SPC Guiding Case No. 139: Shanghai Xinjingshan Building Materials Development Co., Ltd. v. Shanghai Jinshan District Environmental Protection Bureau (Environmental Administrative Penalty)

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

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Keywords

Administrative / administrative penalty / prevention and control of air pollution / prevention and control of environmental pollution by solid waste / application of law / exceeding discharge standards

Holding

Where the odor concentration generated by an enterprise, public institution, or other producer or operator in stacking or handling solid waste exceeds the discharge standards for air pollutants, and the environmental protection authority applies the Air Pollution Prevention and Control Law of the People's Republic of China, which imposes a heavier penalty, to penalize it, if the enterprise, public institution, or other producer or operator claims that the Law on the Prevention and Control of Environmental Pollution by Solid Waste of the People's Republic of China should instead be applied, the people's court shall not support the claim.

Basic Facts

The plaintiff Shanghai Xinjingshan Building Materials Development Co., Ltd. ("Xinjingshan") was dissatisfied with an administrative penalty imposed by the Shanghai Jinshan District Environmental Protection Bureau ("the Jinshan Environmental Protection Bureau") and brought administrative litigation, alleging that it was improper for the Bureau to penalize it under the Air Pollution Prevention and Control Law of the People's Republic of China ("the Air Pollution Prevention and Control Law") for the odor concentration exceeding the standard from the sludge stacked at its plant site, and that the Law on the Prevention and Control of Environmental Pollution by Solid Waste of the People's Republic of China ("the Solid Waste Pollution Prevention and Control Law") should have been applied instead, and requested that the penalty be revoked.

The court found upon trial that, following a public report, on August 17, 2016, law enforcement officers of the defendant Jinshan Environmental Protection Bureau went to Xinjingshan for an inspection, and staff of the Jinshan Environmental Monitoring Station sampled gas from the odor at the company's plant boundary and from the waste gas discharge outlets. On the 26th of the same month, the Jinshan Environmental Monitoring Station issued a Test Report numbered XF26-2016. The Monitoring Report within it showed that, pursuant to the Emission Standards for Odor Pollutants (GB 14554-93), the standard value for the second-level odor concentration at the plant boundary was 20, and that after collecting three samples at each of four monitoring points along the plaintiff's plant boundary for testing, the maximum one-time odor concentration at monitoring point No. 3 was 25. On September 5, 2016, the defendant received the Test Report and filed the case the same day. After investigation, on November 9, 2016, the defendant prepared the Order to Rectify (Jin Huan Bao Gai Zi [2016] No. 224) and the Notice of Administrative Penalty Hearing, and served them on the plaintiff. At the plaintiff's request, the defendant organized a hearing on November 23, 2016. On December 2, 2016, the defendant issued the Administrative Penalty Decision No. 2020160224, finding that on August 17, 2016, its law enforcement officers had inspected and monitored the plaintiff's fugitive emission of odor pollutants, and after sampling at the plaintiff's plant boundary, testing by the Jinshan Environmental Monitoring Station showed that the maximum one-time odor concentration at monitoring point No. 3 was 25,

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exceeding the discharge limit of 20 prescribed by the Emission Standards for Odor Pollutants (GB 14554-93). This conduct violated Article 18 of the Air Pollution Prevention and Control Law, and pursuant to Article 99, item 2 of the Air Pollution Prevention and Control Law, it was decided to impose a fine of RMB 250,000 on the plaintiff.

It was further established that on November 13, 2009, the defendant approved the Environmental Impact Report Form for the Technical Renovation Project of Multi-Specification Environmentally Friendly Silt-Sintered Perforated Bricks submitted by the plaintiff, and on December 5, 2012, the technical renovation project passed the defendant's completion acceptance. In addition, since 2015, the plaintiff had been the subject of dozens of public complaints reflecting such environmental problems as the company's emission of pungent odors. On September 9, 2015, because the maximum measured odor concentration at two sampling points along the plaintiff's plant boundary on July 20 of that year exceeded the standard, the defendant issued an Order to Rectify (Jin Huan Bao Gai Zi [2015] No. 479) to the company, and on September 18 of that year issued the Administrative Penalty Decision No. 2020150479, deciding to impose a fine of RMB 35,000 on the plaintiff.

Judgment

On March 27, 2017, the Jinshan District People's Court of Shanghai rendered Administrative Judgment (2017) Hu 0116 Xing Chu No. 3: dismissing the claims of the plaintiff Shanghai Xinjingshan Building Materials Development Co., Ltd. After the judgment was pronounced, the parties accepted the judgment and ceased litigating; neither party appealed, and the judgment has become legally effective.

Reasoning

The court in its effective judgment held that the core focal point of dispute in this case was whether it was correct for the defendant to apply the Air Pollution Prevention and Control Law in penalizing the plaintiff's conduct in question. This involved the choice of application among Article 68, paragraph 1, item 7 and paragraph 2 of the Solid Waste Pollution Prevention and Control Law and Article 99, item 2 of the Air Pollution Prevention and Control Law. The former provides that where a person fails to take corresponding preventive measures, causing industrial solid waste to scatter, be lost, or leak, or causing other environmental pollution, a fine of not less than RMB 10,000 but not more than RMB 100,000 shall be imposed; the latter provides that where a person discharges air pollutants in excess of the discharge standards for air pollutants or in excess of the key total-volume control indicators for air pollutants, the environmental protection authority of a people's government at or above the county level shall order rectification or restrict production or suspend production for remediation, and impose a fine of not less than RMB 100,000 but not more than RMB 1,000,000; where the circumstances are serious, it shall report to a people's government with approval authority for approval and order suspension of business or closure. The former regulates the conduct of failing to take preventive measures and thereby causing environmental pollution by industrial solid waste, while the latter regulates the conduct of discharging air pollutants in excess of the standards; the former may be constituted by the act of failing to take preventive measures together with certain consequences of environmental pollution, while the latter may be constituted only where the pollutants discharged by the discharging entity exceed the discharge standards or the key total-volume control indicators for air pollutants. In this case there was no evidence to confirm whether the odor originated from any industrial solid waste, and the defendant conducted its enforcement inspection after receiving public complaints about the plaintiff's emission of odors, with the objects of inspection and monitoring being the plaintiff's discharge of air pollutants, so that in terms of the applicable object it was more compatible with the Air Pollution Prevention and Control Law. The Monitoring Report showed that the odor concentration exceeded the discharge standards for air pollutants, and in terms of the consequences of the conduct, applying Article 99, item 2 of the Air Pollution Prevention and Control Law was more accurate; therefore, the application of law in the challenged administrative penalty decision was not improper.

Relevant Legal Provisions

1. Article 10 of the Environmental Protection Law of the People's Republic of China.

2. Articles 18 and 99 of the Air Pollution Prevention and Control Law of the People's Republic of China.

3. Article 68 of the Law on the Prevention and Control of Environmental Pollution by Solid Waste of the People's Republic of China.

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