
THE INDIRECT POLLUTER AND CIVIL ENVIRONMENTAL LIABILITY FOR PRECEDENT DAMAGES

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ABSTRACT

Indirect polluter, one that causes environmental degradation indirectly, has been at the center of some discussions on environmental tort law cases, it has been sued even when the environmental damage precedes his conduct. Especially those who acquire forest product by Forest Origin Document (FOD) ideologically false have been targets of uncritical environmental liability. This article seeks to define the concept of indirect polluter in the case of environmental damage precede the conduct of the agent. The methodology consisted of bibliographical and documentary research, and a discussion was carried out on those who purchase a forest product with an ideologically false Forest Origin Document (FOD) and that have been the targets of uncritical liability by the environmental agencies, the Public Prosecutor's Office and even the Judiciary. It was verified that in order to process the purchaser of charcoal with ideologically false FOD, it is necessary to prove that there was knowledge (or should be) about an irregularity, only being able to charge liability for the wood resulting from the operations in which this fault is characterized.

Keywords: indirect polluter; causality nexus; fault; environmental damage; forest origin document (FOD).

*O POLUIDOR INDIRETO E A RESPONSABILIDADE CIVIL
AMBIENTAL POR DANO PRECEDENTE*

RESUMO

O poluidor indireto é aquele que contribui para a degradação ambiental sem dar causa a ela de forma direta. Esse poluidor tem sido o centro de algumas discussões sobre a responsabilidade civil em matéria ambiental, vindo inclusive a ser demandado quando o dano ambiental preceder a sua conduta, seja ela omissiva ou comissiva. O presente trabalho procurou delimitar a responsabilidade do poluidor indireto na hipótese de o dano ambiental ser anterior à conduta do agente. A metodologia consistiu em pesquisa bibliográfica e documental e uma discussão foi realizada sobre aqueles que adquirem produto florestal com Documento de Origem Florestal (DOF) ideologicamente falso e que têm sido alvos de responsabilizações acríicas por parte dos órgãos ambientais, do Ministério Público e até do Poder Judiciário. Verificou-se que para se processar o adquirente de carvão vegetal com DOF ideologicamente falso é necessário a prova de que havia ciência (ou deveria haver) da irregularidade, somente podendo cobrar responsabilidade pela madeira decorrente das operações nas quais essa culpa restar caracterizada.

Palavras-chave: *poluidor indireto; nexo causal; culpa; dano ambiental; documento de origem florestal (DOF).*

INTRODUCTION

The indirect polluter, one who indirectly causes environmental degradation, has been the focus of some discussions about environmental liability. Based on this concept of indirect polluter, for example, steelmakers have been blamed for tree-cutting damage when purchasing charcoal because they do not have the FOD (Forest Origin Document), the successor to the FPTA / ATPF (Forest Products Transport Authorization). Commercial establishments also have been blamed for noise produced by its customers outside the establishment, as well as the State for having allowed, by default, the occupation of PPAs (Permanent Preservation Areas), etc.

This category also includes financial institutions for financial loans that enable activities or businesses that cause environmental damage. This perspective was strengthened by the edition of the Bacen Resolution (Central Bank of Brazil) 4,332 / 2014, which defined guidelines for the implementation of Social and Environmental Liability Policy by financial institutions.

The indirect polluter lacks of understanding and the limits of its liability creates undesirable legal uncertainty, especially because there is too much presumption in this area, leaving the possibilities to determine the liability up to the interpreter. On the other hand, the indirect polluter's liability is essential to ensure adequate protection of the environment, as it places a duty of care, which should govern life in society, by bringing environmental civil liability to those who have not done so, but are responsible for it (Benjamin, 1998, Lemos, 2012, pp. 134 and ANTUNES, 2014, p.501), avoiding that the indirect polluter takes advantage of the environmental degradation carried out by the direct polluter.

The objective of the present work is to try to trace the physiognomy of the one that indirectly causes pollution (indirect polluter), in cases in which the environmental damage is previous to its conduct, using as example the charcoal chain of production, especially to repair the damage to the environment caused by acquiring charcoal without FOD or ideologically false FOD.

The ideologically false FOD is a broad concept, encompassing a number of situations in which the content does not correspond to the declaration, passing from cases in which the falsity is manifestly known by the acquirer in cases in which the awareness of this falsity is impossible. The

purpose of this article is not to work with the cases of the FOD ideological falsity, just to delineate the theory that should guide its application.

Considering that environmental civil liability is the last legal resource (*ultima ratio*) for the environmental damage to be internalized (BENJAMIN, 1998) and that, as a rule, sanctioning administrative law and penal law, due to their characteristics, have more complicated solutions to the indirect polluter issue, it is necessary to face the juridical difficulties of the matter and to discuss the causal link, since it is only possible to hold the indirect polluter responsible when its conduct has produced (indirectly) the result..

Thus, a few words about civil liability in the environmental field are mandatory, since there is in the imagination of some the understanding that objective liability would dispense with the causal link, thus linking everything to everyone

1 THE INDIRECT POLLUTER

Indirect polluter is the one that, although not having directly caused the environmental degradation, has contributed to its occurrence. The Law 6.938/81 (art. 3rd, IV) defines the polluter as the natural or juridical person responsible, direct or indirectly, for the activity causing environmental degradation.

In procedural terms, there is no difference if it deals of the direct or indirect polluter, as the Court (STJ High Court of Justice / Supremo Tribunal de Justiça), decided in the Public Civil Action/ ACP (Ação Civil Pública) that for reparation of environmental damage, the action can be filed against the direct polluter, the indirect polluter or both, as it deals of joint and several liability and permissive joinder (BRASIL, 1995).

However, in substantial terms, such differentiation is relevant, since the assumptions in which an indirect environmental polluter is characterized can not equate it with the direct one, for damages for which he should not be responsible, whether they are before or after his conduct.

Indirect civil liability is not exclusive to environmental law, but rather nourishes its characteristics in the civil law, whose doctrine calls it responsibility for the fact of another, even claiming that its nomenclature is changed to liability for its own due to the duty of vigilance. In fact, the imputation to the third party liability for fact of another is not arbitrary and indiscriminate. It is necessary that the indirect official is legally bound to

the perpetrator of the offense in order to result in a custody, surveillance or custody.

The underlying idea to the indirect polluter is that this one must internalize the duty of care, entering as a kind of guarantor of third party, causing harm. As Rômulo Sampaio points out, the function of the indirect polluter's liability policy "consists in internalizing the duty of care in a third party outside the causal relationship, increasing the number of people and institutions required to control the production of risks" (SAMPAIO, 2013, p. 26).

Extreme caution must be exercised in handling the indirect polluter concept, otherwise the requirement of causality will be transformed into an indeterminate, broad concept that can be manipulated by the interpreter on call. As Paulo de Bessa Antunes and Elizabeth Alves Fernandes warn of financial institutions, but whose reasoning is common to all the indirect polluters:

In addition, by providing for the possibility of liability of indirect agents, the law extends the requirement of a causal link in an indeterminate juridical concept, without, however, establishing the limits for such scrapping. This action is particularly inappropriate for the unrestricted environmental liability of financial institutions

The indirect polluter concept assumes unique importance for companies that purchase charcoal, since they can be held responsible for the irresponsible consumption of this raw material in their production process. This acquisition without the FOD has already led to the signing of TACs / CATs (Termos de Ajustamento de Conduta/ Conduct Adjustment Terms) with steelmakers to repair the damage caused by the consumption of charcoal.

However, in the case of ideologically false FOD, that is, in which only the form of the document is true, but not its content, the issue assumes greater legal complexity, since it raises the possibility of the charcoal consumer being liable civilly without the evidence of actual or presumed evidence that illegal deforestation by third parties generated the raw material of the purchased charcoal, which would obviously not be fair.

2 THE OBJECTIVE LIABILITY FOR THE REPAIR OF ENVIRONMENTAL DAMAGE: THE CAUSAL NEXUS IS ESSENTIAL

Undoubtedly, the responsibility for environmental damage in the civil sphere is objective, since the Law of the National Environmental Policy (Law 6.938 / 81, article 14, § 1o) thus established, being further endorsed by the High Court of Justice (STJ) (BRASIL, 2013a, 2009a, 2005a, 2003, 2005b, 2004, 2007).

However, the objective liability does not dispense the evidence of the causal link between the conduct and the environmental damage (Lemos, 2010, page 126, LEITE, AYALA, 2011, page 134, LEAL, 2011, page 516, LEMOS, 2012, Pp. 167, SAMPAIO: 2013, p.22 and MILARÉ, 2015, pp. 437-438). As was decided by the TRF (Federal Regional Court) of the 4th Region, “there is no causal link, that is, the link between the conduct of the assessed party and the damage to the environment resulting from infrastructure works by the municipal authorities, There is no need to speak of civil liability “(BRAZIL, 2016).

It is no coincidence that the causal nexus is considered as the Achilles’ heel of environmental civil liability (BENJAMIN, 1998). However, this does not authorize the interpreter to create it at will so as to bring its conception of adequate civil liability to the protection of the environment.

As Paulo de Bessa Antunes points out, “even the most rigorous applications of objective liability for integral risk do not dispense the causal link” (ANTUNES, 2014, p.231)¹. Patricia Faga Iglecias Lemos doctrine is “even in the theory of the created risk, there is a need to demonstrate the causal relationship” (2010, p.130). The High Court of Justice (STJ), by its 1st Section organs, understand that “the configuration of liability for damage to the environment requires verification of the causal link between the damage caused and the action or omission of the polluter”:

[...] 5. Moreover, it is clear that environmental law is governed by autonomous principles, specifically provided for in the Federal Constitution (article 225 and paragraphs) and specific legislation, among which the objective liability of the person causing the damage to the environment (articles 3, 4, And 14, paragraph 1,

¹ In the same sense: “Thus, civil liability presupposes, at its core, an unlawful conduct that damages others, bound by a causal link” (ANTUNES; FERNANDES: 2015, p. 29).

of Law 6.938 / 81). 6. Therefore, the configuration of liability for environmental damage requires verification of the causal link between the damage caused and the action or omission of the polluter (BRASIL, 2007).

[...] 2. The jurisprudence of this Sodality directs that, in the case of environmental damage, liability is objective. It is therefore necessary to prove guilt, however, it is necessary to establish the causal link between the action or omission and the damage caused, in order to establish responsibility. (AgRg in AREsp 165.201 / MT, Rel. Minister Humberto Martins, Second Class, adjudicated on 06/19/2012, DJe 06/22/2012). Thus, regardless of the existence of guilt, the polluter, although indirect, is obliged to indemnify and repair the damage caused to the environment. Precedents (BRASIL, 2013a).

In short, the objectivity of environmental liability cannot be used to create a non-existent causal link or simply to waive its requirement. It is wrong, therefore, to fight for the causal link between the conduct and an antecedent result, with the fragile argument that it only cuts trees illegally (result) because someone will buy (action), being irrelevant if that buyer took all the care required by law to do so.

The existence of a causal link is fundamental, but it cannot be irresponsibly created from the will of the interpreter in the discourse of connecting everything to everyone, especially the indirect polluter (third in relation to environmental damage) and especially in relation to the environmental damages antecedent to its conduct that is imputed as polluting.

3 THE INDIRECT POLLUTER CAUSAL LINK (NORMATIVE CAUSALITY)

As we have seen previously, when it comes to environmental damage, it is not just an objective liability, but a question of the causal link of conduct with environmental damage..

In the case of omissive conduct, as noncompliance with some duty of care that has the capacity to cause environmental damage, the fault is not imputed in its conduct, but in characterizing the causal link between its conduct and the result that it should have prevented, through the breach of duty, or, in other words, by omission. Therefore, the High Court of Justice / STJ has already recognized the existence of the indirect polluter,

because its omissive conduct made possible the damage caused later ²

Rômulo Sampaio emphasizes that the lack of the juridical link or the non-compliance with the duty of care,

excludes the necessary causal link by not having contributed the [polluter] indirectly with the creation of the risk that caused the damage. [...] Complying with the legal obligation of internalizing the care, the indirect breaks the causal link with the damage, when it effectively occurs (SAMPAIO, 2013, p. 22).

It is important to highlight the need for omission, for noncompliance with a duty, because the doctrine points that

for a result to be attributed to a particular subject, there must be a causal relationship between the conduct of the subject and the *supervening fact*, that is, there is a link between the action and the result. [...] The cause would be, then, a set of conditions that contributed to the realization of the damaging effect (MACHADO, 2006, page 59).

Thus, there would be no way to characterize the causal relationship between the conduct and an antecedent fact, except if this relation were normative or there was a noncompliance with a duty of care. It is a logical question. It is only the result of an action that comes after this action. It precedes (it comes before) because the system imposed the condition of guarantor to the indirect polluter, what needs to be contextualized normatively.

Even when there is an apparent exclusion from the causal link, due to the application of strict environmental responsibility, as expressed in REsp (Special Appeal) Rep. 1,374,284 / MG (damages caused by dam rupture), the damage is subsequent to the conduct, That is, it is not previous. In AgrRg in REsp (Special Regime in Special Appeal) 1,286,142 / SC, Susep (Superintendence of Private Insurance) the agent did not take measures to avoid environmental degradation, that is, the pollution also followed his management as liquidator. In Agrg in AREsp 224.572 / MS, the indirect ² “[...] 4. The transfer of funds from the State of Paraná to the Municipality of Foz de Iguaçu (action), the lack of caution regarding the licenses granted and those that should have been made by the state organ (omission), contributed to the production of the damage environmental. Such circumstances, therefore, are capable of characterizing the causal link of the event, and thus legitimize the objective liability of the applicant. 5. Thus, irrespective of the existence of fault, the polluter, even if indirectly (Article 3 of Law 6.938 / 81), is obliged to indemnify and repair the damage caused to the environment (objective liability)” (BRASIL, 2005b).

polluter was the owner of the property, which, by not supervising the use of the property, allowed the tenant to pollute the environment with sound noises, that is, that third party used to cause damages to others.

If the result should be in fact supervening, how to hold the indirect polluter accountable for a fact prior to his conduct? The difficulty of characterizing the causal link of the indirect polluter occurs when his conduct is posterior to the damage, and not previous, as in the case of the acquirer of charcoal without FOD or with a ideologically false one.

Only in the event of a *failure to comply with the obligation to inspect* and the obligation *propter rem*³, enforce liability, the jurisprudence recognizes the causal link and imputes environmental liability. In the event of failure to inspect, the damage occurs after the failure, not before, but in the case of obligation, the damage has already occurred at the time of acquisition (conduct).

If the coal purchaser does not have the FOD or if the one he possesses is ideologically false, it would still not be possible for the causal link to be factual because it would be impossible to require a link between that conduct and the damage (deforestation) caused by third parties and, consequently, prior to the charcoal purchase.

Although it is difficult to establish which causal link theory best fits environmental law, it is pertinent to recognize that the causal link appears to be more of a legal than a factual one (Lemos, 2012, pp. 158-159, 165 195). Incidentally, the reason why the theory of equivalence of causal antecedents is criticized is its excessive attachment to natural causality, which would make it impossible, for example, to hold liability for omission (CRUZ, 2005, pp. 48-49), as well as rendering the very figure of the indirect polluter unnecessary (SAMPAIO, 2013, 24)..

For this reason, the High Court /STJ accepted the liability to the acquirer of the contaminated property. By assuming the acquirer's responsibility by previous act, apparently without causal link, the system imposed such a nexus, since these were cases of reforestation of real estate *propter rem*.

PROCESSUAL CIVIL. ENVIRONMENTAL DAMAGE. IRREGULAR BATCHING. PURCHASING OWNERS. SOLIDARITY LIABILITY. [...] 2.

According to the documents in the case file, it is considered that there is no valid

³ The expression of Latin origin *propter rem* can be translated freely as "because of", the obligation, in turn, is the real liability attached to the thing imposed on the holder of certain real right, given the condition of ownership.

environmental or urban development permit on the APP-Permanent Preservation Area and Wildlife Area of the Sapucaí Mirim Environmental Protection Area (APA), degrading the habitat, in the Atlantic Forest (Araucaria forest) biome, of species threatened with extinction, with deforestation and landfill of springs and water streams. Lot purchasers are jointly and severally liable for the environmental damage of the subdivision contested in a Public Civil Action, even if they do not carry out works on their property. In subdivision, “if the property causing the damage is acquired by a third person, it enters into solidarity, as responsible” (BRASIL, 2001).

This understanding, now enshrined in the new Forest Code (article 7, § 2), is, to a certain extent, a consequence of the improvement and partial overcoming of an earlier understanding of the 1st STJ Panel, in which it is not admitted that the buyer would recompose the vegetation if he bought the property already deforested (BRASIL, 1998a, 1998b, 1999,2000). Even if, in this case, there had never been jurisprudence in both classes of the 1st Section. In any case, in addition to the causality nexus said to be non-existent, in the judgments only the recovery by the current owner was conditional upon prior delimitation of the area by the Public Power, and there is no identity with the treaty in this article.

Even in the understanding set forth in the previous paragraph, there was never absolute immunity to the property purchaser, and in the current jurisprudential positioning, later confirmed by the new Forest Code, the question is about a causal normative nexus deriving from obligatory obligation, not simply by a nexus of ordinary or purely factual causality, drawn by the interpreter without legal basis or non-fulfillment of duty of care. In addition, compliance with legislation (environmental or not) integrates the conception of social function, constitutional principle that governs the property right.

In summary, for the High Court of Justice, the two cases in which a broader causal link was recognized were (i) omission in the supervisory duty and (ii) mandatory obligation. It is important to stress that even in cases of liability, there is always a failure to comply with the duty of care (guilt), since the property may not be acquired or be refused, when it comes from inheritance or donation, if there is an environmental liability.

In the thesis of the charcoal acquisition without the FOD there would be a normative causality, since the coal consumer is the guarantor of the raw material used (wood that is transformed into coal) by means of

the FOD requirement. There is charcoal acquisition of illicit origin because the deforestation promoted by third party was illegal, as if the FOD is irregular, or nonexistent, it is almost certain that the origin of the wood is also irregular.

The FOD non-existence, or its irregularity, does not cause illegal deforestation, is its consequence. Going back in causal terms, if all the wood acquired had the FOD, the deforester could not sell and would not degrade, at least in that acquired fraction. There would be an obligation on the part of the purchaser to ensure the origin of the acquired forest product. If there was a failure to supervise the compliance with the legal obligation to demand the FOD it is legally valid to consider that the acquisition enters the illegal chain of deforestation, binding itself to it, even though the damage precedes the acquisition act.

Thus, considering that there would be the figure of the indirect polluter by virtue of which he does not control, or is not responsible in any way, does not seem possible at the current stage of our law, but it is when the legislation imposes an obligation for both, as the case of the FOD, and it is intentional or culpably ignored. There would be in this case, the legal bond and noncompliance with the duty of care (guilt).

The subjective element, here required and sufficient, is the fault (noncompliance with the objective duty of care), and no fraud is necessary, simply by buying charcoal without FOD or false FOD as long as the falsity is identifiable by the average man in the branch. Toshio Mukai (MUKAI, 2011, pp. 91-99) expressed in the doctrine that the environmental liability of the indirect polluter is subjective.

There would be no indivisibility between acquiring coal without certification and deforestation, since the law itself treats these situations as different infractions. But would there be solidarity between those who acquire uncertified coal and deforestation? Would there be a link, even if supervening, between several subjects to justify the blemish of indirect polluter to the acquirer of coal in relation to the direct polluter, the deforester? It is possible that, although for that, it would be necessary to fail to comply with the duty of care, in which case the normative causal link cannot be attributed to the purchaser.

If there is guilt, for the acquisition of the product of forest origin without the FOD (very serious fault) or with its known irregularly, it is characterized by the figure of the indirect polluter. As Jeanne da Silva Machado pointed out, solidarity, when

not agreed upon, is related to subjective liability, patrimony and guilt, since the law cannot oblige debtors, who have not acted in disagreement with their individual obligations, to fulfill the obligation, albeit linked by a common objective link, either in strict compliance with the law or in compliance with the agreement, failing which the iniquity will be established (2006, 108).

Nelson Nery Jr. and Rosa Nery (NERY JR., NERY, 1993, p. 289) teach that the passive liability of Article 14, § 1, of Law 6.938 / 81 is due to the risk created, that is, it requires proof of violation of a duty of care, which would be, in the responsibility for the acquisition of the forest product, acquisition without FOD or with FOD that should be known to be false.

If there is a normative obligation to have the documentation to receive the forest product, the guilt remains both in the acquisition without the FOD and in the acquisition with the document that should be known to be false.

The allegation that admission of such liability could lead to an ‘in’, since damage (deforestation) could be recomposed twice, is not sufficient to obstruct the liability of the indirect polluter because the likelihood of a coincidence is remote and it is not advisable to argue using the exception. This does not prevent the indirect polluter from exempting himself from the recomposition of environmental damage if he proves that the coal purchased comes from a restored or “indemnified” area.

Although the High Court / STJ, in the classic REsp650.728 / SC, has understood that for a causal link, a wide range of conducts are equivalent, linking them to the objective responsibility, it is believed that the subjective element in the characterization of the polluter when the damage precedes the conduct of the agent.

In addition, admitting the wide equating in terms of the indirect polluter causal nexus without the subjective element would create a universal insurer for the environment, which would shape a world in which everyone would take responsibility for all, ruining the environmental civil liability system.

A system created by the state must be reliable, in order to provide legal certainty to the citizens who use it. If the FOD is apparently regular, and the citizen had no way of knowing its falsity, there is no reason to recognize the purchaser of the input with FOD ideologically false as an indirect polluter pure and simple, because that would be to disregard the

very existence of the FOD.

The State cannot accept the consequences of the FOD only when everything goes well, because to hold the purchaser of vegetal product with FOD ideologically false, without being able to know this falsehood, is equivalent to making the FOD a juridical indifferent, in which the citizen cannot trust. Likewise, the professional citizen of the branch that uses the FOD cannot have a blind trust in the system, and there must be some caution because there may be elements that indicate the ideological falsity of the document..

Even in cases of damage subsequent to the conduct of the agent, as in the financing of projects provided for in the caput of article 2 of the Biosafety Law, what causes responsibility is the non-requirement of a state document, which, in this case, is the Certificate of Quality In Biosafety (“under penalty of becoming jointly responsible for possible effects arising from non-compliance with this Law or its regulations” - Law 11.105 / 05, article 2, paragraph 4th).

The purchaser of the FOD product has no additional duty to go beyond the FOD requirement, which is why it is not required to audit the business, checking the establishment of its suppliers, etc., and this is the State duty. By not fulfilling this function, the State betrays the citizen’s trust by violating the principle of trust protection and good faith in public law by using the concept of indirect polluter so elastically to create an obligation - not provided for by law - to seek, at any and all costs, the suitability of the document made available by the State exactly for that purpose.

It would be like demanding from the financial institution the step-by-step follow-up of environmental licensing, when, in fact, its obligation is only to analyze the project and verify if the environmental license is valid. In fact, the responsibility of the third party is not unrestricted, and it is not up to the third party to act on behalf of the environmental organ itself.

Therefore, it is essential to require proof by those legitimated to seek civil liability that the charcoal consumer knew or ought to know of its illicit origin. This proof is materialized with the lack of the FOD or with the reasons why the buyer should know that it was ideologically false.

Of course there are several elements that can overturn the “presumption of innocence” of those who purchase forest products with ideologically false FOD, and do not need to list them in advance. However, it is not enough to mention only an environmental police or supervision

operation, the fact that the selling companies are ghosts or the prices are presumably below the market to characterize the fault and, *ipso facto*, the liability of the forest product buyer for the deforestation, estimated by the environmental agency. Somehow, this buyer was also a victim and cannot be punished for it, unless with proven bad faith.

The discovery of the fake FOD by the police or environmental supervision may be just one of the reasons to exempt the buyer, unless it is part of the fraud chain. As for the fact that the company is a phantom, besides being the environmental agency the inspection obligation to verify its existence, it highlights the temporal issue (since when?) and to impose on the product buyer an *in loco* inspection that does not exist in the law. To presume that the acquisition of the product occurred at a lower price is inadmissible, and the exact price should be pointed out, as well as the reason why the difference between it and the market price would justify the science of the FOD ideological falsity.

CONCLUSION

The environmental civil liability is objective, but such fact does not have the power to eliminate the need for the causal link between the damage and the polluter action.

The concept of the indirect polluter in the environmental law cannot be dependent of the interpreter's good will to hold liable whoever he thinks is fair. Extreme caution must be exercised in the management of this concept, otherwise the causal link requirement will be transformed into an ample indeterminate concept, making the law lack the certainty and security replaced by a justice standard up to the interpreter's mind.

The nexus of physical causality is impossible for the indirect polluter, as he was not the one who practiced the injurious action to the environment, at least not directly, when it is an act that precedes its action. It is a logical question. It is only the result of an action that is subsequent to it. If, by chance, it is not subsequent, it is because the regulatory system has imposed the condition of guarantor to the indirect polluter, which needs to be contextualized from the legal point of view.

It is possible to recognize as an indirect polluter of forest deforestation the one who acquires charcoal without FOD or with one that is ideologically false, when its falsity should be known. This possibility

of characterization as an indirect polluter comes from the FOD being a mechanism created to protect the products of forest origin, in the sphere of the duty of care or vigilance of the citizen who deals professionally with such products. If this duty is not fulfilled, the liability for the antecedent damages arises.

To blame the purchaser of the forestry product for damages prior to its action because he did not require the FOD or transacted with a FOD ideologically false, inserts the typical duty of care of an environmentally responsible society, since it civilly blames the one who did not practice the act, but is responsible for it, avoiding that the indirect polluter takes advantage of the environmental degradation carried out by the direct polluter.

In sum, in order to process the charcoal purchaser with ideologically false FOD, it is necessary that those legitimated to do it carry evidence that there was (or should be) the FOD irregularity, only being able to charge liability for the wood resulting from the operations in which this fault remains characterized.

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