SPC Guiding Case No. 203: Case of Zuo Yong and Xu He 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 / emergency response measures / necessary and reasonable scope / public and private property loss / ecological environment damage

Holding

With respect to necessary, reasonable, and appropriate environmental pollution disposal expenses, the people's court shall determine them as falling within the scope of public and private property losses and ecological environment damage compensation in a criminal case with incidental civil public interest litigation over environmental pollution. Disposal expenses clearly exceeding the necessary and reasonable scope shall not be used as the basis for pursuing the criminal liability of the defendant, or as the basis for the defendant in the incidental civil public interest litigation to bear ecological environment damage compensation liability.

Basic Facts

Beginning in June 2018, defendant Zuo Yong rented a factory building in Cheqiao Town, Huai'an District, Huai'an City, Jiangsu Province, and, without approval, produced aluminum ingots. Later, defendant Xu He and others, knowing that Zuo Yong had no hazardous waste operation permit, still screened aluminum ash to produce aluminum ingots in Zuo Yong's factory building, generating approximately 100 tons of waste aluminum ash in total. On April 23, 2019, Zuo Yong and Xu He arranged personnel to dig a pit in Daxing Village, Cheqiao Town, Huai'an District, Huai'an City, to dump the waste aluminum ash. When more than 20 tons had been dumped, the waste aluminum ash heated up and emitted smoke, and was discovered by the public, stopped, and reported to the police.

On April 24 of the same year, the former Environmental Protection Bureau of Huai'an District, Huai'an City, entrusted the judicial appraisal institute of Jiangsu Xinrui Environmental Monitoring Co., Ltd. to sample and appraise the waste aluminum ash in the pit, and entrusted Huai'an Xiangyu Environmental Testing Technology Co., Ltd. to sample and test the air and waste gas downwind of the pit in issue. On April 28, upon testing by Huai'an Xiangyu Environmental Testing Technology Co., Ltd., the ammonia downwind of the pit in issue exceeded the standard. On April 29, upon appraisal by the judicial appraisal institute of Jiangsu Xinrui Environmental Monitoring Co., Ltd., of the 13 samples of the dumped waste aluminum ash in issue, 4 samples had fluoride (leaching toxicity) exceeding the standard value, and the number of samples exceeding the standard exceeded the corresponding lower limit prescribed in the Technical Specifications for Identification of Hazardous Wastes (HJ/T 298-2007), indicating that the waste aluminum ash was hazardous waste with leaching toxicity characteristics. The National Catalogue of Hazardous Wastes (2021 Edition) provides that, in the process of recycled aluminum and aluminum material processing, aluminum ash slag generated from the remelting, refining, alloying, and casting melt surfaces of waste aluminum and aluminum ingots, as well as the salt slag and secondary aluminum ash generated in the process of recovering aluminum, are hazardous waste.

On April 27 of the same year, the People's Government of Cheqiao Town, Huai'an District, Huai'an City, organized personnel to extinguish the burning waste aluminum ash by stirring it with soil. The mixture of the stirred waste aluminum ash and soil weighed 453.84 tons.

In November 2019, the Jiangsu Provincial Academy of Environmental Sciences, entrusted by the People's Government of Cheqiao Town, Huai'an District, Huai'an City, prepared an emergency response plan, holding that the mixture of the waste aluminum ash in issue and soil had not been subjected to hazardous waste attribute identification due to funding and time issues, and that, in accordance with Article 10 of the exemption management list in the National Catalogue of Hazardous Wastes (2016 Edition), it recommended disposal by cement kiln co-processing. The academy's ecological environment damage assessment of this incident held that this pollution incident caused no personal injury but caused property damage, and that the expenses mainly included property damage expenses, emergency response expenses, and ecological environment damage expenses. The property damage expenses were the losses of wheat, rapeseed, broad beans, and vegetables of farmers caused during the cleanup, totaling RMB 3,400; the emergency response expenses included emergency monitoring expenses of RMB 7,800 (actually received RMB 7,200), cleanup expenses of RMB 76,161 for the mixture of waste aluminum ash and soil, and disposal expenses temporarily estimated at RMB 1,000 per ton because disposal had not yet been carried out; and the ecological environment damage expenses were RMB 18,000 (backfill restoration of the pit, i.e., earth-filling expenses).

On March 18, 2020, the People's Government of Cheqiao Town, Huai'an District, Huai'an City, entrusted Nanjing Zhonglian Cement Co., Ltd. to dispose of the mixture of waste aluminum ash and soil as hazardous waste, at a disposal unit price of RMB 2,800 per ton, inclusive of tax and freight. In addition, there were appraisal fees of RMB 80,000 of Jiangsu Xinrui Environmental Monitoring Co., Ltd., emergency response plan expenses of RMB 70,000 of the Jiangsu Provincial Academy of Environmental Sciences, and ecological environment damage assessment expenses of RMB 250,000, totaling RMB 400,000.

With respect to the relevant issues of the emergency response in this case, the appraisal expert appearing in court clarified that the emergency response plan targeted the already excavated mixture of waste aluminum ash and soil, that the mixture could not be directly determined to be hazardous waste, that treatment in accordance with the exemption procedure could improve economy and practicality, and that the price of disposing of the contaminated soil in this case by cement kiln co-processing was RMB 1,000 per ton. The person with specialized knowledge appearing in court held that aluminum ash would not burn over a large area, and that it was only necessary to cover the open flame with soil; after 20 tons of waste aluminum ash was mixed and stirred with soil, the cleaned-out mixture should be within the range of 60 to 120 tons, and anything beyond that would constitute excessive disposal.

The Huai'an District People's Procuratorate of Huai'an City initiated a criminal case with incidental civil public interest litigation, charging defendants Zuo Yong and Xu He with the crime of polluting the environment, and requesting an order that defendants Zuo Yong and Xu He jointly compensate property damage expenses of RMB 3,400, emergency response expenses of RMB 1,431,788, ecological environment damage expenses of RMB 18,000, and other reasonable expenses such as inspection and appraisal of RMB 400,000 caused by the environmental pollution, totaling RMB 1,853,188; and that defendants Zuo Yong and Xu He publicly apologize to the public in media at the municipal level of Huai'an.

Judgment

On June 24, 2021, the Xuyi County People's Court of Jiangsu Province rendered the judgment in the criminal case with incidental civil public interest litigation (2019) Su 0830 Xing Chu No. 534, holding that defendant Zuo Yong committed the crime of polluting the environment and was sentenced to fixed-term imprisonment of two years and fined RMB 50,000; that defendant Xu He committed the crime of polluting the environment and was sentenced to fixed-term imprisonment of two years and fined RMB 50,000; that defendant Zuo Yong was ordered to return the illegal gains of RMB 13,000, to be turned over to the state treasury; that defendants Zuo Yong and Xu He shall jointly compensate property damage expenses of RMB

3,400, emergency response expenses of RMB 156,489, ecological environment damage expenses of RMB 18,000, and transactional expenses such as appraisal and assessment of RMB 400,000, totaling RMB 577,889, to be performed within fifteen days after the judgment took effect; that defendants Zuo Yong and Xu He were ordered to publicly apologize to the public in media at the municipal level of Huai'an; and that the remaining claims of the plaintiff in the criminal case with incidental civil public interest litigation, the Huai'an District People's Procuratorate of Huai'an City, were dismissed. After the judgment was pronounced, there was no appeal or protest, and the judgment became effective.

Reasoning

The court's effective judgment held that defendants Zuo Yong and Xu He, in violation of state provisions, jointly dumped hazardous waste and seriously polluted the environment, and their acts both constituted the crime of polluting the environment. The acts of the two defendants caused ecological environment damage and harmed the public interest. In addition to being subject to criminal punishment, they should also bear corresponding civil liability in accordance with law, including compensation for losses and apology. Defendants Zuo Yong and Xu He should jointly and severally bear compensation liability for the ecological environment damage consequences caused.

To safeguard the national interest and the public interest, the plaintiff in the criminal case with incidental civil public interest litigation claimed that the two defendants should bear ecological environment damage compensation liability, which should be upheld, but the determination of the amount of ecological environment damage should follow the principles of reasonableness and necessity. When initiating public interest litigation, the procuratorial organ should, based on the purpose of the public interest, the standpoint of fairness and justice, and the principles of conserving resources and protecting the ecological environment, reasonably raise claims and accurately review evidence. That is, after an environmental pollution incident occurs, the administrative organ should take emergency response measures on the principles of necessity, reasonableness, and appropriateness. Necessary, reasonable, and appropriate disposal expenses should be used as the basis for pursuing the criminal liability of the defendant and bearing ecological environment damage compensation liability. However, disposal expenses clearly exceeding the necessary and reasonable scope should not be determined as public and private property losses caused by the environmental pollution incident, and such unreasonable disposal expenses should not be used as the basis for pursuing the criminal liability of the defendant, nor as the basis for the defendant bearing ecological environment damage compensation liability. The focus of this case was whether the emergency response measures exceeded the necessary and reasonable limits.

I. On whether the emergency response measure of covering more than 20 tons of waste aluminum ash with more than 400 tons of soil was reasonable and necessary

After an environmental pollution incident occurs, the means and methods of emergency response adopted by the administrative organ to eliminate danger, remove pollution, and prevent the further expansion of the damage consequences should be recognized, but, where conditions permit, necessary, reasonable, and appropriate disposal should still be the basic principle. In this case, after receiving the report and going to the site for inspection, the relevant administrative organ had already determined that the dumped substance was waste aluminum ash. Aluminum ash would not burn over a large area, and even if it burned locally, it was only necessary to cover the open flame with soil. The disposal technology for waste aluminum ash, namely the "soil covering" technology, was relatively simple and universal. In this case, the emergency response was carried out several days after the pollution incident, and there was no longer any urgency in time, so the emergency response personnel had sufficient time to study and formulate a more reasonable plan. The administrative organ's measure of organizing personnel to use soil mixing and stirring was feasible and could achieve the emergency effect, but the amount of soil used should be within a reasonable and necessary range; otherwise, it would not only cause excessive contaminated soil and consume national resources, but would also increase the corresponding disposal expenses. In this case, the quantity of the mixture actually

excavated was nearly 4 times the highest value suggested by the expert, which was too great a gap. The 453.84 tons of mixture cleaned out after soil stirring in this environmental pollution incident constituted excessive disposal. Based on the principle of appropriate disposal and conservation of resources, and in conjunction with the expert opinion, the reasonable and necessary quantity of the mixture cleaned out in this pollution incident was determined as appropriate to be 120 tons.

II. On whether it was reasonable to directly entrust the disposal of the mixture of waste aluminum ash and soil as hazardous waste at RMB 2,800 per ton

The emergency response plan prepared by the Jiangsu Provincial Academy of Environmental Sciences clearly stated that, in this case, the transfer and disposal of the waste aluminum ash mixture in issue could be carried out in accordance with Article 10 of the exemption management list in the National Catalogue of Hazardous Wastes (2016 Edition), without being managed as hazardous waste, and recommended disposal by cement kiln co-processing, with the disposal expenses estimated at RMB 1,000 per ton (inclusive of freight). Therefore, the disposal and utilization of the mixture could be carried out without being managed as hazardous waste, and it would be more reasonable to directly send it for disposal at the price of RMB 1,000 per ton as contaminated soil. However, the disposal price in this case was too high, and the portion exceeding RMB 1,000 per ton was not determined.

III. On whether the loading and transportation expenses that were actually incurred but not listed in the ecological environment damage assessment report should be included in the emergency response expenses

Upon investigation, when the emergency response personnel actually disposed of the mixture of waste aluminum ash and soil, loading and transportation expenses for the mixture were incurred. The appraisal expert appearing in court clearly stated that the disposal expense of RMB 1,000 per ton in the ecological environment damage assessment report included transportation expenses but did not include loading expenses. Therefore, the additional transportation expenses paid in the actual disposal fell within an unreasonable and unnecessary scope and were not upheld; however, the loading expenses fell within the “expenses incurred by the plaintiff in taking reasonable preventive and disposal measures to stop the infringement, remove obstruction, and eliminate danger” prescribed in Article 19 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, and were upheld.

IV. On the determination of the amount of public and private property losses and the amount of compensation in the incidental civil public interest litigation

Upon investigation, the public and private property losses in this case included the property losses directly caused by the environmental pollution acts and the reduced actual value, and also included the expenses incurred in taking necessary and reasonable measures to prevent the expansion of pollution and eliminate pollution, such as backfilling the contaminated site, as well as the emergency monitoring expenses for disposing of the sudden environmental incident. Based on the assessment of the Jiangsu Provincial Academy of Environmental Sciences and in conjunction with the actual disposal situation, the amount of public and private property losses caused by the environmental pollution acts of defendants Zuo Yong and Xu He was determined as follows: 1. property damage expenses of RMB 3,400, namely the losses of wheat, rapeseed, broad beans, and vegetables of farmers caused during the cleanup totaling RMB 3,400; 2. emergency response expenses of RMB 156,489, including: (1) emergency monitoring expenses of RMB 7,200; (2) cleanup expenses of RMB 20,137; and (3) disposal expenses of RMB 129,152; and 3. ecological environment damage expenses of RMB 18,000, namely, after the emergency cleanup, the pollution of the pit had been basically eliminated, but backfill restoration was required, with earth-filling expenses of RMB 18,000. The above expenses totaled RMB 177,889. That is, the amount of public and private property losses should be determined as RMB 177,889, which did not reach the RMB 1,000,000 prescribed by judicial interpretation and did not fall within the circumstances of particularly serious consequences.

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The amount of ecological environment damage claimed by the plaintiff in the incidental civil public interest litigation included the above public and private property losses, and also included the ecological environment damage compensation appraisal and assessment expenses and emergency plan preparation expenses totaling RMB 400,000. In summary, the total amount of ecological environment damage compensation that defendants Zuo Yong and Xu He should bear was RMB 577,889.

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).

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