SPC Guiding Case No. 204: Fifth Branch of Chongqing Municipal People's Procuratorate v. Chongqing Yuhuang Power Equipment Manufacturing Co., Ltd. et al. (Environmental Pollution Civil Public Interest Litigation)

Dan Young Business Consultancy — www.danyoungcpa.com

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 30, 2022.

Keywords

Civil / environmental pollution civil public interest litigation / environmental protection technical transformation / expense offset / eco-environmental damage compensation

Holding

1. Where the damaged ecological environment cannot be repaired or there is no need to repair it, and the infringer, on the basis of having already performed the mandatory obligations prescribed by the laws and regulations on ecological environment protection, implements environmental protection technical transformation through resource conservation, intensive and circular utilization, and other means, and, upon assessment, it can achieve the effects of energy conservation and emission reduction, pollution and carbon reduction, and risk reduction, the people's court may, upon the infringer's application and in conjunction with factors such as the timing of the environmental protection technical transformation and compliance with ecological environment protection, appropriately offset the environmental protection technical transformation expenses thereby incurred against the eco-environmental damage compensation that it should bear.

2. With respect to expenses incurred in implementing environmental protection technical transformation to meet the environmental impact assessment requirements, the pollutant discharge standards set in the pollutant discharge permit, or to perform other mandatory obligations prescribed by the laws and regulations on ecological environment protection, where the infringer applies to offset such expenses against the eco-environmental damage compensation that it should bear, the people's court shall not uphold such application.

Basic Facts

Chongqing Pengzhan Chemical Co., Ltd. ("Pengzhan Company"), Chongqing Yuhuang Power Equipment Manufacturing Co., Ltd. ("Yuhuang Company"), and Chongqing Shuntai Iron Tower Manufacturing Co., Ltd. ("Shuntai Company") all had no hazardous waste operation qualifications. On April 10, 2015, Pengzhan Company signed contracts with Yuhuang Company and Shuntai Company respectively, agreeing that Pengzhan Company would sell hydrochloric acid to Yuhuang Company and Shuntai Company at a price of RMB 420 per ton, with Pengzhan Company bearing the freight. The aforementioned price included the price of selling the hydrochloric acid and the expenses of Pengzhan Company transporting the waste hydrochloric acid back for disposal. Beginning in July 2015, Pengzhan Company, after transporting the waste hydrochloric acid back from Yuhuang Company and Shuntai Company, directly illegally discharged the waste hydrochloric acid. From July 2015 to March 2016, Pengzhan Company illegally discharged at least 717.14 tons of waste hydrochloric acid in total, causing pollution of the Tiaodeng River. Upon assessment, the ecological environment damage caused by this incident was RMB 6,454,260, and there were also transactional expenses of RMB 25,100 and appraisal fees of RMB 5,000. After this pollution incident, Yuhuang Company and Shuntai Company invested funds to carry out technical transformation in multiple aspects, such as acid mist collection and a flux regeneration system, and their environmental protection level

was improved. The plaintiff in the public interest litigation, the Fifth Branch of the Chongqing Municipal People's Procuratorate, considered that Pengzhan Company, Yuhuang Company, and Shuntai Company should bear the losses caused by this environmental pollution incident, and accordingly initiated a lawsuit requesting an order that Pengzhan Company, Yuhuang Company, and Shuntai Company bear eco-environmental damage compensation and appraisal fees totaling RMB 6,484,360, and apologize to the public.

Judgment

On November 29, 2019, the Chongqing Fifth Intermediate People's Court rendered Civil Judgment (2019) Yu 05 Min Chu No. 256: (1) defendant Pengzhan Company shall compensate ecological environment restoration expenses of RMB 6,479,360 and technical consulting fees of RMB 5,000 for the illegal discharge of waste hydrochloric acid, totaling RMB 6,484,360, to be paid within ten days after the judgment took effect to the judicial ecological restoration fund special account designated by this court; (2) defendants Yuhuang Company and Shuntai Company shall each bear joint and several liability for RMB 3,242,180 of the compensation borne by defendant Pengzhan Company as determined in item 1 of this judgment; and (3) defendants Pengzhan Company, Yuhuang Company, and Shuntai Company shall, within thirty days after the judgment took effect, apologize to the public in media at or above the municipal level of Chongqing. After the judgment was pronounced, Yuhuang Company and Shuntai Company were dissatisfied and appealed, and, in the second instance, applied for installment payment and requested offset of their technical transformation expenses. On December 25, 2020, the Chongqing Higher People's Court rendered Civil Judgment (2020) Yu Min Zhong No. 387: (1) affirming items 1 and 3 of Civil Judgment (2019) Yu 05 Min Chu No. 256 of the Chongqing Fifth Intermediate People's Court; (2) revoking item 2 of Civil Judgment (2019) Yu 05 Min Chu No. 256 of the Chongqing Fifth Intermediate People's Court; (3) Yuhuang Company and Shuntai Company shall each bear joint and several liability for RMB 3,242,180 of the eco-environmental damage compensation that Pengzhan Company should bear, and, after providing effective security to the Chongqing Fifth Intermediate People's Court, shall pay in three installments in the proportions of 25%, 25%, and 50%; the specific payment time is: within ten days after the judgment took effect, each shall pay RMB 809,920 and technical consulting fees of RMB 2,500; before December 31, 2021, each shall pay RMB 809,920; and before December 31, 2022, each shall pay RMB 1,619,840; the technical consulting fees shall be paid to the account designated by the Fifth Branch of the Chongqing Municipal People's Procuratorate within ten days after enforcement is realized; and (4) where Yuhuang Company and Shuntai Company implement technical transformation after this judgment takes effect, significantly reduce the generation of hazardous waste or reduce resource consumption under the premise of the same production capacity, and have not been penalized for environmental violations, their already-paid technical transformation expenses may, based on the assessment opinion of the technical transformation effect and the audit report on the technical transformation investment funds issued by an intermediary institution with statutory qualifications, be applied to the people's court for offset when paying the third installment.

Reasoning

The court's effective judgment held that, in accordance with Article 57 of the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste (2015 Amendment), a unit engaged in the collection, storage, or disposal of hazardous waste must apply to the environmental protection administrative authority of a people's government at or above the county level for an operation permit; and a unit engaged in the utilization of hazardous waste must apply to the environmental protection administrative authority of the State Council or of a provincial, autonomous regional, or municipal people's government for an operation permit. In this case, Yuhuang Company and Shuntai Company, as producers of hazardous waste, handed over the hazardous waste in issue to Pengzhan Company, which had not obtained a hazardous waste operation permit, for disposal, violating their statutory obligation to prevent and control hazardous waste pollution. The hazardous waste illegally discharged by Pengzhan Company could not be

distinguished by the specific quantity or share respectively provided by Yuhuang Company and Shuntai Company, constituting joint infringement, and therefore Yuhuang Company and Shuntai Company should bear joint and several liability for the ecological environment damage caused by Pengzhan Company.

Environmental public interest litigation, as an important litigation system established by the Environmental Protection Law, has the purpose not only of pursuing environmental tort liability, but more importantly of urging and guiding environmental infringers to implement environmental restoration, encouraging enterprises to take the path of giving priority to ecology and green development, and realizing the coordination of environmental protection with economic construction and social development. Yuhuang Company and Shuntai Company implemented technical transformation after the pollution incident in issue, and requested offset of the technical transformation expenses against the eco-environmental damage compensation. With respect to the question of whether the technical transformation expenses could be used to offset the eco-environmental damage compensation that should be borne, the court should uphold the aforementioned environmental judicial concept, distinguish the projects and purposes of the environmental protection technical transformation implemented by enterprises, and treat them by category. If the projects and purposes of the environmental protection technical transformation implemented by an enterprise merely satisfy its environmental impact assessment requirements, meet the pollutant discharge standards set in the pollutant discharge permit, or perform other statutory mandatory obligations, then that portion of the technical transformation expenses should not be offset; if, on the basis of having fully performed the mandatory environmental protection obligations set by law, the enterprise, through the use of clean energy and the adoption of better technology, processes, or equipment, achieves effects such as higher resource utilization rates, reduced pollutant emissions, and improved comprehensive utilization rates of waste, then that portion of the technical transformation expenses should be considered for appropriate offset.

In this case, because rivers have self-purification capacity, there was no longer any need to carry out ecological environment restoration of the polluted water body. Yuhuang Company and Shuntai Company were willing to continue technical transformation, and the technical transformation they committed to implement was conducive to realizing the reduction, reuse, and recycling of pollutants, and also conducive to reducing local environmental risks. Therefore, using the environmental protection technical transformation expenses actually paid by Yuhuang Company and Shuntai Company to offset the eco-environmental damage compensation they should bear was consistent with the purpose of environmental public interest litigation in safeguarding the public interest. To support enterprises' green transformation and encourage Yuhuang Company and Shuntai Company to invest more funds in energy conservation and emission reduction, the court set the upper limit of the offset that each of Yuhuang Company and Shuntai Company could apply for at 50% of the eco-environmental damage compensation it should bear. Therefore, where Yuhuang Company and Shuntai Company carry out technical transformation after this judgment takes effect, significantly reduce the generation of hazardous waste or reduce resource consumption under the premise of the same production capacity, and have not been penalized for environmental violations, their already-paid technical transformation expenses may, based on the assessment opinion of the technical transformation effect and the audit report on the technical transformation investment funds issued by an intermediary institution with statutory qualifications, be applied to the people's court for offset.

In environmental civil public interest litigation cases, it is necessary to ensure that the damaged ecological environment is repaired promptly and effectively, while also giving enterprises that correctly face their own environmental violations and are willing to actively bear environmental legal liability the opportunity to continue lawful production and operation, so as to realize the balance between protecting the ecological environment and promoting economic development. During the COVID-19 pandemic, the production and operation of Yuhuang Company and Shuntai Company were affected to a certain extent. The two enterprises invested a large amount of funds in technical transformation after the case, part of the outstanding technical transformation expenses had reached the repayment period, and both enterprises were currently experiencing a certain degree of operational difficulty. In order to promote development, stabilize

expectations, and protect people's livelihoods, and to maximize the maintenance of the enterprises' ability to continue operating, the court adopted the opinion of Yuhuang Company and Shuntai Company requesting installment payment, permitting them to pay the eco-environmental damage compensation in three installments within two years.

Relevant Legal Provisions

Article 36 and Article 40, paragraph 1 of the Environmental Protection Law of the People's Republic of China.

Article 3 of the Circular Economy Promotion Law of the People's Republic of China.

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People's Court shall prevail. This translation does not constitute legal advice.