SPC Guiding Case No. 131: All-China Environment Federation v. Dezhou Jinghua Group Zhenhua Co., Ltd. (Air Pollution Liability Civil Public Interest Litigation)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / environmental civil public interest litigation / liability for air pollution / harming the social public interest / major risk

Holding

Where an enterprise, public institution, or other producer or operator repeatedly discharges pollutants in excess of the pollutant discharge standards or the key total-volume control indicators for pollutants, and fails to rectify the situation even after the environmental protection administrative department has imposed administrative penalties, and the plaintiff, pursuant to the "acts of polluting the environment and destroying the ecology that carry a major risk of harming the social public interest" prescribed in Article 1 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases, brings environmental civil public interest litigation against it, the people's court shall accept the case.

Basic Facts

The defendant Dezhou Jinghua Group Zhenhua Co., Ltd. ("Zhenhua Company") was established in 2000, with a business scope including electric power production, flat glass, hollow glass bricks, deep-processed glass, and the manufacture of glass products. In December 2002, the company's 600 t/d high-quality ultra-thick glass project passed examination and approval of its environmental impact assessment, and in November 2003 it passed the "three simultaneous" acceptance inspection. In November 2007, the company's high-grade, high-quality automotive raw glass project passed examination and approval of its environmental impact assessment, and in February 2009 it passed the "three simultaneous" acceptance inspection.

According to the monitoring of the Dezhou Environmental Protection Monitoring Center Station, in March, May, August, and December 2012 and January, May, and August 2013, Zhenhua Company's waste gas discharges all met the standards. In November 2013, January, May, June, and November 2014, and February 2015, its discharges of sulfur dioxide, nitrogen oxides, and smoke and dust were in excess of the standards. The Dezhou Environmental Protection Bureau imposed administrative penalties on Zhenhua Company in December 2013, September 2014, November 2014, and February 2015, each penalty amounting to RMB 100,000. In December 2014, the Shandong Provincial Environmental Protection Department imposed an administrative penalty on it, in the amount of RMB 100,000. On March 23, 2015, the Dezhou Environmental Protection Bureau ordered Zhenhua Company to immediately suspend production for remediation, to completely suspend production before April 1, 2015, and to cease discharging waste gas pollutants in excess of standards. After the plaintiff All-China Environment Federation brought the lawsuit, on March 27, 2015, Zhenhua Company's production lines all released water and suspended production, and it selected a new factory site in Yangma Village north of the Tianqu Industrial Park in Decheng District, with the original factory area preparing for relocation.

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During the trial of this case, in order to prove the losses caused by defendant Zhenhua Company's discharge in excess of standards, in December 2015 the plaintiff All-China Environment Federation entered into a technical consulting contract with the Environmental Planning Institute of the Ministry of Environmental Protection, entrusting it to appraise the amount of losses to public and private property caused by Zhenhua Company's discharge of air pollutants, including the direct property damage caused by the pollution acts and the reduction in actual value, as well as the costs incurred in taking necessary and reasonable measures to prevent the spread of pollution and eliminate pollution. In May 2016, the Environmental Risk and Damage Appraisal and Assessment Research Center of the Environmental Planning Institute of the Ministry of Environmental Protection issued an assessment opinion based on evidence obtained by the people's court that had been cross-examined by both parties. The appraisal result was as follows: Zhenhua Company is located within the urban area of Decheng District, Dezhou City, surrounded mostly by residential communities, and originally had three float glass production lines; the No. 1 float glass production line had been completely suspended in October 2011, while the No. 2 600 t/d high-quality ultra-thick glass production line and the No. 3 400 t/d high-grade, high-quality automotive glass raw sheet production line were still in production. 1. Nature of the pollutants: mainly smoke and dust, sulfur dioxide, and nitrogen oxides. According to the relevant materials in the Report of Dezhou Jinghua Group Zhenhua Co., Ltd. on the Implementation of Rectification Work: as of March 17, 2015, desulfurization and denitration treatment facilities had not been installed or operated on Zhenhua Company's No. 2 float line; the dust removal and desulfurization facilities of the No. 3 float line had been put into operation in September 2014. 2. Confirmation of the periods of discharge in excess of standards: the period of excess sulfur dioxide discharge was June 10, 2014 to August 17, 2014, totaling 68 days; the periods of excess nitrogen oxide discharge were November 5, 2013 to June 23, 2014 and October 22, 2014 to January 27, 2015, totaling 327 days; and the period of excess smoke and dust discharge was November 5, 2013 to June 23, 2014, totaling 230 days. 3. Quantities of pollutants discharged: during the appraisal period, the excess discharge of sulfur dioxide directly discharged into the atmosphere because the enterprise had not installed desulfurization facilities was 255 tons; the discharge of nitrogen oxides directly discharged into the atmosphere because the enterprise had not installed denitration facilities was 589 tons; and the discharge of smoke and dust partially directly discharged into the atmosphere because the enterprise had not installed dust removal facilities or the dust removal facilities had insufficient treatment capacity was 19 tons. 4. Unit treatment costs of pollutants: according to database materials, the unit treatment cost of sulfur dioxide was RMB 5,600 per ton, the unit treatment cost of nitrogen oxides was RMB 6,800 per ton, and the unit treatment cost of smoke and dust was RMB 3,300 per ton. 5. Virtual treatment costs: pursuant to the Ambient Air Quality Standards, the Recommended Methods for Environmental Damage Appraisal and Assessment (Second Edition), and the Technical Specifications for Environmental Damage Assessment in the Emergency Response Stage of Environmental Incidents, the project in this case was located in a Class II environmental functional zone, and the amount of ecological and environmental damage was 3 to 5 times the virtual treatment cost; this report took the parameter 5, giving a total virtual treatment cost of RMB 7.13 million for sulfur dioxide, RMB 20.02 million for nitrogen oxides, and RMB 310,000 for smoke and dust. The appraisal conclusion was that, during the appraisal period, the defendant enterprise discharged a total of 255 tons of sulfur dioxide, 589 tons of nitrogen oxides, and 19 tons of smoke and dust into the air in excess of standards; calculated at unit treatment costs of RMB 5,600 per ton, RMB 6,800 per ton, and RMB 3,300 per ton respectively, the virtual treatment costs were RMB 7.13 million, RMB 20.02 million, and RMB 310,000 respectively, totaling RMB 27.46 million.

Judgment

On July 20, 2016, the Dezhou Intermediate People's Court rendered Civil Judgment (2015) De Zhong Huan Gong Min Chu Zi No. 1: (1) the defendant Dezhou Jinghua Group Zhenhua Co., Ltd. shall, within 30 days from the date the judgment takes effect, compensate RMB 21.9836 million for the losses caused by discharging pollutants in excess of standards, to be paid into the Dezhou special fund account for the

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restoration of the atmospheric environmental quality of Dezhou City; (2) the defendant Dezhou Jinghua Group Zhenhua Co., Ltd. shall make a public apology to society in media at or above the provincial level; (3) the defendant Dezhou Jinghua Group Zhenhua Co., Ltd. shall, within 10 days from the date the judgment takes effect, pay the plaintiff All-China Environment Federation RMB 100,000 for the assessment expenses it incurred; and (4) the other claims of the plaintiff All-China Environment Federation were dismissed.

Reasoning

The court in its effective judgment held that, pursuant to Article 1 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases, where the organs prescribed by law and relevant organizations, in accordance with Article 55 of the Civil Procedure Law, Article 58 of the Environmental Protection Law, and other laws, bring a lawsuit against acts of polluting the environment and destroying the ecology that have already harmed the social public interest or that carry a major risk of harming the social public interest, and the lawsuit satisfies the provisions of Article 119, items 2, 3, and 4 of the Civil Procedure Law, the people's court shall accept it; and pursuant to Article 18, for acts of polluting the environment and destroying the ecology that have already harmed the social public interest or that carry a major risk of harming the social public interest, the plaintiff may request the defendant to bear civil liability such as cessation of the infringement, removal of the obstruction, elimination of the danger, restoration to the original condition, compensation for losses, and an apology. The court held that the act of an enterprise, public institution, or other producer or operator of discharging pollutants in excess of the pollutant discharge standards or the key total-volume control indicators for pollutants may be regarded as an act carrying a major risk of harming the social public interest. The excess discharge of sulfur dioxide, nitrogen oxides, and smoke and dust by defendant Zhenhua Company would affect the service value functions of the atmosphere. Among them, sulfur dioxide and nitrogen oxides are precursors of acid rain, and their excess discharge can lead to acid rain and thereby cause property and personal injury; the excess discharge of smoke and dust would affect atmospheric visibility and cleanliness and would also cause property and personal injury. Since November 2013, defendant Zhenhua Company had repeatedly discharged pollutants such as sulfur dioxide, nitrogen oxides, and smoke and dust into the atmosphere in excess of standards, and had failed to rectify the situation even after repeated administrative penalties by the environmental protection administrative department; its acts fell within the "acts carrying a major risk of harming the social public interest" prescribed by the judicial interpretation, and defendant Zhenhua Company was therefore a proper defendant in this case.

Relevant Legal Provisions

1. Article 55 of the Civil Procedure Law of the People's Republic of China.

2. Article 58 of the Environmental Protection Law of the People's Republic of China.

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