

Logics and Paths for Legalizing Waste Treatment Facilities in China

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Abstract. These years, social disputes arise from waste treatment facilities frequently, and legalizing waste treatment facilities is the final way for resolving disputes. This paper intends to put forward paths for legalizing Chinese waste treatment facilities from the perspective of regulating waste treatment facilities and standardizing lawsuits. First of all, licensing rules on setup of waste treatment facilities are clarified based on standardized classification of waste treatment facilities. Licensing requirements cover technical standards, assessment of environmental impacts, setup personnel's capabilities and key passive requirements. Meanwhile, surrounding residents' consent shall not be deemed as a key licensing requirement for legislation. In addition, it is necessary to strengthen regulation of operational processes, establish regular governmental censorship mechanisms and improve information disclosure systems.

Raising Questions: Legal Research on Standardization of Waste Treatment Facilities

Over the past four decades, general improvements of urbanization and residents' living standards in China have contributed to a dramatic increase in domestic wastes. As a consequence, an enormous amount of domestic wastes are produced. Under this situation, numerous waste treatment facilities must be set up and operated. Although domestic waste treatment facilities are indispensable infrastructures for urban lives, there have been considerable conflicts and disputes against construction and operation of waste treatment facilities over more than ten years owing to "externality" of waste treatment facilities; moreover, severe violent phenomena such as highway obstruction and people's conflicts with the police. In the meantime, lawsuits about waste treatment facilities have unceasingly sprung up, and many legal difficulties have been encountered.

Study on waste treatment facilities were mostly empirical generalized studies. For instance, waste classification and different types of waste treatment facilities were investigated from the perspective of environmental sociology.^[1] Moreover, related issues about domestic waste treatment facilities such as site selection^[2] and decision-making processes^[3] were studied from the perspective of legal policy-making or environmental sociology. The deficiencies of previous studies are as follows: These studies placed too much emphasis upon management and governance of waste treatment facilities. Instead, they didn't systematically demonstrate standardized governance of waste treatment facilities. This paper focuses on how to standardize setup, construction and operation of domestic waste treatment facilities by laws.

Status Quo and Legislation of Chinese Domestic Waste Treatment Facilities

Status Quo of Facility Construction

According to the "13th Five-year Plan for National Urban Domestic Waste Decontamination Facilities, domestic waste decontamination capacity is expected to be increased by 509,700t/day and 67% all over China.^[4] This means that domestic waste treatment facilities will be increased or expanded in large quantities in the period of the "13th Five-year Plan". At present, industrialization of biochemical waste treatment is a little backward in China, where waste treatment facilities are mainly constructed with investments of governmental sanitation departments. The construction of these facilities is primarily supported by governments' public finance, whereas there are still problems such as lack of diverse investment mechanisms, inadequate social participation, limited market-oriented operations, and lack of large-scale specialized enterprises for waste treatment.

According to the “13th Five-year Plan”, on one hand, more efforts will be made to establish diverse mechanisms for facility construction in China; on the other hand, it is noteworthy that existing Chinese systems on domestic waste treatment facilities integrating government construction and government supervision are contradictory.

Legislation Status of Regulating Domestic Waste Treatment Facilities

There are no special laws or rules for standardizing domestic waste treatment facilities in China, where no normative document about departmental rules at relatively low levels contain any standard document regarding domestic waste treatment facilities. Nevertheless, this doesn't mean that no laws have been legislated with respect to domestic waste treatment facilities in China. The rules about these facilities are mainly reflected from following legislations. At first, the Law of the People's Republic of China on the Prevention and Control of Solid Waste Pollution has been formulated as fundamental law for standardizing waste treatment facilities.

Except for the principle rule in the Administration of City Appearance and Environmental Sanitation which specifies that sanitation facilities must conform to national environmental health standards, there are no other administrative rules on domestic waste treatment facilities. Concerning departmental rules, principle-based and policy-oriented content is also specified in the Notice of Opinions on Further Strengthening the Work for Treating Urban Domestic Wastes that it is necessary to speed up facility construction, improve operations and facilitate stock governance. Besides, it is specially stipulated in Section 2 of the Administrative Measures for Urban Domestic Wastes with respect to domestic waste treatment facilities, while qualification of enterprises managing domestic waste treatment facilities is specially specified in Section 4.

In addition, there are still some normative documents about waste treatment facilities, including the Opinions on Further strengthening MSW Incineration issued by MOHURD, Guiding Opinions on Better Making Environmental Facilities and Urban Sewage Treatment Facilities Open to the General Public, Rules on Administration of Urban Construction Wastes, and the Opinions of the General Office of the State Council on Strengthening Renovation of Gutter Oil and Administration of Kitchen Wastes.

Existing Problems

From the perspective of standardization, current problems with regulation of biochemical waste treatment facilities are mainly as follows: Firstly, laws and rules are not effective for standardization, as they are mostly some policy declarations. Being ineffective for standardizing power of governments, these policy declarations, in essence, are hard to be used as legal guidance or guarantee for proprietors of domestic waste treatment facilities or surrounding residents. Secondly, above rules are not systematic for regulating treatment facilities. Without specially specifying related regulatory rules, they don't definitely stipulate key issues such as legal significance of classifying treatment facilities, if any licensing system is adopted for facilities, key elements of licensing and legal positioning of residents' rights to consent. Thirdly, there is a lack of normative studies on lawsuits regarding domestic waste treatment facilities in China. In particular, regular issues such as eligible parties concerned in lawsuits, law-breaking trial framework and certification of causal relations remain to be studied.

Legal Regulation of Domestic Waste Treatment Facilities

Whether to Adopt a Licensing System

To construct domestic waste treatment facilities, it is firstly necessary consider whether administrative license is necessary for setting up these facilities. This question not only involves measures for regulating domestic waste treatment facilities, but is also closely correlated to issues such as administrative justiciability and law-breaking trials in civil litigations. It shall be firstly clarified in studying waste treatment facilities.

Then, is administrative approval necessary for constructing domestic waste treatment facilities?

According to Article 12 of the Law of the PRC on Administrative Permission, administrative license can be established for particular activities which are directly connected with environmental protection and personal health. Setting up domestic waste treatment facilities is not only related to environmental protection, but might also endanger personal health, so apparently these facilities must be set up. According to Article 13 of the Law of the People's Republic of China on the Prevention and Control of Solid Waste Pollution, environmental impacts must be lawfully evaluated for constructing projects treating solid wastes. In general, evaluating environmental impacts is typical administrative licensing behavior.^[5] Then, does this mean Chinese laws clearly specify the use of licensing system for constructing waste treatment facilities? The author considers that it is inadvisable to reach rash conclusions. It is because "one-ticket veto system" is implemented for assessing environmental impacts in China. Pursuant to the List of Classified Management for Assessing Environmental Impacts of Construction Projects, environmental impacts must be evaluated for all projects concerning centralized urban domestic waste treatment and waste-based power generation regardless of their scale. On the other hand, it is stipulated in the Urban and Rural Planning Law of the People's Republic of China that related administrative licenses must be granted for site selection, planning of construction land, planning and construction of construction projects. In addition, it is mentioned in Article 27 of the Administrative Measures for Urban Domestic Wastes that licensing documents must be obtained for planning site selection of sanitary landfill sites, composting plants and incineration plants. According to Article 12 of the measures, the projects must be examined and accepted upon their completion. Above all, it is beyond doubt that licensing system is implemented for setting up domestic waste treatment facilities in China.

Licensing Requirements

At present, key licensing requirements for domestic waste treatment facilities are not specially specified in existing legislations of China, but more or less mentioned in some scattered normative documents. Here below, the author will summarize four key requirements in combination with existing rules.

At first, key national technical standards for environment shall be followed. In other words, domestic waste treatment facilities must be constructed in accordance with environmental standards of environmental and administrative competent construction departments of the State Council. Secondly, environmental impacts shall be assessed. In other words, an evaluation report about environmental impacts shall be submitted in applying for setting up domestic waste treatment facilities. Thirdly, operators' capabilities are requisite. To be specific, operators of waste treatment facilities shall have corresponding qualifications and business capacity. Fourthly, key passive requirements for operators shall be met. Specifically, governments must revoke administrative licenses for treatment provided that operators meet some key passive requirements and commit serious illegal behaviors. These key passive requirements include operators' past gross misconducts, dishonest behaviors and violations of legal obligations.

Whether Residents' Consent is Needed

Public engagement is necessary for setup and operation of waste treatment facilities. It is one of effective measures for guaranteeing rights to know environmental information, participation rights and supervision rights of the general public, and increase all people's consciousness of environmental protection. Whether residents have veto rights to set up domestic waste treatment facilities, or if residents' consent decides upon administrative license, scholars hold two completely different opinions. On one hand, some scholars consider that residents' rights to consent are not key decisive requirements, but mere procedural requirements for public participation, and if public participation exists might constitute procedural defects. However, in making full explanations to the general public, setup of waste treatment facilities shall not be disapproved just because of surrounding residents' objection. On the other hand, some people think that public participation based on residents' rights to consent is supposed to be more mandatory, but shall not be reduce to governments' or enterprises' one-way communications with residents or formalism. In other words, past "announcement - review" shall be objected, because that mode is ineffective for facilitating

communications between administrative organizations and residents, while it is hard to reach a consensus.

According to the measures for guaranteeing public participation, administrative organizations granting administrative licenses may solicit citizens, civils and other organizations their opinions and suggestions about matters or activities related to environmental protection. Procedural “defects” apparently exist if no opinion is sought from surrounding residents. In this case, administrative licenses might be revoked. However, according to Article 9 of the measures, competent departments for environmental protection are supposed to categorize, sort out, analyze and study opinions and suggestions of citizens, legal persons and other organizations, which shall be fully taken into account in making environmental decisions, and appropriately reported to citizens, legal persons and other organizations. Thus, from the perspective of legislation, the “eminent” position of residents’ rights to consent is not established in administrative licenses. Instead, it is only a consideration or a reference factor. To a greater extent, residents’ rights to consent are a type of procedural rights. Therefore, normative theories specify that it is inappropriate to reckon surrounding residents’ consent as a key licensing requirement.

Conclusions

After above research and consideration of differences between environmental contamination of waste treatment facilities and general environmental issues, the author infers in combination with existing Chinese legislation and judicial practices that to legalize Chinese waste treatment facilities, following work must be carried out: To regulate waste treatment facilities, types of these facilities shall be firstly clarified in Chinese legislation; the methods for specifying laws for preventing and controlling environmental contamination of solid wastes in sanitary landfill sites, waste incineration plants and other facilities shall be specified in policy documents. In the meantime, regulation methods shall be specified in details for different types of facilities. In terms of regulation, the use of licensing system shall be specified for setting up waste treatment facilities. In addition, key licensing requirements shall be clarified as follows: Conform to national technical standards; evaluate environmental impacts; operators’ corresponding capabilities; without severe passive records such as law-breaking and dishonesty.

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