SPC Guiding Case No. 132: China Biodiversity Conservation and Green Development Foundation v. Qinhuangdao Fangyuan Packaging Glass Co., Ltd. (Air Pollution Liability Civil Public Interest Litigation)

Dan Young Business Consultancy — www.danyoungcpa.com

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 / reducing environmental risk / reducing compensation liability

Holding

Where, during environmental civil public interest litigation, the polluter proactively improves its environmental protection facilities and effectively reduces environmental risks, the people's court may, comprehensively considering factors such as the unlawfulness of the act of discharging pollutants in excess of standards, the degree of fault, the operating costs of the pollution treatment facilities, and the effective measures taken for pollution prevention, appropriately reduce the polluter's compensation liability.

Basic Facts

The defendant Qinhuangdao Fangyuan Packaging Glass Co., Ltd. ("Fangyuan Company") is an enterprise principally engaged in the production and processing of various glass packaging bottles, and currently has four glass furnaces. During production, it was repeatedly subjected to administrative penalties by the Qinhuangdao Haigang District Environmental Protection Bureau ("the Haigang District Environmental Protection Bureau") for discharging pollutants in excess of standards. On February 12, 2015, Fangyuan Company entered into a General Contract for Denitration, Desulfurization, and Dust Removal of Glass Furnaces with Wuxi Gerun Environmental Protection Technology Co., Ltd., to carry out denitration, desulfurization, and dust removal renovation of its four furnaces, with a total contract value of RMB 36.17 million.

After the China Biodiversity Conservation and Green Development Foundation ("China Green Development Foundation") brought environmental public interest litigation against Fangyuan Company in 2016, Fangyuan Company accelerated the renovation and upgrading of its denitration, desulfurization, and dust removal equipment. On June 15, 2016, Fangyuan Company passed the environmental protection acceptance inspection of the Haigang District Environmental Protection Bureau. On July 22, 2016, the China Green Development Foundation organized relevant experts to inspect the operating condition of Fangyuan Company's denitration, desulfurization, and dust removal equipment and put forward relevant suggestions. On June 17, 2016 and June 17, 2017, the environmental protection department issued Fangyuan Company a Pollutant Discharge Permit of Hebei Province. On December 2, 2016, Fangyuan Company invested a further RMB 19.65 million to add a set of standby denitration, desulfurization, and dust removal equipment for the four furnaces.

Fangyuan Company paid an administrative fine of RMB 80,000 on March 18, 2015. After the China Green Development Foundation brought public interest litigation in 2016, Fangyuan Company paid administrative fines totaling RMB 12.81 million in 24 installments between April 13, 2016 and November 23, 2016.

On July 25, 2017, the China Green Development Foundation submitted to the court its Explanation of the Claims and Evidence, confirming that the period of damage caused to the environment by Fangyuan Company's unlawful discharge of air pollutants ran from the time the damage was found in the administrative penalty determination to the time the environmental protection department's acceptance inspection was passed. The court entrusted the Environmental Risk and Damage Appraisal and Assessment Research Center of the Environmental Planning Institute of the Ministry of Environmental Protection to appraise the amount of damage caused to the environment by Fangyuan Company's discharge of air pollutants and the costs required to restore the polluted atmospheric environment by taking alternative remediation measures, with the starting and ending dates being October 28, 2015 (the date the damage was determined in the administrative penalty) and June 15, 2016 (the date of compliance with environmental standards).

In November 2017, the appraisal institution issued the Appraisal Opinion on the Environmental Damage Caused by Fangyuan Company's Discharge of Air Pollutants in Excess of Standards, calculating by the virtual cost method that the total amount of particulate matter discharged by Fangyuan Company into the atmosphere in excess of standards during the appraisal period was approximately 2.06 tons, the total amount of sulfur dioxide discharged in excess of standards was approximately 33.45 tons, and the total amount of nitrogen oxides discharged in excess of standards was approximately 75.33 tons; the Qinhuangdao area where Fangyuan Company is located is a Class II air functional zone. As prescribed, the ecological damage amount for a Class II ambient air zone is 3 to 5 times the virtual treatment cost, and the appraisal report took 3 times, calculating the amount of damage caused to the atmospheric environment as approximately RMB 7,400, RMB 271,000, and RMB 1,271,200 respectively, totaling RMB 1,549,600.

It was further established that, in March 2015, web pages of the Hebei Broadcasting Network and the Yanzhao Metropolis Daily showed that the appellee Fangyuan Company was subjected to daily consecutive penalties of more than RMB 2 million for discharging air pollutants in excess of standards without installing dust removal, denitration, and desulfurization facilities. The appellee Fangyuan Company accepted the authenticity of the content shown on those web pages, so the fact that it had discharged pollutants in excess of standards before October 28, 2015 was confirmed.

Judgment

On April 10, 2018, the Qinhuangdao Intermediate People's Court of Hebei Province rendered Civil Judgment (2016) Ji 03 Min Chu No. 40: (1) Qinhuangdao Fangyuan Packaging Glass Co., Ltd. shall compensate RMB 1,549,600 for the losses caused by discharging air pollutants in excess of standards, to be paid in three installments into the special fund account of Qinhuangdao City (RMB 516,500 per installment; the first installment to be paid within seven days from the date the judgment takes effect, and the second and third installments to be paid before December 31 of the second and third years after the judgment takes effect respectively), for the environmental restoration of the Qinhuangdao area; (2) Qinhuangdao Fangyuan Packaging Glass Co., Ltd. shall, within 30 days after the judgment takes effect, publish in national-level media an apology statement for its acts of polluting the atmospheric environment (the content to be published after review by the first-instance court); if Fangyuan Company fails to perform the above obligation, the Qinhuangdao Intermediate People's Court of Hebei Province shall publish the content of this judgment in national-level media, with the relevant costs borne by Fangyuan Company; (3) Qinhuangdao Fangyuan Packaging Glass Co., Ltd. shall, within 15 days after the judgment takes effect, pay the China Biodiversity Conservation and Green Development Foundation RMB 30,000 for the reasonable expenses it incurred for this case; and (4) the other claims of the China Biodiversity Conservation and Green Development Foundation were dismissed. The case acceptance fee of RMB 80 shall be borne by Qinhuangdao Fangyuan Packaging Glass Co., Ltd., and the appraisal fee of RMB 150,000 shall be borne by Qinhuangdao Fangyuan Packaging Glass Co., Ltd. (already paid). After the judgment was pronounced, the China Biodiversity Conservation and Green Development Foundation appealed. On November 5, 2018, the Hebei Provincial Higher People's Court rendered Civil Judgment (2018) Ji Min Zhong No. 758: dismissing

the appeal and affirming the original judgment.

Reasoning

The court in its effective judgment held that Article 23 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 provides that, where the ecological and environmental restoration costs are difficult to determine, the people's court may reasonably determine them by taking into account factors such as the scope and degree of the pollution of the environment and destruction of the ecology, the operating costs of pollution prevention equipment, the benefits obtained by the polluting enterprise through the infringing acts, and the degree of fault. In this case, Fangyuan Company entered into the General Contract for Denitration, Desulfurization, and Dust Removal of Glass Furnaces with Wuxi Gerui Environmental Protection Technology Co., Ltd. in February 2015 to upgrade and renovate the environmental protection facilities equipped for its four furnaces, with a total contract value of RMB 36.17 million, which reflected the enterprise's awareness of the law in rectifying and preventing pollution. Although Fangyuan Company's discharge of pollutants in excess of standards during the upgrading and renovation of its environmental protection facilities was unlawful, after being subjected to administrative penalties for the excess discharge, it actively paid administrative fines totaling more than RMB 12.8 million, and its excess discharge was subjected to administrative sanctions. After the public interest litigation in this case was brought, Fangyuan Company accelerated the upgrading and renovation of its environmental protection facilities and, after the environmental protection facilities passed acceptance inspection, invested a further RMB 19.65 million to build a set of standby pollutant discharge equipment, becoming the first enterprise in the Qinhuangdao area to achieve the configuration of two sets of atmospheric pollution control environmental protection equipment with one set in standby.

Articles 1 and 4 of the Environmental Protection Law of the People's Republic of China set out the legislative purposes of protecting the environment, preventing pollution, and promoting sustainable economic development, reflecting the principle of giving equal weight to protection and development. Environmental public interest litigation, while emphasizing relief for environmental damage, should also take into account the precautionary principle. During the litigation in this case, Fangyuan Company accelerated the rectification of its environmental protection facilities, actively assumed administrative responsibility, and, after the environmental protection facilities it installed passed acceptance inspection, invested nearly RMB 20 million to equip an additional set of environmental protection facilities to ensure the stable operation of the environmental protection facilities during production, greatly reducing the risk and possibility of causing further environmental pollution. Fangyuan Company's voluntary investment of huge sums in pollution prevention and control was an act of safeguarding the public interest carried out in addition to the litigation claims of "environmental damage compensation and environmental restoration costs" raised by the China Green Development Foundation in the first instance, realizing the legislative intent of "giving priority to protection and focusing on prevention" prescribed by Article 5 of the Environmental Protection Law of the People's Republic of China, as well as the risk prevention function of environmental civil public interest litigation, and had a positive social guidance effect. The people's court comprehensively considered factors such as the unlawfulness of Fangyuan Company's act of discharging pollutants in excess of standards during enterprise production, the degree of fault, the operating costs of pollution treatment, and the positive measures taken for pollution prevention, offset the damage caused by the excess discharge before the first-instance appraisal period of environmental damage, and maintained the amount of environmental damage compensation and restoration costs determined by the first-instance court in accordance with the appraisal opinion.

Relevant Legal Provisions

Articles 1, 4, and 5 of the Environmental Protection Law of the People's Republic of China.

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