## The possibility to direct a claim for remedial treatment against a liquidated company

According to both statute and the "polluter pays principle", the entity which has operated or operates a polluting activity bears the primary liability for investigating and carrying out remedial treatment of a contaminated area. If it is not possible to direct such a remedial claim against a business operator, the authorities may, instead, turn to the owner of the contaminated land. The land owner thus has secondary liability while h the business operator has principal liability. The responsibility for investigating and treating the land has been developed through case law of the Environmental Court of Appeal .It can be concluded that the retroactive liability for treatment has been interpreted much more extensively than is expressly stated in statute.

In a recent judgment (case number M 1954-10), the Environmental Court of Appeal held that the authorities have to possibility to direct a demand for an extensive survey of a contaminated area against a company which has been liquidated. According to the judgment, the grounds for the finding are, in part that the business operator is principally responsible for undertaking an investigation under the rules of the Environmental Code, and in part that under chapter 25, section 44 of the Companies Act there is a possibility of directing a demand against a liquidated company. The judgment might mean that all possibilities to compel the business operator to defray the cost of a survey of a contaminated area, even if they are merely theoretical, have to be exhausted before the authorities can direct claims against the land owner with secondary liability for investigation of the contaminated area. Thus, there is no reason to consider the business operator's financial position when the authorities are to determine to whom they are to direct their injunction, which has also been evident from earlier judgments.

However, the judgment of the Environmental Court of Appeal raises the question of whether a claim could be directed against a parent company or shareholder (lifting of the corporate veil) of a liquidated company before the injunction can be directed to the land owner who has the secondary liability. The Environmental Court of Appeal does not address the question in their reasoning. Lifting the corporate veil can, in practice, be attained in two ways in an environmental law context. In part by way of a legal regulation which allows a lifting of the corporate veil and in part by way of an extension of the term "business operator" in the Environmental Code.

Both two possibilities of lifting the corporate veil have been the subject of several reports. SOU 2006:39 examined the question in the light of a so-called environmental liability directive. In bill number 2006/07:95 the government resolved that a parent company that does not operate business can be held liable, but only if operations in the subsidiary are completely dependent upon resources from the parent company, in respect of the business within the contaminated area. Case law has not provided scope for lifting the corporate veil and exists only under very specific circumstances

according to the preparatory work. The final question is, therefore, how the recently announced judgment of the Environmental Court of Appeal should be interpreted, i.e. whether it opens the long-closed door for lifting the corporate veil, or if it only means that authorities must exhaust all theoretical possibilities of getting the business operator to defray the cost of an investigation before they can turn to the land owner who has the secondary liability. If it was not the objective of the Environmental Court of Appeal to lift the corporate veil, the judgment means, in all probability, that the relevant authorities will be forced to pursue pointless legal proceedings against companies in liquidation before an injunction ordering a survey can be directed against a land owner. Such proceedings are both costly and risk becoming rather protracted.

In summary, it can be concluded that the authorities' possibilities – and obligations – to order a business operator to undertake a survey are substantial. The question of lifting the corporate veil is constantly a matter of discussion – even if there still are no cases from the Environmental Court of Appeal which support the proposition that lifting the corporate veil is possible.

It can be concluded that the debate on the issue of lifting the veil in environmental law is far from over. It is of great importance that everyone who has conducted activities which are contaminating, or potentially contaminating, is aware of this.

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