SPC Guiding Case No. 138: Chen Delong v. Chengdu Chenghua District Environmental Protection Bureau (Environmental Administrative Penalty)

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

Keywords

Administrative / administrative penalty / environmental protection / privately installed concealed pipes / evading supervision

Holding

Where an enterprise, public institution, or other producer or operator discharges water pollutants by means of evading supervision, such as through privately installed concealed pipes, an administrative penalty shall be imposed in accordance with law. Where the polluter claims, on the ground that the water pollutants it discharged met the standards and did not cause damage to the environment, that it should not be subject to an administrative penalty, the people's court shall not support the claim.

Basic Facts

Chen Delong was the owner of the Delong Processing Factory, an individually owned business under the Damian Subdistrict Office of Longquanyi District, and had been processing and producing tempered glass since March 2011. On November 2, 2012, the Chengdu Chenghua District Environmental Protection Bureau ("the Chenghua District Environmental Protection Bureau"), while inspecting the factory premises of the Delong Processing Factory located at B-10, Group 1, Tian'e Community, Baohe Subdistrict Office, Chenghua District, Chengdu, discovered that the factory was suspected of privately installing concealed pipes to secretly discharge sewage. After filing the case and conducting an investigation, and following the relevant statutory procedures, on December 11, 2012, the Chenghua District Environmental Protection Bureau issued Administrative Penalty Decision Cheng Huan Bao Fa Zi [2012] No. 1130-01, finding that Chen Delong's conduct violated Article 22, paragraph 2 of the Water Pollution Prevention and Control Law of the People's Republic of China ("the Water Pollution Prevention and Control Law"), and, pursuant to Article 75, paragraph 2 of the Water Pollution Prevention and Control Law, ordered the immediate dismantling of the concealed pipes and imposed a fine of RMB 100,000. Chen Delong was dissatisfied and brought a lawsuit in court, requesting that the penalty decision be revoked.

Judgment

On May 21, 2014, the Chenghua District People's Court of Chengdu rendered Administrative Judgment (2014) Cheng Hua Xing Chu Zi No. 29, ruling to dismiss the claims of plaintiff Chen Delong. Chen Delong was dissatisfied and appealed to the Chengdu Intermediate People's Court. On August 22, 2014, the Chengdu Intermediate People's Court rendered Administrative Judgment (2014) Cheng Xing Zhong Zi No. 345, ruling to dismiss the claims of plaintiff Chen Delong. On October 21, 2014, Chen Delong applied to the Chengdu Intermediate People's Court for a retrial of the case, and the court rendered Ruling (2014) Cheng Xing Jian Zi No. 131, ruling not to accept Chen Delong's retrial application.

Reasoning

The court in its effective judgment held that, although the registered place of business of the Delong Processing Factory was in Longquanyi District, Chengdu, the specific location where its production and

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processing gave rise to the environmental violation was in Chenghua District, Chengdu; pursuant to Article 20 of the Administrative Penalty Law of the People's Republic of China and Article 17 of the Measures for Environmental Administrative Penalties, the Chenghua District Environmental Protection Bureau had the administrative authority to render the challenged penalty decision. Although the Test Report issued by the Chengdu Chenghua District Environmental Monitoring Station on May 22, 2012 found that the wastewater discharged by the Delong Processing Factory complied with the relevant standards for discharging sewage, what the Delong Processing Factory discharged through its privately installed concealed pipes still constituted sewage, violating Article 22, paragraph 2 of the Water Pollution Prevention and Control Law. The Delong Processing Factory had previously been subject to an administrative penalty for the unlawful act of "putting production into operation without completing environmental impact assessment procedures or passing acceptance of environmental protection facilities," so the unlawful act in this case was a second offense; the Chenghua District Environmental Protection Bureau, within the range prescribed by Article 75, paragraph 2 of the Water Pollution Prevention and Control Law and comprehensively considering the fact that the Delong Processing Factory was a repeat offender, imposed an administrative penalty of a fine of RMB 100,000 on the Delong Processing Factory, which was not improper.

Relevant Legal Provisions

Articles 39 and 83 of the Water Pollution Prevention and Control Law of the People's Republic of China (2017 Amendment). (This case applied Article 22, paragraph 2 and Article 75, paragraph 2 of the Water Pollution Prevention and Control Law of the People's Republic of China as amended in 2008.)

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