SPC Guiding Case No. 133: The People's Procuratorate of Yantai City, Shandong Province v. Wang Zhendian and Ma Qunkai (Environmental Civil Public Interest Litigation)

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

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 26, 2019.

Keywords

Civil / environmental civil public interest litigation / water pollution / ecological and environmental restoration liability / self-purification capacity

Holding

Where a polluter, in violation of state regulations, discharges pollutants into a water body and causes ecological and environmental damage, and claims exemption from or reduction of ecological and environmental restoration liability on the ground that the polluted water body has self-purification capacity and the water quality has recovered, the people's court shall not support the claim.

Basic Facts

Between February and April 2014, Wang Zhendian and Ma Qunkai, without completing any registration, safety inspection, or environmental impact assessment procedures, carried out a project of cleaning feldspar granules with hydrochloric acid in the workshop on the north side of the courtyard of the sand field in Xiaoshuizhuang Village, Zuocun Town, Laizhou City. Wang Zhendian provided the site, personnel, and part of the funds, while Ma Qunkai funded the construction of the reaction tanks, imparted the technology, provided equipment, purchased raw materials, and sold finished products. About 60 tons of waste acid liquid was generated during the operations, which Wang Zhendian first stored in the wastewater tank outside the north wall of the factory courtyard. During its storage in the wastewater tank, the waste acid liquid showed obvious signs of leakage, and the leaked waste acid liquid polluted the soil and groundwater around the wastewater tank. The waste acid liquid was also discharged into the Xiaoshui River north of the village through the drainage ditches outside the east and west walls of the factory courtyard, polluting the water body of the Xiaoshui River. At the end of April 2014, after the hydrochloric acid feldspar-granule cleaning operation of Wang Zhendian and Ma Qunkai was discovered and shut down by the Laizhou Public Security Bureau, more than 20 tons of remaining waste acid liquid from the hydrochloric acid cleaning of feldspar granules was buried by Wang Zhendian in the reaction tanks. The waste acid liquid was monitored by the Laizhou Environmental Monitoring Station and determined by the Laizhou Environmental Protection Bureau to have a monitored pH value of less than 2, and, according to the National Catalogue of Hazardous Wastes and the standards and methods for identifying hazardous waste, it fell within the category of hazardous waste "HW34 waste acid, code 900-300-34." On June 1, 2016, defendant Ma Qunkai was sentenced to one year and six months' fixed-term imprisonment, suspended for two years, and a fine of RMB 20,000 (the fine having been paid), for the crime of polluting the environment; defendant Wang Zhendian was sentenced to one year and two months' fixed-term imprisonment, suspended for two years, and a fine of RMB 20,000 (the fine having been paid), for the crime of polluting the environment.

In the criminal case handled by the Laizhou Public Security Bureau against Wang Zhendian for polluting the environment, the Work Record of On-Site Inspection and Examination of the Food, Drug, and Environment Investigation Brigade of the Laizhou Public Security Bureau recorded: "The central scene is located in an abandoned workshop on the north side of the courtyard of the Xiaoshui sand field. In the west of the

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workshop, two reaction tanks, 20 m long, 6 m wide, and 1.5 m deep on average, are arranged from south to north, with sloped bottoms. To the north of the workshop is a passageway, within which are three cement tanks, 15 m long, 2.6 m wide, and 2 m deep." The north tank on the west side of the workshop, which had contained waste acid liquid, has now been filled with sand and soil, the total weight of the polluted sand and soil being 223 tons.

On November 27, 2015, the Food, Drug, and Environment Crime Investigation Brigade of the Laizhou Public Security Bureau entrusted the Environmental Risk and Pollution Damage Appraisal and Assessment Center of the Shandong Provincial Environmental Protection Science Research and Design Institute to appraise and assess the extent and amount of environmental damage caused by the environmental pollution case of Wang Zhendian and Ma Qunkai in Laizhou City. In February 2016, the institution issued the Environmental Damage Inspection Report on the environmental pollution case of Wang Zhendian and Ma Qunkai in Laizhou City, determining that the quantifiable environmental damage in this assessment consisted of emergency response costs and ecological and environmental damage costs: the emergency response costs were RMB 56,000 for the disposal of the polluted sand and soil in the acid-washing tanks, and the ecological and environmental damage costs were RMB 720,000 for the ecological damage restoration caused by the surreptitious discharge of acid-washing wastewater, totaling RMB 776,000.

On April 6, 2016, the Laizhou People's Procuratorate issued Procuratorial Recommendation Lai Jian Min (Xing) Xing Zheng Wei Jian [2016] No. 37068300001 to the Laizhou Environmental Protection Bureau, "recommending a comprehensive investigation of the pollutant discharge of other enterprises and small workshops in the Xiaoshui River basin to see whether there are still acts of discharging pollutants into the Xiaoshui River basin." On May 3 of the same year, the Laizhou Environmental Protection Bureau replied: "After receiving the Procuratorial Recommendation of the Laizhou People's Procuratorate, our bureau immediately organized law enforcement personnel to conduct a comprehensive investigation of the pollutant discharge of enterprises and small workshops in the Xiaoshui River basin; after strict law enforcement, no environmental violations such as the discharge of hazardous wastes such as waste acid into the Xiaoshui River basin were found."

On February 8, 2017, the Yantai Intermediate People's Court of Shandong Province, together with the public interest litigant, Wang Zhendian, Ma Qunkai, the Yantai Environmental Protection Bureau, the Laizhou Environmental Protection Bureau, and the Xiaoshuizhuang Village Committee, conducted an on-site inspection and sampling monitoring of the polluted areas caused by the infringing acts of Wang Zhendian and Ma Qunkai, including the sand and soil in the acid-washing tanks and the groundwater in the wells of some households in the surrounding residential area, and took 22 photographs of the evidence-collection scene. The environmental protection department submitted to the people's court a water quality monitoring compliance report dated February 13, 2017 (the water quality monitoring results at all 8 monitoring points complied with the standards) and a solid waste testing report for the acid-washing tanks dated February 14, 2017 issued by Shandong Hengcheng Testing Technology Co., Ltd. as entrusted by the department (for the south acid-washing reaction tank: pH = 9.02 at -40 cm and pH = 9.18 at -70 cm; for the north tank: pH = 2.85 at -40 cm and pH = 2.52 at -70 cm). The testing report on the waste tanks of Wang Zhendian's acid-washing pools dated March 3, 2017, submitted by the public interest litigant and issued by Shandong Hengcheng Testing Technology Co., Ltd. as entrusted by the Laizhou Environmental Protection Bureau, recorded: for the south reaction tank, pH = 9.7 at -1.2 m; for the north tank, pH < 2 at -1.2 m. The public interest litigant argued that, under the Identification Standards for Hazardous Waste — Identification of Extraction Toxicity (GB 5085.3-2007) and the Technical Specifications for Soil Environmental Monitoring (HJ/T 166-2004), a substance is a corrosive hazardous waste when pH ≥ 12.5 or pH ≤ 2.0; under the National Catalogue of Hazardous Wastes (2016 Edition), category 900-300-34 under HW34 waste acid is "waste acid liquid generated from cleaning with acid," and category 900-041-49 under HW49 other waste is "discarded packaging, containers, and filtering and adsorption media containing or contaminated with toxic or infectious hazardous waste." The polluted sand and soil in the acid-washing tanks in question constituted hazardous

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waste, and all the polluted sand and soil in the acid-washing tanks should be disposed of as hazardous waste.

The consultation report and expert opinion submitted by the public interest litigant and issued by Liu Weijin, a senior hydrogeological and environmental engineer at the Shandong Provincial Geological Environment Monitoring Station, on the evolution of groundwater pollution, recorded: I. The development process of groundwater environmental pollution. 1. Pollution factors enter the saturated zone (the stratum from the groundwater level of the phreatic aquifer up to the surface) through surface infiltration, and enter the aquifer through leakage once they reach the groundwater level. 2. Upon entering the aquifer, they initially diffuse outward under the action of head pressure, forming a roughly circular polluted area extending along the direction of groundwater flow. 3. As pollutants continue to infiltrate, under the action of groundwater dynamics, the pollution factors migrate downstream with groundwater runoff, generally expanding downstream from the initially formed polluted area in a fan-shaped or elliptical pattern along the direction of groundwater flow. 4. As the polluted area formed by groundwater runoff continues to expand, the polluted area and the concentration of pollution factors continuously increase, causing pollution of the groundwater environment; where the pollution source is not cut off, the polluted area will continue to expand along the direction of groundwater runoff. II. The evolution of the polluted area and of groundwater pollution is closely related to factors such as the persistence of the pollution, the permeability of the vadose zone, the permeability of the aquifer, the adsorptivity of the soil and aquifer rock, and the conditions of groundwater runoff. 1. Long-term pollution evolution. As pollution factors enter the surface and infiltrate downward through the saturated zone, part of them is adsorbed by the rock and soil of the saturated zone, polluting the rock and soil layers of the vadose zone; the concentration of pollution factors initially entering the aquifer is relatively low, but after a period of infiltration and adsorption reaches saturation, the concentration entering the aquifer will gradually approach or reach the concentration of the sewage. In the process of entering the aquifer and expanding downstream, through dilution by groundwater and adsorption by the aquifer, it will initially gradually decrease. After saturation, with the continuous injection of pollution factors, the polluted area reaching a certain concentration will continuously expand downstream, and the polluted area will continuously enlarge. 2. Short-term pollution evolution. Short-term pollution refers to the process of change of the pollution factors and polluted areas already entering the groundwater environment after the pollution source is eliminated over a certain period of time. (1) The evolution of pollution factors. Where the pollution source is eliminated and pollution factors are blocked from entering the groundwater environment, through dilution by upstream groundwater runoff and by groundwater runoff from the expanded polluted area, and through adsorption by the aquifer rock and soil, the concentration of groundwater in the polluted waters will gradually decrease and the water quality will gradually improve. (2) Changes in the polluted area. After the pollution source is eliminated and sewage is prevented from entering the aquifer, the groundwater polluted area will, over time and under the dynamic action of groundwater runoff, gradually move and expand downstream; as the polluted area expands and the adsorption of rock and soil strengthens, the groundwater quality in the aquifer will gradually improve. After a certain period of time, the pollution factors will be adsorbed onto the rock and soil layers and diluted in the groundwater, improving the groundwater environment of the polluted area and ultimately enabling the originally polluted area to reach the relevant water quality standards.

Judgment

On May 31, 2017, the Yantai Intermediate People's Court of Shandong Province rendered Civil Judgment (2017) Lu 06 Min Chu No. 8: (1) the defendants Wang Zhendian and Ma Qunkai shall, within thirty days from the date the judgment takes effect and under the supervision of the Yantai Environmental Protection Bureau, dispose of the 223 tons of polluted sand and soil in the acid-washing tanks in accordance with the disposal requirements for hazardous waste so as to eliminate the danger; if they are unable to dispose of it themselves, the environmental protection administrative department shall entrust a third party to carry out the disposal, and the defendants shall compensate RMB 56,000 for the disposal costs of the acid-washing

hazardous waste, to be paid into the Yantai environmental public interest litigation fund account; and (2) the defendants Wang Zhendian and Ma Qunkai shall, within ninety days from the date the judgment takes effect, formulate a remediation plan for the pollution of the groundwater and soil around the workshop on the north side of the courtyard of the sand field in Xiaoshuizhuang Village, Zuocun Town, Laizhou City, and the water body of the Xiaoshui River, and carry out the remediation; if they fail to perform the remediation obligation within the time limit or the remediation fails to meet the standard for protecting the social public interest of the ecological environment, they shall compensate RMB 720,000 for the ecological damage restoration costs caused by their surreptitious discharge of acid-washing wastewater, to be paid into the Yantai environmental public interest litigation fund account. After the judgment was pronounced, neither party appealed, and the judgment has become legally effective.

Reasoning

The court in its effective judgment held as follows:

I. The determination of the infringing acts of Wang Zhendian and Ma Qunkai

(1) As to the determination of the quantity of hazardous waste in question and the disposal costs, the testing report issued by Shandong Hengcheng Testing Technology Co., Ltd. during the trial pointed out that the pH values at depths of -40 cm, -70 cm, and -1.2 m in the south acid-washing reaction tank were all within the normal range, while the pH value of less than 2 at -1.2 m in the north tank constituted hazardous waste. The north tank of the acid-washing tanks in question originally contained the waste acid liquid generated by Wang Zhendian and Ma Qunkai in cleaning feldspar granules with hydrochloric acid, and was later filled with sand and soil. Under the National Catalogue of Hazardous Wastes (2016 Edition), category 900-300-34 under HW34 waste acid and category 900-041-49 under HW49 other waste, the sand and soil now filling the entire tank has adsorbed the waste acid liquid in the tank and has become hazardous waste containing or contaminated with corrosive toxicity. The Environmental Damage Inspection Report issued by the Environmental Risk and Pollution Damage Appraisal and Assessment Center of the Shandong Provincial Environmental Protection Science Research and Design Institute took the total of 223 tons of polluted sand and soil in the north acid-washing tank as the quantity of hazardous waste, and, with reference to the unit treatment cost of RMB 250-800 per ton under the “cleaning method” of the “reference unit restoration and treatment cost of land resources” given in the Recommended Methods for Calculating the Amount of Environmental Pollution Damage, took RMB 250 per ton in this case to calculate the disposal costs of RMB 56,000, which had a factual and legal basis and was not improper, and was adopted. (The specific calculation method was: 20 m × 6 m × average depth 1.3 m × density 1.3 t/m³ = 203 tons of sand and soil + 20 tons of waste acid = 223 tons × RMB 250/t = RMB 56,000.)

(2) As to the determination of the ecological damage restoration costs for the pollution of the soil, surface water, and groundwater in question, the monitoring report of the Laizhou Environmental Monitoring Station showed that the pH value of the residual wastewater in the wastewater tank was less than 2, constituting strongly acidic wastewater. The acid-washing wastewater discharged by Wang Zhendian and Ma Qunkai through the wastewater tank and drainage ditches was hazardous waste and also toxic substances polluting the environment, causing the water in the wells of some households to turn yellow, smell pungent, and become undrinkable. Monitoring found that the pH value of the well water of some households was lower than the background value, and that the chloride content and total hardness were far higher than the background value and clearly exceeded the standards. The wastewater leaking during storage in the wastewater tank infiltrated the surrounding soil and groundwater, and the wastewater discharged into the ditches flowed into the Xiaoshui River. There was no other similar pollution source around the polluted area in question, so it could be determined that the polluted groundwater, which was yellow, had a pungent odor, and had a relatively high chloride concentration, was caused by the environmental pollution acts carried out by Wang Zhendian and Ma Qunkai.

The water quality monitoring report of February 13, 2017 showed that, at some monitoring points within the original water quality monitoring scope, the water quality monitoring results complied with the standards. According to the opinions of geological environment monitoring experts, where the pollution source is eliminated and pollution factors are blocked from entering the groundwater environment, through dilution by upstream groundwater runoff and by groundwater runoff from the expanded polluted area and through adsorption by the aquifer rock and soil, the concentration of groundwater in the polluted waters will gradually decrease and the water quality will gradually improve. The groundwater polluted area will, over time and under the dynamic action of groundwater runoff, gradually move and expand downstream. After a certain period of time, the originally polluted area may reach the relevant water quality standards, but this does not mean that the regional ecological environment has improved or been restored. Wang Zhendian and Ma Qunkai should still bear the responsibility for the ecological and environmental damage restoration of the polluted area. Where the defendants are unable to carry out the restoration themselves, pursuant to the Recommended Methods for Calculating the Amount of Environmental Pollution Damage and the Recommended Methods for Environmental Damage Assessment in the Emergency Response Stage of Environmental Incidents, the virtual treatment cost method is adopted to estimate the ecological damage restoration costs caused by Wang Zhendian and Ma Qunkai's surreptitious discharge of wastewater. The virtual treatment cost refers to the cost that an industrial enterprise or sewage treatment plant would incur in treating an equivalent quantity of pollutants discharged into the environment, namely the product of the quantity of pollutants discharged and the unit virtual treatment cost of the pollutants. The unit virtual treatment cost of pollutants refers to the average cost of treating a unit of pollutants at the industrial enterprise or sewage treatment plant at the location of the environmental incident. In quantifying ecological and environmental damage, the amount may be multiplied by a factor of 1.5 to 10 according to the environmental functional sensitivity of the polluted area to serve as the upper and lower limits of the amount of environmental damage. As to the ecological damage restoration costs for the soil in the polluted area, the Class III groundwater, and the Class V surface water of the Xiaoshui River in this case, the Environmental Damage Inspection Report issued by the Environmental Risk and Pollution Damage Appraisal and Assessment Center of the Shandong Provincial Environmental Protection Science Research and Design Institute took 6 times the virtual treatment cost, calculated on the basis of the 60 tons of surreptitiously discharged acid-washing wastewater as determined in the effective Criminal Judgment (2016) Lu 0683 Xing Chu No. 136 of the Laizhou People's Court, giving ecological damage restoration costs of RMB 720,000, i.e., unit virtual treatment cost RMB 2,000/t × 60 t × 6 times = RMB 720,000, which had a factual and legal basis and was not improper.

II. The issue of tort liability

Article 65 of the Tort Liability Law of the People's Republic of China provides: "Where pollution of the environment causes damage, the polluter shall bear tort liability." Article 66 provides: "Where a dispute arises from pollution of the environment, the polluter shall bear the burden of proving the circumstances under which it does not bear liability or bears reduced liability as prescribed by law, and that there is no causal relationship between its conduct and the damage." Criminal Judgment (2016) Lu 0683 Xing Chu No. 136 of the Laizhou People's Court determined that there was a causal relationship between the environmental pollution acts carried out by Wang Zhendian and Ma Qunkai and the resulting consequences of environmental pollution damage; Wang Zhendian and Ma Qunkai had no objection to this, and the judgment has become legally effective. Pursuant to Article 64 of the Environmental Protection Law of the People's Republic of China, Articles 8, 65, and 66 of the Tort Liability Law of the People's Republic of China, and Article 14 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Tort Liability Dispute Cases, Wang Zhendian and Ma Qunkai shall bear tort liability for their acts of polluting the environment and causing damage to the social public interest.

Relevant Legal Provisions

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1. Article 4, paragraph 1, and Articles 8, 65, and 66 of the Tort Liability Law of the People's Republic of China.

2. Article 64 of the Environmental Protection Law of the People's Republic of China.

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