SPC Guiding Case No. 202: Case of Wuhan Zhuohang Jianghai Trading Co., Ltd., Xiang Yang, and Ten Others for Environmental Pollution (Criminal Case with Incidental 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

Criminal / criminal case with incidental civil public interest litigation / vessel discharging oily wastewater / damage determination / identification of pollutant properties

Holding

1. In a case of a vessel secretly discharging oily wastewater, the people's court may, based on the vessel's navigation trajectory, the operating status of pollution prevention facilities, and the destination of pollutant disposal, and in conjunction with evidence such as the defendants' statements, witness testimony, and expert opinions, make a determination of the act of illegally discharging pollutants and the damage caused thereby.

2. When determining whether the oily wastewater secretly discharged by a vessel is a toxic substance, where sampling cannot be carried out due to objective reasons, the pollutant properties may be identified based on the residual bilge wastewater of the same source and stable nature.

Basic Facts

The defendant unit, Wuhan Zhuohang Jianghai Trading Co., Ltd. ("Zhuohang Company"), engaged in domestic scheduled water cargo transport business by leasing vessels. The route of the Guoyu No. 1 vessel it operated was from Nanjing City, Jiangsu Province, via Wuhu City, Anhui Province, to Taizhou City, Zhejiang Province, and Ningbo Beilun Port, and back to Nanjing City.

In accordance with laws and regulations, the defendant unit Zhuohang Company formulated the Management Instructions on Preventing Vessel-Induced Pollution, which provided that the bilge oily wastewater of the Guoyu No. 1 vessel could be discharged after being treated by the oil-water separator to meet the standards, or could be received by a third party with reception qualifications. The engine department of the defendant unit Zhuohang Company had not purchased or replaced the oil-water separator filter elements for years, and the vessel's oil-water separator could not function normally. The deputy general manager in charge of the engine department and others instructed staff to use purified water to replace the water samples from the oil-water separator outlet for inspection, conniving at the vessel's evasion of supervision and secret discharge; it also failed to hand over the oily wastewater to a qualified third party for treatment, and the oily wastewater had no lawful disposal destination for a long time.

From August 2017 to March 2019, defendant Xiang Yang, who successively served as the captain of the Guoyu No. 1 vessel, and defendants Yin Jianglin and Hu Guozheng, who served as chief engineers, together with other defendants in the same case, violated the law and secretly discharged the vessel's oily wastewater on five occasions. Later, they purchased wastewater reception certificates, filled them in themselves, and attached them to the oil record book to cope with inspections. In March 2019, upon a report, the act of the Guoyu No. 1 vessel secretly discharging oily wastewater into the Yangtze River and the tools used in the crime were seized.

After being brought to justice, defendant Xiang Yang and the other defendants confessed that the chief engineers and others of the Guoyu No. 1 vessel, for the company's benefit, had repeatedly instructed the engine department officers, machinists, and others to evade supervision and refuse to implement the pollution prevention measures prescribed by law, and, from August 2017 to March 2019, on five occasions, secretly discharged bilge oily wastewater into the Yangtze River and offshore natural waters without treatment by the oil-water separator. The defendants' statements corroborated each other and were supported by witness testimony, and were also consistent with the circumstances that the vessel in issue had been operating on a fixed route for years, and that the accumulation rate of oily wastewater and the frequency of secret discharge were relatively stable, which was sufficient to determine the relevant facts of the case.

Because the oily wastewater discharged into the external environment could no longer be sampled due to objective reasons, and given that the vessel in issue operated on a fixed route for years, the frequency of secret discharge was stable, and the equipment and operating procedures had not changed, the residual bilge oily wastewater and the oily wastewater discharged into the external environment were of the same source and stable nature with no essential changes, samples were therefore taken from the residual bilge oily wastewater for inspection. Upon appraisal, the bilge oily wastewater of the Guoyu No. 1 vessel was a "toxic substance." The expert assessment opinion on ecological environment damage confirmed that, calculated using the virtual treatment cost method, the ecological environment damage caused by the five secret discharges of oily wastewater was RMB 10,000 to RMB 37,500.

The Gulou District People's Procuratorate of Nanjing City, Jiangsu Province, simultaneously initiated a criminal case with incidental civil public interest litigation, charging the defendant unit Zhuohang Company and the defendants with the crime of polluting the environment, and requesting an order that defendant Zhuohang Company bear environmental damage compensation expenses of RMB 23,750, expert assessment expenses of RMB 9,000, and announcement expenses of RMB 700 in this case.

Judgment

On July 16, 2020, the Xuanwu District People's Court of Nanjing City, Jiangsu Province, rendered the judgment in the criminal case with incidental civil public interest litigation (2020) Su 0102 Xing Chu No. 24, holding that the defendant unit Zhuohang Company committed the crime of polluting the environment and imposing a fine of RMB 40,000; sentencing defendant Xiang Yang and the other eleven defendants, for the crime of polluting the environment, to fixed-term imprisonment ranging from one year and six months to eight months, and fines ranging from RMB 30,000 to RMB 10,000; and ordering the defendant in the incidental civil public interest litigation, Zhuohang Company, to pay ecological environment damage compensation expenses of RMB 23,750, expert assessment expenses of RMB 9,000, and announcement expenses of RMB 700, totaling RMB 33,450. After the judgment was pronounced, defendant Xiang Yang appealed. On December 23, 2020, the Nanjing Intermediate People's Court rendered the ruling in the criminal case with incidental civil public interest litigation (2020) Su 01 Xing Zhong No. 575: dismissing the appeal and affirming the original judgment.

Reasoning

The court's effective judgment held that, in accordance with the Law on the Prevention and Control of Water Pollution and other laws and regulations, although the defendant unit Zhuohang Company had formulated pollution prevention measures for bilge oily wastewater and other pollution, the relevant measures became a mere formality in actual operation and were not actually implemented, and the oil-water separator used for pollution prevention could not be used normally. The defendant unit Zhuohang Company obtained, by fraud, testing reports showing that the oil-water separator water samples were qualified, and purchased oily wastewater reception certificates at low prices to evade supervision. The vessel in issue operated on a fixed route for years, with a route of thousands of kilometers, and as the voyage increased, oily wastewater would inevitably be generated and continuously accumulated, but the oily wastewater was neither treated by the

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oil-water separator nor handed over to a qualified third party for reception. The defendants' statements, witness testimony, and the physical evidence in the case regarding the manner, time, and participants of the secret discharge of wastewater were consistent with each other, and were sufficient to determine that the defendants had committed the acts of polluting the environment by discharging oily wastewater into the Yangtze River and offshore waters. The properties of the oily wastewater in issue were stable; the vessel in issue operated on a fixed route for years; the equipment, operating procedures, and the mechanism of oily wastewater generation were stable; and the residual bilge oily wastewater and the secretly discharged wastewater were of the same whole and consistent properties, and could be sampled for the identification of pollutant properties. Upon appraisal, the oily wastewater was a toxic substance.

The environmental pollution acts in issue were for the benefit of the defendant unit Zhuohang Company, and, under the instruction of the deputy general manager in charge, were participated in by the captain, chief engineer, machinists, and others of the Guoyu No. 1 vessel, who jointly secretly discharged untreated bilge oily wastewater into the Yangtze River and offshore waters along the route, and should be determined to constitute a unit crime. Zhuohang Company, in violation of state provisions, discharged toxic substances by evading supervision, seriously polluting the environment, and its acts constituted the crime of polluting the environment. Defendant Xiang Yang and the other defendants were directly responsible supervisors or other directly responsible persons in the unit crime, and should be convicted and punished for the crime of polluting the environment.

The defendant in the incidental civil public interest litigation, Zhuohang Company, polluted the environment and should bear ecological environment damage compensation liability in accordance with law. Zhuohang Company secretly discharged untreated bilge oily wastewater into natural waters on multiple occasions, and the expert opinion quantifying the ecological environment damage using the virtual treatment cost method was not improper, to which Zhuohang Company had no objection. Upon assessment, the ecological environment damage caused by the vessel's five secret discharges of untreated bilge oily wastewater into the Yangtze River and offshore waters along the route was RMB 10,000 to RMB 37,500. The plaintiff in the public interest litigation, the Gulou District People's Procuratorate of Nanjing City, claimed the middle value as the ecological environment damage compensation expenses, which had legal and factual basis and was upheld in accordance with law. The expert assessment expenses and announcement expenses claimed by the plaintiff in the public interest litigation were reasonable expenses incurred for the litigation, and were upheld in accordance with law.

Relevant Legal Provisions

Article 338 of the Criminal Law of the People's Republic of China (as amended by the Criminal Law Amendment (VIII) of the People's Republic of China, effective May 1, 2011).

Article 59 of the Law of the People's Republic of China on the Prevention and Control of Water Pollution (amended June 27, 2017).

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