three different opinions: civil liability, administrative liability, and civil or administrative liability.The author believes that these views are not very consistent with the current legal system of our country, there are some problems.

The author hopes that this paper can unify the current marine environmental protection law, administrative enforcement law and other relevant laws, and provide guidance for the relevant clean-up industry, shipping industry and government departments.

3.Research significance, research methods and article structure

The significance of this paper is mainly reflected in the following two aspects:

In respect of theory, by clarifying the concept, scope and nature of clean-up fees, this paper provides future researchers with the research on the current situation of Chinese judicial practice of clean-up fees, in order to establish a more perfect legal system under the current framework of China in the future, so as to make the problem of clean-up fees more thorough and easy to be accepted by all relevant parties.

In practice, this paper aims to provide a systematic theoretical basis for judicial practice, so that the court in the judgment, the parties in commercial activities can be clear about the relationship between various legal subjects, rights and obligations and the consequences of various legal acts.

In this paper, through case analysis, literature analysis and legal analysis and other methods, layer upon layer to solve the relevant legal problems.In this paper, based on the existing laws of China, referring to the relevant cases and theoretical research, the author puts forward his own views on the related issues of ship oil pollution clearance fee.

In terms of the structure of the article, the first chapter of this paper mainly discusses the concept and scope of the ship oil pollution clean-up fee under the Chinese legal system. Through the comparison and comparison between the ship oil pollution clean-up fee and the related similar fees, it summarizes the elements that the concept of the ship oil pollution clean-up fee under the Chinese legal system should have and the scope it should cover.

The second chapter will mainly introduce the more important three parties in the clean-up operation and the specific generation mode of clean-up fee in practice.This chapter will explain the relationship between the parties and how their relationship affects the nature of the clean-up fee through case analysis and interpretation of relevant laws and regulations.

The third chapter will mainly introduce the most controversial one of the ship oil pollution cleaning fees, that is, the nature of the compulsory cleaning fees caused by the compulsory cleaning measures of the competent government departments.Due to the compulsory clean-up costs based on the relevant laws and regulations, but the understanding of the relevant laws is not clear, so in practice, the parties often shirk from each other.This chapter will contact maritime law, marine environmental protection law, administrative law and other legal departments, based on Chinese existing legal framework, to clarify the legal status of compulsory decontamination fee.

CHAPTER 1 The Concept and Scope of Ship Oil Pollution Clearance Fee

In China, there is no law or administrative regulation that clearly defines and divides the clean-up fee.As far as the term "clean-up fee" is concerned, it is not completely unified when it appears in laws or administrative regulations.Article 41 of the marine environmental protection law of the People's Republic of China in 1983 (hereinafter referred to as "the marine environmental protection law of 1983") stipulates that: "if anyone violates this Law and causes or is likely to cause pollution damage to the marine environment, the relevant departments specified in Article 5 of this law may order him to control the pollution within a time limit, pay the sewage discharge fee and pay the fee for eliminating the pollution,Compensation for the loss of the State... "The" cost of eliminating pollution "here is the cost of cleaning up.At the same time, in the minutes of the second National Conference on foreign related commercial maritime trial (hereinafter referred to as "minutes of trial meeting"), it is called "clean-up expenses".The disunity of words reveals that there is not a very clear definition of clean-up fee in Chinese current law. (law,1983)

In Chinese judicature and legislation, in addition to the different words, there is also a lack of clear provisions on the scope of clean-up fees.Taking the law of the people's Republic of China on marine environmental protection in 2013 (hereinafter referred to as "the law of the people's Republic of China on marine environment protection in 2013") as an example, a series of concepts are defined respectively in the annex to the law, but the scope of clean-up fee is not clearly defined.This may lead to various courts for the actual type and amount of clean-up fees identified deviation, resulting in the unity of the law is damaged.

In order to solve the above problems, it is necessary for us to make an in-depth study on this issue, so as to clarify the concept and scope of the clean-up fee in China.

1.1 Concept of clean up fee

When maritime According to the third paragraph of article 172 of the maritime law of the people's Republic of China (hereinafter referred to as "the maritime law"), the salvage payment refers to any remuneration, remuneration or compensation payable by the salved party to the salvor in accordance with the provisions of this chapter

1.1.1 Distinction between clean up fee and salvage reward

According to the 1989 International Convention on salvage to which China is a party, the principle of voluntary salvage at sea is "no cure no pay", (law, 1989)that is, if there is effect, there will be reward, and if there is no effect, there will be no reward.In addition, Article 182 of the maritime law of the people's Republic of China also stipulates that if the salvor fails to prevent or reduce the environmental pollution damage due to the fault of the salvor, the salvor may be deprived of the right to special compensation in whole or in part.According to the provisions of paragraphs 1, 2 and 5 of Article 182 of the maritime law of the people's Republic of China, when the salvor is negligent and fails to prevent or reduce the environmental pollution damage, what is deprived is only the right to special compensation, not the right to reward.It can be seen that if the salvor's rescue has only partial effect and the salvor fails to prevent or reduce the environmental pollution damage due to his fault, the salvor can still get the corresponding reward, but the right to special compensation may be deprived in part or in whole.It can be seen from this article that there are two different purposes in the same rescue act: rescue and prevention or reduction of environmental pollution damage.At this time, we need to distinguish between the rescue reward and the clean-up cost, otherwise it will lead to unnecessary confusion and unfair results to all parties involved.

The Patmos case well illustrates the position of the international oil pollution compensation fund on this issue: the oil tanker Patmos collided with another oil tanker in the Messina Strait of Italy and caught fire, resulting in the leakage of about 700 tons of crude oil.More than 40 claims have been filed by shipowners, 30 of which have been allowed. However, the International Fund for compensation for oil pollution damage points out that 12 of the claims filed by shipowners belong to rescue operations and related measures, and cannot be claimed in the fund,The reason is that the measures related to these 12 claims are not primarily aimed at preventing or reducing pollution.The Italian court took the same position and further pointed out that even if the salvage action actually prevented or reduced pollution losses, since the main purpose of these measures was to rescue ships and cargo, the salvage action could not be regarded as a measure to prevent or reduce pollution (Yu,1994).

In some cases, salvage at sea may contain preventive measures to prevent or reduce ship pollution damage. Some maritime emergency activities may also have the purposes of salvage at sea and preventing or reducing ship pollution damage at the same time, and there may be further cases where the two purposes coexist and are not easy to distinguish. The specific identification of specific maritime emergency activities as salvage or decontamination involves the assessment of costs and the limitation and non limitation of maritime claims, which may affect the major interests of the parties and easily lead to disputes. Therefore, Article 11 of the provisions of the Supreme People's Court on Several Issues concerning the trial of disputes over compensation for oil pollution damage from ships stipulates that "if the main purpose of implementing anti pollution measures on ships in distress is only to prevent and mitigate oil pollution damage at the beginning of operation, the expenses incurred shall be recognized as the expenses of preventive measures. The operation

has the dual purposes of rescuing the ship and other property in distress and preventing and mitigating the oil pollution damage; If there is no reasonable basis for distinguishing primary and secondary purposes, the relevant expenses shall be shared equally. However, the expenses incurred after the elimination of pollution hazards shall not be listed as the expenses for preventive measures. " Therefore, it is necessary to analyze and judge whether a maritime emergency action is salvage or decontamination in combination with the initial purpose of the operation, the risk faced by the ship, the actual operation content and other facts. In some cases, we can even see that some auxiliary ships carry out replenishment operations for the salvage and decontamination ships respectively in the process of salvage. The court holds that the whole operation can be regarded as salvage and decontamination respectively according to 50%.

1.1.2 The distinction between the cost of cleaning and salvage

According to the measures of the people's Republic of China on salvage of sunken ships (hereinafter referred to as "Salvage Measures") and the maritime traffic safety law of the people's Republic of China (hereinafter referred to as "Sea Safety Law"), the objects of salvage and removal are those that hinder the navigation, waterway regulation or engineering construction of the ship; The wreck with repairing and using value; Although there is no value for repair and use, the wreck with the value of dismantling and utilization, as well as sunken and drifting objects which affect safe navigation, channel regulation and potential explosion risk. Obviously, the reasons for salvage and cleaning costs are not the same. The reasons for salvage and removal can be summarized as two points: 1. The impact on safe navigation or channel regulation; 2. Having use value or utilization value. As the name implies, the pollution fee is closely related to the pollution of oil pollution. Besides, the pollution

of oil pollution may be harmful.

The most important thing that hinders the navigation and waterway regulation is that it is a great threat to the marine ecological environment. Therefore, similar to the compensation for salvage, if the main purpose of the measures taken is to prevent or reduce pollution losses, it should be included in the category of pollution clearance fee; Otherwise, it does not belong to. The most illustrative example is that in order to salvage the sunken tanker (the main purpose of the act), the parties remove the remaining oil from the ship safely through certain measures, and the removal of the remaining crude oil is an inseparable part of the salvage operation. This Act does reduce the possible pollution consequences, but its main purpose is to be able to salvage the wreck, the cost will not be recognized by the International Fund for oil pollution damage compensation, and should not be recognized as the cleaning cost in the corresponding judicial practice. If salvage and cleaning (to prevent pollution) are one of the purposes of cleaning the residual oil in the wreck, and the cost of cleaning the residual oil can be classified as the cleaning fee in proportion. The court has the discretion on this issue, but the factors that the court should consider in its determination include:1. The factors related to the state and position of the sinking ship. For example, the possibility of leakage of residual oil in the ship caused by damage to the ship structure, the quantity, type and nature of the residual oil inside the ship, and the stability of the ship hull are also discussed. 2. Factors related to the possibility, nature and scope of pollution in the future. For example, if the residual oil in the sinking ship is leaked, the pollution loss may be caused (compared with the cost of cleaning measures), and the pollution range that may be caused after the leakage of residual oil. 3. Factors related to the appropriateness of measures taken. For example, the success rate of the measures taken to clean up the pollution. 4. Factors related to the cost of the cleaning measures.

1.1.3 Elements of the concept of clean up fee under Chinese law

The The United States is one of the few countries that have defined the concept of clean-up fee. In the 1990 oil pollution act of the United States, the definition of "removal costs" refers to "the costs of removal measures to prevent, reduce or eliminate oil pollution caused by accidents when oil leakage has occurred or there is a substantial threat of oil leakage." However, some other countries do not directly stipulate the decontamination fee, but stipulate the anti pollution measures or preventive measures, and indirectly clarify the concept of decontamination fee by connecting the decontamination fee with the anti pollution measures or preventive measures. For example, Article 153 (1) of the British Merchant Shipping Act 1995 stipulates that after the leakage has occurred, the shipowner shall be liable for the cost of any reasonable measures for the purpose of preventing or reducing the loss caused by the leakage pollutants. The second paragraph of Article 153 stipulates that when there is a major and urgent threat of pollution caused by crude oil leakage, the shipowner shall be liable for the cost of any reasonable measures for the purpose of preventing or reducing the losses caused by the leakage of pollutants. Therefore, according to the British Merchant Shipping Act 1995, the cost of clean-up is the cost of any reasonable measures to prevent or reduce the loss caused by pollutants (crude oil, etc.).

In China's judicial practice, most of the disputes concerned by the parties are whether the amount of clean-up fee is reasonable. Taking the case of Xiamen Haicang District People's Government v. Xiamen Port Shipping Co., Ltd. and other ship pollution damage liability dispute as an example, the plaintiff proposed to purchase 10 cleaning machines for oil pollution cleaning, totaling 280000 yuan, while the final court supported the cost of 35000 yuan. The reason is that "the cleaning machine is

not a disposable product and can be used for many years under normal maintenance. Even if the cleaning machine is damaged after this cleaning, it is also caused by improper use". Therefore, it is unreasonable to compensate 280000 yuan in full. It can be seen that China's judicial practice has also noticed that the party's claim for clean-up fees should be reasonable.(Law court,2013)

In addition to the rationality and purpose issues discussed above, the generation time of cleaning fee also needs to be considered as an element. Decontamination fee can be generated after or before the occurrence of oil pollution leakage. The time factor is only a secondary factor for the clean-up fee after the oil pollution leakage, which generally does not become the focus of controversy. As for the clean-up fee before the occurrence of oil pollution leakage and in order to prevent the occurrence of pollution, it is necessary to make certain restrictions on it so as to clarify its scope. For example, the second paragraph of Article 153 of the merchant shipping act of 1995 points out that the cost of relevant measures that must be taken when there is a grave and immediate threat of damage can be classified as the clean-up fee. This element is indispensable for the determination of the clean-up fee before the oil pollution leakage, which needs to be summarized into the concept of clean-up fee as an element.

Finally, the author thinks that the additional loss caused by taking corresponding measures should be classified as the cleaning fee. For example, in the process of cleaning, the normal use of relevant cleaning equipment will inevitably cause damage to the breakwater or road surface, wharf and ship loads. If this part is excluded from the clean-up fee, the cleaner can only bear this part of the loss on his own, which will greatly damage the enthusiasm of the cleaner and can not promote the clean-up operation. Therefore, the additional loss caused by taking corresponding

measures should also be included in the concept of clean-up fee.

Article 11 of the provisions of the Supreme People's Court on Several Issues concerning the trial of disputes over compensation for oil pollution damage from ships stipulates that "if the main purpose of implementing anti pollution measures on ships in distress at the beginning of operation is only to prevent and mitigate oil pollution damage, the expenses incurred shall be recognized as the expenses of preventive measures. The operation has the dual purposes of rescuing the ship and other property in distress and preventing and mitigating the oil pollution damage; If there is no reasonable basis for distinguishing primary and secondary purposes, the relevant expenses shall be shared equally. However, the expenses incurred after the elimination of pollution hazards shall not be listed as the expenses for preventive measures. " Therefore, it is necessary to analyze and judge whether a maritime emergency action is salvage or decontamination in combination with the initial purpose of the operation, the risk faced by the ship, the actual operation content and other facts.

Based on the above discussion, the author believes that the concept of clean-up fee under Chinese law should include the following elements: 1. All costs should be within a reasonable range; 2; 2、 The main purpose of the measures is to prevent or reduce the loss of oil pollution; 3、 That is, it can happen before or after the pollution damage; 4、 It should also include additional losses caused by taking corresponding measures. It can be summarized as follows: the clean-up fee refers to the cost of reasonable measures taken to prevent or reduce the loss of oil pollution (or one of several purposes regardless of the primary and secondary) and the reasonable loss caused by taking measures when there is a major and urgent threat of oil pollution leakage or oil pollution leakage has occurred.

1.2 Scope of cleaning fee

According to the regulations on oil spill emergency response and oil spill emergency response support system in China's maritime ship oil spill emergency plan jointly issued by the Ministry of transport and the State Environmental Protection Administration in March 2003, combined with the operation contents of decontamination and antifouling, At the same time, referring to the details of the decontamination expenses claimed by the decontamination unit listed in the appraisal report on decontamination and antifouling expenses issued by Shanghai Shuangxi Maritime Development Co., Ltd. entrusted by a case court, the decontamination expenses incurred by the decontamination unit mainly include the following six categories:

(1) Human resource cost: including labor cost of commander, investigator, antifouling expert, technician, appraiser, cleaner, diver, supervisor, etc;

(2) Material resources cost: including the use or consumption / standby / maintenance / maintenance cost of clean-up vessels, vehicles, equipment, apparatus and articles, etc;

(3) Cost of storage and disposal of recovered materials;

(4) Technical support fee: including aerial photography fee, monitoring fee, monitoring fee, sampling and testing fee, etc. for reasonably determining the polluted sea area, shoreline and facilities, as well as the resources easily affected by pollution;

(5) Miscellaneous expenses: including transportation and communication expenses, catering expenses, accommodation expenses, etc;

(6) Taxes and management fees.

In addition, according to the guidelines for claims of Oil Pollution Compensation Fund (trial version) issued by the maritime administration of the Ministry of transport in July 2016 (hereinafter referred to as the "guidelines for claims") and the guidelines for claims of Oil Pollution Compensation Fund (trial version) (hereinafter referred to as the "guidelines for claims"), among which, The "expenses for emergency disposal" and "expenses for pollution control or removal measures" approved in the "guidelines for claims settlement" include: expenses for the use of ships, aircraft, vehicles, professional equipment, consumable materials, waste disposal, personnel, monitoring, wildlife protection, logistics support and other directly related items; It can be seen that the above items (1) to (5) are basically within the scope of claims, and the major controversy in judicial practice is whether the "taxes and management fees" in Item (6) can be claimed. Those who hold a negative view think that this is the company's so-called management fees and taxes are not the inevitable additional expenses of the cleaning operation, and such expenses should not be required to be borne by the parties (the person responsible for pollution).

Taking the above-mentioned scope of clean-up fees as a reference, Chinese courts can determine the nature of various fees and give reasonable judgments in actual cases according to the different facts of the case and the court's different understanding of rationality, purpose and other issues, instead of generalizing clean-up fees and not making judgments on various fees. The reasonable standard of decontamination cost should be determined in combination with the local market price at the time of decontamination, The author thinks that the court can refer to the reference price published by the local industry association at that time or the rate

approved by itopf or the rate in the "guidelines for claims" when determining the amount of decontamination fee, We can entrust professional evaluation institutions or experts to evaluate the cost of cleaning according to the market situation.

Summary of this chapter

This chapter mainly defines the concept of clean-up fee, and provides the reference scope of clean-up fee for the court, so as to establish a unified understanding of clean-up fee in the future judicial practice, and then achieve the effect of similar judgments of different courts on determining the scope and amount of clean-up fee. At the same time, clarifying the scope of clean-up fees can also make the parties have a basic understanding of the costs and benefits paid, and can reasonably estimate the risks and benefits, and reduce unnecessary operating costs and litigation costs.

The author summarizes that the clean-up fee under the Chinese law should refer to the cost of reasonable measures taken to prevent or reduce the loss of oil pollution (or one of several purposes regardless of the primary and secondary) and the reasonable loss caused by taking measures when there is a major and urgent threat of oil pollution leakage or oil pollution leakage has occurred. The scope of clean-up fee includes human resource fee, material resource fee, storage and treatment fee, technical support fee and miscellaneous fee.

Chapter II Parties and ways of producing the clean up fee

This chapter will mainly clarify the parties involved in the decontamination operation and the two different ways to start the decontamination operation after the pollution accident. Due to different reasons and legal basis, the rights and obligations of the parties involved in the cleaning operation may be different. Moreover, the same

entity may have two different identities at the same time, so it needs to be clear when it is one kind of Party and when it will become another kind of party. The decontamination operation based on different legal basis will have different characteristics, and the generated decontamination fee will have different legal characteristics, which requires the parties to clarify their respective rights and obligations.

2.1 Parties involved in decontamination

According to different cases, the parties who may participate in the oil pollution accident are not specific. The following will focus on the three most important subjects, namely, the person responsible for the pollution, the cleaner and the government department.

2.1.1 Person responsible for pollution

According to Article 3 of the 1969 International Convention on civil liability for oil pollution damage, the shipowner shall be liable for the pollution losses caused by the accident. On the other hand, the International Convention on civil liability for oil pollution damage of 1992 further defines the employees or agents of the shipowner, or the crew, pilot or other persons providing services for the ship (including employees or agents), and any charterer, manager or operator of the ship (including employees or agents), Any person (including employees or agents) carrying out rescue operation or anti pollution operation is not the subject of responsibility. In China's legislation, there is no clear definition of the person responsible for pollution. However, considering that China's marine environmental protection law and other laws are derived from international conventions and mainstream legislation of various countries, and China has also joined the 1992 International Convention on

civil liability for oil pollution damage, although there is no clear definition of the person responsible for pollution, its concept should not be different from international treaties and mainstream legislation of various countries, that is, the subject of liability is limited to the owner of the ship.

2.1.2 Cleaner

The clean-up fee is generated by taking measures to prevent or reduce the damage caused by oil pollution when there is oil pollution or there is a major urgent threat that oil pollution may occur. According to the different circumstances of each case, the actual parties involved in the clean-up activities are not nearly the same. In this paper, the author refers to all the right subjects who actually participate in the clean-up activities and can make claims to the responsible persons as the clean-up persons. According to the specific situation, the scope of cleaner is also different, but generally it should include special government departments, professional cleaning companies, ship rescue companies and individuals under specific circumstances.

2.1.3 Government departments

The government departments referred to here generally refer to all the government departments that may participate in the occurrence of oil pollution. For example, after the occurrence of oil pollution, the specific MSA may take preliminary measures to control the scope of pollution. At this time, the MSA also has the status of cleaner and can claim compensation from the person responsible for pollution; When the oil pollution occurs in the port, the government departments managing the port will inevitably be involved, and the local government will respond to the pollution and take corresponding measures. For example, the people's Government of a certain district claims as the "Administrator" of its jurisdiction. The people's

Government of the district organizes the decontamination of the polluted areas under its jurisdiction, which is the same as that of the affected fishermen. The only difference is that the affected fishermen protect their property based on ownership, while the people's Government of the district protects national resources based on the authorization of relevant laws and administrative regulations. In addition to the above-mentioned local governments and others who can claim compensation from the person responsible for pollution through civil litigation, there is also a special subject, namely, the national maritime administrative department which has the right to take compulsory measures as stipulated in the law of the people's Republic of China on the sea and the environment, that is, the maritime administration. When the MSA compulsorily takes measures, there is a dispute about the identity of the MSA in theory and practice. This is also the difficulty discussed in this paper, which will be explained in detail later.

2.2 Production mode of cleaning fee

When the marine oil pollution accident occurs (or there is a major imminent threat), based on the legal liability, the person responsible for pollution may take the initiative to enter into a decontamination contract with a professional decontamination company in order to prevent or reduce the oil pollution damage. By signing a contract with the person responsible for pollution, the cleaning company participates in the specific cleaning operation, performs the obligations agreed by both parties in the cleaning contract, and gets remuneration afterwards. At this time, the start of cleaning operation is based on the agreement between the pollution responsible person and the professional cleaning company. They enjoy specific rights and obligations, and the parties enjoy the right of autonomy. And according to the relevant laws and conventions, the person responsible for pollution can enjoy the

relevant rights such as limitation of liability to better protect their own interests.

In addition, the cost of the measures taken by the victims themselves to prevent or reduce the oil pollution damage can also belong to the category of clean-up fee. The legal basis of this kind of clean-up fee is tort liability.

Paragraph 1 of Article 71 of the sea environment law (revised version in 2013) stipulates that if a shipwreck causes or is likely to cause major pollution damage to the marine environment, the state maritime administrative department shall have the right to compulsorily take measures to avoid or reduce pollution damage. After all, the national maritime administrative department is not a professional decontamination company. Therefore, when the national maritime administrative department compulsorily takes measures in accordance with the first paragraph of Article 71 of the sea environment law (2013 Revision), it inevitably needs the assistance of professional decontamination companies, and even leaves all decontamination operations to professional decontamination companies, The maritime administrative department only plays a supervisory role. In this case, because the national maritime administrative department compulsorily takes measures to clean up the pollution according to the law, there may not be a cleaning contract between the professional cleaning company and the person responsible for the pollution.

Under the mode of contract based decontamination fee, as the person responsible for pollution actively enters into a decontamination contract with the decontamination company, both parties are parties to the decontamination contract, and the rights and obligations of each party are specified in the contract. Therefore, when the final clean-up operation is completed and the person responsible for pollution pays the compensation to the clean-up company, even if there is a dispute between the two

parties, the court will not have too much difficulty in determining because of the clear legal relationship between the two parties. In the mode of pollution fee based on tort liability, the dispute between the injured person and the person responsible for pollution is a civil tort liability, and it is also regulated by the relevant laws of ship oil pollution, so the person responsible for pollution can enjoy the limitation of liability.

In the case that the maritime administrative department compulsorily takes the decontamination measures according to the relevant laws and regulations, there is no decontamination contract between the pollution responsible person and the decontamination company. The decontamination company starts the decontamination operation according to the instructions (or contracts) of the maritime administrative department, so who should the decontamination company make a request for the decontamination reward? There are many disputes on this issue in practice. The author will give an answer to this issue after clarifying the nature of the compulsory decontamination fee.

Summary of this chapter

This chapter mainly defines the concept of the three parties involved in the cleaning operation, the entities that may be involved, and how to start the cleaning operation. As a specific entity may play two different subject identities at the same time, it is necessary to clarify the rights and obligations it should bear when it appears as a specific subject identity. How to start the cleaning operation has a significant impact on the nature of the cleaning cost, so special attention should be paid to prevent misjudgment in judicial practice.

As for the clean-up fee based on contract and tort liability, its nature belongs to civil liability, and the relevant laws and regulations have clear provisions on the important issues such as who should bear the clean-up fee and whether to limit the liability. In judicial practice, there are disputes about the nature and cost bearing of the clean-up fee generated by the maritime administrative department's compulsory clean-up measures in accordance with relevant laws and regulations. The author will put forward his own views in the following.

CHAPTER 3 The nature of compulsory decontamination fee

As mentioned above, when the MSA compulsorily takes the decontamination measures according to the law, the nature of the decontamination fee (compulsory decontamination fee) is not as clear as the nature of the decontamination fee generated by the decontamination contract signed between the pollution responsible person and the decontamination company. In the theoretical circle, there are three different arguments about the nature of the compulsory clean-up fee.

3.1 Civil liability

Scholars who hold this view hold that "although cleaning is a compulsory measure of the administrative authorities, it can not change the nature of civil liability for cleaning costs." The reasons are as follows: firstly, the International Convention on liability for oil pollution damage in 1992 and the common international practice are to take the compulsory cleaning fee as civil liability. (Si,2002)

Based on China's 1983 sea environment law and 1983 regulations on prevention of pollution from ships,Civil liability and administrative liability are mixed together and can be exercised as administrative power. However, the two new "Ocean environmental law" has clearly separated civil liability from administrative

liability.Although Article 71 of the sea environment law, which came into effect in 2000, stipulates that the national maritime administrative department has the right to take compulsory measures, it will not change the nature of the civil liability of the clean-up fee. Therefore, the compulsory clean-up fee at this time is an ordinary civil liability. The national maritime administrative department has the right to make a claim to the person responsible for pollution through the court, but it must go through the legal procedure of maritime claim, and can not exercise it on its own. When the MSA takes compulsory cleaning measures and signs a cleaning contract with the cleaner, there are two civil relations at the same time. The first civil relationship is the legal relationship between the MSA and the cleaner; The second civil relationship is the civil legal relationship caused by the compulsory measures taken by the MSA in accordance with the marine environmental protection law because the person responsible for pollution does not take the decontamination measures. The opposite party of the legal relationship is the MSA and the person responsible for pollution.

In the second legal relationship, what MSA puts forward to the person responsible for pollution is a civil claim. Therefore, in the case of limitation of liability and fund, MSA may not be able to obtain the full amount of clean-up fee. At this time, can the cleaner in the first legal relationship get full amount of clean-up fee from MSA? The author thinks that the cleaner is likely to be able to get the full amount of cleaning fee. The reason is that when the maritime authority entrusts the cleaner to clean up on its own and there is a cleaning contract, the parties to the contract are only the maritime authority and the cleaner, excluding the person responsible for pollution. Based on the civil contract relationship, the maritime administrative department shall undertake the obligations under the contract and pay the cleaner remuneration. After the maritime authorities pay the compensation, they claim compensation from the person responsible for pollution according to the first legal relationship.

However, only from the perspective of Article 71 of the sea environment law, the maritime authorities can take compulsory decontamination measures, but the basis of the corresponding maritime authorities' claim to the person responsible for pollution can not be clearly classified into a certain category of civil relations. The basis of civil creditor's rights can be divided into contract debt, non cause management debt, tort debt and unjust enrichment debt.

The following four kinds of creditor's rights are analyzed one by one: 1. There is no contract between the maritime administrative department and the person responsible for pollution, so it is not a contractual obligation. 2. No cause management. It is not necessary for the law to stipulate that the maritime administrative department has the right to take compulsory decontamination measures, which is not contradictory to the requirement of "no legal or agreed obligations", so it may be the debt of non cause management. However, no cause management requires that no cause manager is to avoid losses (for himself or others, or only for others), which is inconsistent with the compulsory cleaning fee. In terms of purpose, the purpose of compulsory clean-up measures taken by maritime administrative departments is to reduce pollution, not to reduce the loss of the person responsible for pollution. Therefore, it is difficult to say that the compulsory clean-up measures taken by the maritime authorities are for the interests of the person responsible for the pollution, which does not belong to the management without cause. 3.Tort liability. If it is a tort liability, then the corresponding decontamination measures should not be compulsory. For the tort liability, the corresponding infringer or the victim (the maritime authority at this time) can complete the decontamination. The difference is that the infringer completes the decontamination, and the way to bear the liability is to restore the original state; If the victim completes the decontamination, the way for the victim to ask the infringer to bear the responsibility is to compensate for the loss.

But for the victims, it is up to them to ask the infringer to restore the original state directly or to ask the infringer to compensate for the loss after self cleaning. That is to say, if the maritime authorities are the victims of infringement, then the maritime authorities themselves can immediately take decontamination measures after major pollution may occur or occur, without the authorization of Article 71 of the 2013 sea environment law. Moreover, the clean-up measures at this time should not be called compulsory clean-up measures, but ordinary clean-up measures for pollution victims. Therefore, it is contradictory to regard compulsory decontamination as tort liability. 4. Unjust enrichment. Similar to tort liability, maritime authorities need to be authorized by law to have the right to take compulsory clean-up measures, while the claim for restitution of unjust enrichment does not require special legal provisions. As long as the person responsible for pollution receives improper interests and the claimant suffers losses, there is a certain causal relationship between the two. Through the above analysis, it is obvious that the compulsory decontamination fee relationship is defined as a civil liability relationship between the pollution responsible person and the maritime authority, and between the maritime authority and the decontaminator, which will cause the following consequences to the three subjects: 1. The decontaminator can obtain reasonable decontamination fee remuneration in full. 2. The person who is responsible for pollution has the right to limit liability, and only to limit liability. 3. Maritime authorities need to pay full amount of reasonable clean-up fee to the polluter, but they may not be able to obtain corresponding compensation from the person responsible for pollution.

3.2 The Administrative responsibility

In contrast to the first view, some scholars also claim that compulsory pollution

clearance fee belongs to administrative responsibility, and there is also a civil legal relationship in addition to the administrative liability relationship. That is, there is administrative legal relationship between the maritime bureau and the person responsible for pollution, while the civil legal relationship exists between the maritime bureau and the polluter.

The author thinks that this view is only partially correct, for the following reasons: specific administrative acts should have four elements: 1. main elements: the implementation subject has the qualification of administrative subject. 2. content elements: the content of administrative act is to establish, change and eliminate the rights and obligations of the other party, and it is legal, appropriate, true and clear. 3. procedure and form elements: administrative acts must conform to the legal procedures and have legal forms. 4. term requirements. For compulsory cleaning, the most important component to be discussed is whether the compulsory cleaning conforms to the legal form. The legal forms of administrative acts prescribed in China are administrative license, administrative penalty, administrative penalty, administrative ruling and administrative compulsion. Among them, administrative compulsion includes administrative compulsory measures and administrative enforcement. It is obvious that if compulsory cleaning is an administrative responsibility, it should be administrative compulsory. So specifically, which kind of compulsory cleaning belongs to administrative compulsion? According to the statement in Article 71 of the 2013 "sea environment law", the maritime competent department takes compulsory measures to clean up pollution without requiring the person in charge of pollution to make the administrative decision on cleaning pollution; Similarly, Article 52 of Chapter IV "performing on behalf" of the administrative compulsory law stipulates that "spills, obstacles or pollutants from roads, watercourses, waterways or public places need to be removed immediately,

and if the parties cannot remove them, the administrative organ may decide to implement the performance on behalf of them immediately."

Comparing the two behaviors, we can find that they have two important common points: 1. The measures taken by administrative organs are urgent; 2. No prior administrative decision is needed, and the administrative organ can take corresponding measures according to the law《 Article 52 of the administrative compulsory law clearly states that when certain conditions are met, the performance on behalf of the administrative agency may not be performed in accordance with the procedures prescribed in Article 51 of the administrative compulsory law, and it also proves that in specific circumstances (there is urgent need), the administrative agency can directly perform the performance.

So is the compulsory measures to clean up pollution be performed on behalf of the administrative representative without the existence of relevant administrative decisions? The author believes that the answer to the question is yes《 The second paragraph of Article 3 of the administrative compulsory law stipulates that "in case of natural disasters, accidents and disasters, public health events or social safety incidents, the administrative organ shall take emergency measures or temporary measures and implement them in accordance with the provisions of relevant laws and administrative regulations.". The inclusion of this provision in the administrative compulsory law means that the nature of emergency measures and temporary measures should be within the scope of adjustment of administrative compulsory law, but because of the professionalism of each specific measure, it is more reasonable to make provisions in other laws. If the administrative compulsory law lacks this provision, there may be conflicts between the relevant laws and the administrative compulsory law. However, the compulsory measures for cleaning pollutants

stipulated in Article 71 of the 2013 sea environment law belong to the emergency measures and temporary measures mentioned in Article 3, paragraph 2, of the administrative compulsory law.

Therefore, compulsory pollution removal measures are also one of the emergency measures and temporary measures specially listed in the second paragraph of Article 3 of the administrative compulsory law, and also belong to the special administrative compulsion stipulated by other laws and regulations. According to our comparison of Article 71 of the 2013 sea environment law and Article 52 of the administrative compulsory law, it can be seen that the compulsory cleaning measures are performed by administrative agents as well as the acts of removing spills, obstacles or pollutants from roads, rivers, waterways or public places immediately. Therefore, the conclusion that compulsory cleaning measures belong to administrative acts is correct.

Secondly, is there any civil legal relationship between the maritime administration and the clean-up persons? The author thinks that there is a civil legal relationship between the maritime bureau and the clean polluter. Although the performance of administrative agent belongs to administrative act, the relative person of administrative act is the person responsible for pollution, not the person who cleans the pollution. In the administrative performance, the clean polluter is not necessarily exist, and the maritime competent department can perform on its own behalf directly.

When the maritime authorities entrust the cleaner to clean up the pollution, there is a relationship of entrustment, that is, there is a civil contract. Therefore, the pollution clearance fee is the debt of the civil contract. Finally, what is the relationship between the administrative department and the person responsible for pollution? Scholars who regard compulsory pollution cleaning fee as administrative

responsibility believe that the administrative department and the person responsible for pollution have administrative performance on behalf of each other, so the expenses incurred are administrative responsibility. However, the results of the two similar behaviors are different from those of the maritime administrative departments in terms of infringement and the enforcement of the measures. In terms of performance, there are no relevant administrative decisions between them. In case of emergency, the maritime administrative department has abandoned the person responsible for pollution and directly takes measures to clean up pollution, but the legal nature of the two is totally different. If the two cannot be distinguished in form, can the maritime administrative department choose freely and do whatever it wants? The author believes that the theory circle considers the compulsory measures of decontamination as the administrative department exercising administrative rights, and the view that there is civil legal relationship between maritime bureau and the cleaner is correct. However, the compulsory cleaning fee caused by compulsory cleaning measures is not necessarily administrative responsibility. On the contrary, the expenses incurred for cleaning up pollution should still be civil liability. Only by means of the measures taken by the maritime administrative department on different legal basis can they have the same legal nature, and limit the maritime authorities from damaging the interests of other parties for their own benefit. In the second section of this chapter, the author will give a more detailed explanation of the problem.

3.3 Civil or administrative liability

Some scholars also put forward that "both administrative and civil ways can be adopted to require the responsible person to bear the responsibility, that is, the maritime administrative authority has the right of choice."(Guo,2002)

The reason is that compulsory decontamination measures have the dual nature of civil and administrative. First of all, the maritime authorities exercise administrative power according to laws and regulations to participate in the clean-up work of oil pollution (whether through the clean-up company or not), which has the characteristics of public law to protect public interests and social public order. Therefore, the clean-up cost is an administrative responsibility. Secondly, the compulsory clean-up essentially replaces the measures that the person responsible for pollution should take according to the law, which is similar to the management without cause in the civil law, but the subject of the action is the National Maritime Authority, which belongs to the government, rather than the general natural person or legal person in the civil law. However, the state maritime authorities can still seek judicial relief and protection and obtain compensation through civil relations.

In the case of the dual attributes of the compulsory clean-up fee, the maritime authorities can choose between the administrative and civil relations, and the final attribute of the compulsory clean-up fee is determined by the relief means finally chosen by the maritime authorities. Therefore, the consequences of this kind of situation to the three main bodies are uncertain, but the initiative lies in the maritime authorities, not the cleaner or the person responsible for pollution.

This view holds that although the maritime authorities participate in the decontamination operation with the characteristics of public law to protect public interests and social public order, the relevant costs belong to the administrative responsibility. One of the problems with this way of handling is that it gives the maritime authorities the right to choose. In fact, it will lead the maritime authorities to always choose a more favorable choice for themselves, which will cause great damage to other parties.

3.4 The true nature of the compulsory cleaning fee

Considering the relevant legislation and legislative trend in the world, combined with the current judicial practice in China, the author thinks that the competent maritime administrative department should be recognized as the main qualification of the plaintiff to file civil claims against the polluter. The following is described in detail from the perspective of theory, judicial practice and legislative trend.

(1) Theoretical basis of civil claim filed by maritime administrative department for compulsory cleaning expenses

Joseph of the University of Michigan Professor Sachs proposed that in the current situation where the environment is seriously polluted and damaged, which threatens the normal life of mankind, the basic environmental elements such as sunshine, air and water should belong to all citizens and are the common property of all citizens; In order to reasonably control and protect the co owned property, the co owner entrusts the state to manage it. Thus, environmental protection becomes a duty of the state. This is the theory of environmental public property or the theory of environmental public trust. (Lv, 2007) The property law of China clearly stipulates that water flow and sea area belong to the state (that is, owned by the whole people) . The fourth article of the environmental protection law defines "environmental protection" as the basic national policy.

Based on the above theories and laws, in the case of pollution accidents or possible marine environmental pollution, it is actually infringed on the ownership of the sea area or the risk of infringement. According to the provisions of the tort liability law of China, the infringement of ownership belongs to one of "infringement of civil rights and interests", and the polluter shall bear the liability of infringement

according to law. As one of the departments exercising the right of supervision and administration of marine environment as stipulated in Article 5 of the law of the people's Republic of China on the protection of the marine environment, the maritime administrative department has the right to claim the polluter to bear the liability for infringement compensation in order to prevent or reduce or eliminate the pollution caused by the marine environment caused by the pollution of ships.

(2) In our judicial practice, it has been generally recognized that the civil claim qualification of the maritime administrative department.

Many practical cases where the maritime administration has filed civil claims for compulsory cleaning costs in its own name, the court has supported the main qualification of the maritime bureau as the civil plaintiff without exception, which can be seen, In our judicial practice, it has been recognized that the maritime administrative department as the plaintiff has filed civil claims for compulsory cleaning costs, but the courts have no agreement on the issue of why the maritime administration has the right to claim.

As for the basis of claim for civil compensation filed by the maritime administrative department, it is suggested that the civil public interest litigation theory should be adopted to determine the qualification of the competent authority as the plaintiff, (Qi, 2004)or further believe that the maritime administrative department, as the holder of administrative power, can bring public interest litigation in civil litigation proceedings for the interests protected by its administrative duties (Lin,2014), however, It is worth noting that, according to the interpretation of the Supreme People's Court on the application of laws in the trial of environmental civil public interest litigation cases implemented on January 7, 2015, the subject entitled to bring public interest litigation stipulated in Article 55 of the civil procedure law and Article

58 of the environmental protection law of China is further explained, However, neither of them has given the plaintiff the qualification of the plaintiff to bring public interest litigation. Therefore, there is no clear legal authorization or basis for the public interest litigation filed by the maritime administrative department. In addition, judge Sun Chao of the Supreme People's court believes that there is a certain internal contradiction between the public interest litigation filed by the competent department of environmental protection and the national environmental management right enjoyed by it and the legal responsibilities to protect the environment. “It is not suitable to give the plaintiff the qualification before the problem is clarified, It is obviously inappropriate to classify civil claims filed by the marine administrative department in respect of compulsory pollution clearance claims as public interest litigation.”

(3) It is the legislation and legislative trend of relevant countries (regions): comprehensive use of public and private law to provide relief public law has the advantages of high efficiency and strong, which is of positive significance to prevent and control environmental infringement. Therefore, environmental protection through public law means and measures is the main relief method adopted by countries (regions). Meanwhile, in view of the civil liability system in private law, it pays attention to the polluter payment principle, thus providing economic incentives to reduce pollution. For example, in the white paper on environmental liability adopted by the European Commission in January 2000, it is pointed out from the perspective of economic analysis of tort law that "if the polluter needs to compensate for the damage caused, They will reduce pollution to a lower marginal cost beyond the limit of the avoided payment of compensation "(CEC,2000). Therefore, considering the advantages of public law and private law, at present, countries (regions) are comprehensively using public and private law to remedy environmental

infringement. Moreover, the main body of traditional public law also uses private law to provide relief for environmental infringement. This is also an important embodiment of the privatization of public law. (Lv, 2011)

Article 13, paragraph 4, of the law on the prevention and control of marine pollution in Taiwan, China stipulates that "when the competent authorities at all levels have an emergency pollution incident, they may require public and private places or other marine related undertakings under Item 1 to provide pollution treatment equipment and professional and technical personnel to assist in handling the pollution, and the expenses shall be borne by the marine pollution actor; If necessary, the fund referred to in paragraph 1 of the preceding article may be replaced by the fund and then the person responsible for marine pollution "(Taiwan law database, 2021), which clearly grants the competent authority the right to claim compensation from the person responsible for pollution for the compulsory cleaning costs.

The EU environmental responsibility directive is the most important legal document in the field of environmental damage prevention and relief in the EU. Based on the principle of "polluter pays" and "prevention principle", the directive establishes the EU responsibility certification framework for environmental damage prevention and remediation, which is of great reference for China to establish the environmental damage compensation and environmental relief system. Under the environmental responsibility directive, the competent authority has the right to request the pollution responsible person for the cost of such measures within a reasonable period of time from the date of completion of the prevention or remedy measures.(EU,2000)

The oil pollution act of 1990 stipulates two kinds of claimable losses, namely, the removal costs and the damages of natural resources. The oil pollution liability shall compensate the federal of the United States The costs incurred by States and Indian

tribes in accordance with law to prevent, reduce or reduce oil pollution, and any person who has taken action in accordance with the national contingency plan.(OPA90)

After several serious oil spill incidents in the world, especially in the British sea, after the oil spill of "Blair" and "Queen of the sea" in 1993 and 1996, The UK has established the system of state and interaction through the amendment of the law, The system has been highly evaluated since its operation, and is considered to be a successful and creative system. According to the Merchant Shipping Act 1995 The provisions of the commercial ship and Maritime Safety Act kmerchange shipping and Maritime Security Act 1997 and Marine Safety Act 2003, 1997, SOSREP shall have the right to take any measures to prevent, reduce or mitigate marine pollution at its own expense; In addition, in the case that SOSREP entrusts other parties to take corresponding measures, it may pay to other parties the expenses incurred by taking such measures, and the other parties taking such measures may also claim compensation from the owner for such expenses. (MSA,2003)

From the above legislation, it can be seen that it is a legislative trend to endow the competent authority with dual functions through the integration of public and private law. On the one hand, the competent department, as the administrator, exercises the authority of maritime administration in public law, on the other hand, the competent department can also file civil claims on behalf of the state (local pollution responsible person), which can better implement the principle of burden on polluters Solve the problem of the implementation of compulsory cleaning cost.

In conclusion, the Shanghai administrative department should be entitled to claim infringement on behalf of the state against the person responsible for pollution, and our judicial practice has also recognized its qualification as the subject of civil claim.

Although the current judicial practice in China often uses Article 89 of the "sea environment law" and Article 145 of the minutes of the 2005 conference as the basis for the civil claim filed by the maritime administrative department, article 192 of the maritime law of China also stipulates the civil claim right of the relevant authorities in China concerning the salvage operations they are engaged in or controlled by, However, the nature of the cleaning operation is different from that of salvage operation. The cost of cleaning and salvage should be distinguished from that of salvage (in practice, the measures of salvage and salvage often include pollution prevention factors, and the cleaning and anti pollution operations also include rescue and salvage, which results in the mixing of salvage and salvage costs with the cost of cleaning). Moreover, the minutes of 2005 conference is not legal, There are disputes on the validity of its application. In view of the dispute on the basis of claim right of maritime administrative department in the theoretical and judicial practice in China, it is necessary to make clear provisions on the right and interests of maritime administrative department to file civil claims against compulsory cleaning costs in the newly revised maritime law.

Summary of this chapter

Based on the summary of three different views on the nature of compulsory decontamination fee and the author's evaluation of the three different views, this chapter puts forward the author's own point of view, that is, the maritime administrative department and relevant decontaminator can directly claim the decontamination fee belonging to the civil contract creditor's right from the pollution responsible person, which is in line with international practice and the direction of domestic judicial practice, However, it needs to be further clarified in legislation.

Through the above research and discussion, the author thinks that the problems related to the cleaning cost have been more clear.

CHAPTER 4 Summary and Conclusions.

First, the concept of clean-up cost refers to the cost and reasonable loss caused by the measures taken to prevent or reduce the loss of oil pollution as the main purpose (or one of the main and secondary purposes) when there is a major and urgent threat that may occur oil pollution leakage or oil spill has occurred.

Secondly, the specific scope of the clean-up fee under the Chinese law should refer to the cost of reasonable measures taken to prevent or reduce the loss of oil pollution (or one of several purposes regardless of the primary and secondary) and the reasonable loss caused by taking measures when there is a major and urgent threat of oil pollution leakage or oil pollution leakage has occurred. The scope of clean-up fee includes human resource fee, material resource fee, storage and treatment fee, technical support fee and miscellaneous fee.

It is important to note that the above-mentioned scope of clean-up fee should be closely combined with the concept of clean-up fee when determining the scope of the above-mentioned clean-up fee. Through the judgment of purpose and rationality, it is necessary to determine whether the above-mentioned expenses can be supported as the cleaning fee in specific cases.

The concept and scope of the pollution cleaning fee can make the parties involved in the prevention and control of oil pollution know whether the expenses incurred by a specific act can be classified as the pollution cleaning fee, and whether they can claim compensation from the person responsible for pollution. This also provides a reference for the estimation of cost, risk and income before the parties take action.

Finally, this paper focuses on the issue of the payment of the expenses after the maritime administrative department takes compulsory measures to clean up the pollution according to Article 71 of the marine environmental protection law. The author believes that the compulsory cleaning fee of the maritime administrative department in accordance with the law should be recognized as the civil claims arising from the entrusted third party in the enforcement of administrative enforcement. From the perspective of international legislation and domestic judicial practice, the author thinks that the compulsory cleaning fee caused by the enforcement of pollution by the maritime administrative department should be recognized as the civil creditor rights generated by the entrusted third party in the enforcement of administrative enforcement, It is suggested that the party entrusted by the administrative organ or administrative organ should enjoy the independent civil claim subject status in practice, which is in line with the public interest and is more conducive to the realization of marine environmental protection, and further suggests that the spirit should be clarified in the legislative level in the revision of Maritime Law.

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