SPC Guiding Case No. 216: Suining County People's Procuratorate v. Suining County Environmental Protection Bureau (Failure to Perform Environmental Protection Supervisory Duties)

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

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Keywords

Administrative / administrative public interest litigation / environmental protection supervisory duties / failure to perform duties / disposal on behalf

Holding

Where hazardous waste pollutes the environment and the polluter is unable to dispose of it, the competent ecological environment department at the place where the hazardous waste is located shall perform its statutory duty to organize disposal of the waste on behalf of the polluter, and the disposal costs shall be borne by the polluter in accordance with law. Where the ecological environment department raises a defense of non-performance on the ground that the source or generating unit of the hazardous waste is not within its jurisdiction, the people's court shall not uphold such a defense.

Basic Facts

In September and October 2017, Feng [X]kang and others entrusted others to transport hazardous waste — oil sludge from ship tank cleaning that had been illegally purchased from Zhoushan Jiada Tank Cleaning Co., Ltd. and other sources in Zhejiang Province — to a brick and tile factory in Chenji Village, Lanshan Town, Suining County, Jiangsu Province, where it was illegally dumped. After the case came to light, the Suining County Environmental Protection Bureau transported more than 130 tons of the cleaned-up oil sludge and oil sludge pollutants to a parking lot. In July 2018, the Xuzhou Railway Transport Procuratorate initiated a public prosecution against defendant Feng [X]kang and others for the crime of polluting the environment before the Xuzhou Railway Transport Court, and in November of the same year initiated an incidental civil public interest lawsuit. The Xuzhou Railway Transport Court found that the oil sludge in issue had been stored irregularly for a long time and, to avoid secondary pollution, required the Suining County Environmental Protection Bureau to promptly organize disposal of the oil sludge on behalf of the polluters. Because the Suining County Environmental Protection Bureau had long failed to arrange disposal of the oil sludge on behalf of the polluters, and some of the oil sludge had already leaked and caused secondary pollution to the surrounding environment, the Suining County People's Procuratorate issued a procuratorial recommendation to the Suining County Environmental Protection Bureau on May 27, 2019, requiring it to perform its environmental protection supervisory duties in accordance with law, store the oil sludge in issue lawfully and properly, and promptly transfer it to a unit qualified to dispose of hazardous waste for disposal in accordance with law. On July 2, 2019, the Suining County Environmental Protection Bureau issued a reply, taking the view that, because the unit that generated the oil sludge in issue was not within its jurisdiction, it had no statutory duty to dispose of the sludge on behalf of the polluters, and that the oil sludge in issue should instead be disposed of on behalf of the polluters by the environmental protection authority at the place where the waste-generating unit was located.

On July 19, 2019, the Suining County People's Procuratorate initiated an administrative public interest lawsuit against the Suining County Environmental Protection Bureau for its failure to perform its

environmental protection supervisory duties, requesting confirmation that the Suining County Environmental Protection Bureau's failure to perform its supervisory duties over the storage of the hazardous waste in issue was unlawful, and ordering it to promptly transfer the hazardous waste in issue to a unit qualified to dispose of hazardous waste for disposal in accordance with law. During the trial of the case, in October 2019, the Suining County Environmental Protection Bureau transferred the oil sludge in issue and its pollutants to a qualified unit for disposal in accordance with law. After review, the Suining County People's Procuratorate considered that the Suining County Environmental Protection Bureau had performed its duty to dispose of the hazardous waste in issue on behalf of the polluters, and accordingly applied to amend its original claims to request confirmation that the Suining County Environmental Protection Bureau's failure to perform its supervisory duties over the storage of the hazardous waste in issue was unlawful.

Judgment

On November 15, 2019, the Xuzhou Railway Transport Court rendered Administrative Judgment (2019) Su 8601 Xing Chu No. 1207, confirming that the Suining County Environmental Protection Bureau's failure to fully and promptly perform its administrative environmental protection supervisory duties over the storage of the hazardous waste in issue was unlawful. After the judgment was pronounced, neither party appealed, and the judgment became legally effective.

Reasoning

The court's effective judgment held as follows:

I. The Suining County Environmental Protection Bureau had statutory supervisory and administrative duties over the storage and disposal of the hazardous waste in issue

Article 10, paragraph 1 of the Environmental Protection Law of the People's Republic of China provides that the competent environmental protection department of a local people's government at or above the county level shall exercise unified supervision and administration over environmental protection work within its administrative region. Article 10, paragraph 2 of the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste (2016 Amendment) provides that the competent environmental protection department of a people's government at or above the county level shall exercise unified supervision and administration over the prevention and control of environmental pollution by solid waste within its administrative region. Article 17, paragraph 1, Article 52, and Article 55 of that Law all specifically provide for the supervisory duties of the competent environmental protection department over the storage and disposal of hazardous waste.

The hazardous waste in issue was located within the administrative jurisdiction of the Suining County Environmental Protection Bureau, and therefore the Bureau bore the statutory duty to store the hazardous waste lawfully and to promptly dispose of it on behalf of the polluters. Hazardous waste generally possesses hazardous characteristics such as corrosiveness, toxicity, and infectivity, poses a grave threat to the ecological environment and to the safety of people's lives and property, and may cause immeasurable harmful consequences if stored or disposed of improperly. Article 55 of the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste (2016 Amendment) provides that, where a unit that generates hazardous waste fails to dispose of it within the prescribed period, or disposes of it in a manner not in conformity with the relevant state provisions, the competent administrative department for environmental protection shall designate a unit to dispose of it on its behalf in accordance with the relevant state provisions. The purpose of that provision is to promptly eliminate the risk of hazardous waste pollution, prevent new damage caused by the spread of pollution, and thereby effectively protect the ecological environment and the safety of people's lives and health. In this case, Feng [X]kang and others had been subjected to compulsory measures by the public security organs on suspicion of criminal offenses, and objectively did not have the practical conditions to dispose of the hazardous waste in issue. The competent ecological environment department at the place where the hazardous waste was located ought to

perform its territorial environmental protection supervisory duties and promptly organize disposal of the hazardous waste on behalf of the polluters, and such supervisory duties should not be relieved merely because the source and generating unit of the hazardous waste were not within its administrative jurisdiction.

II. The Suining County Environmental Protection Bureau failed to perform the environmental protection supervisory duties in issue in accordance with law

First, although the Suining County Environmental Protection Bureau knew that the oil sludge in issue was hazardous waste that was toxic and flammable and that it needed to be stored lawfully and properly and disposed of promptly, it failed to lawfully locate premises that complied with the relevant provisions for the proper storage of the oil sludge; it failed to take any pollution prevention and control measures such as measures to prevent loss and leakage during the storage of the oil sludge; it failed to lawfully place relevant hazardous waste identification and warning signs on the packaging of the oil sludge and at the storage site; it failed to carry out effective routine care and maintenance during the storage of the oil sludge; and, when the storage containers became damaged such that the oil sludge overflowed and leaked and caused secondary pollution, it also failed to promptly take emergency pollution prevention and control measures. All of the foregoing circumstances violated the relevant provisions of the Environmental Protection Law of the People's Republic of China and the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste, and clearly reflected a deficiency in administrative supervision. Second, as the competent administrative authority for environmental protection, the defendant knew the characteristics of the hazardous waste in issue and the harm of secondary pollution, and should have promptly and properly disposed of the hazardous waste in issue and exercised proper pollution risk control so as to protect the public interest from infringement. However, it failed to actively perform its duties in accordance with law: after the oil sludge in issue had dripped, overflowed, and leaked, causing new environmental pollution consequences, and even after the adjudication organ had repeatedly issued risk reminders and the procuratorial organ had issued a procuratorial recommendation, it still failed to store the oil sludge properly and promptly organize disposal on behalf of the polluters, allowing the pollution consequences to continue to expand and leaving the public interest in a state of prolonged infringement. Its failure to perform its statutory duties should therefore be confirmed to be unlawful. During the course of the lawsuit, the Suining County Environmental Protection Bureau performed its duty to dispose of the oil sludge in issue on behalf of the polluters, and the Suining County People's Procuratorate applied to withdraw the claims relating to the disposal of the hazardous waste. The people's court accordingly confirmed, in accordance with law, that the Suining County Environmental Protection Bureau's earlier failure to perform its duties was unlawful.

Relevant Legal Provisions

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

Articles 10 and 55 of the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste (2016 Amendment).

Article 9, paragraph 2, and Article 113 of the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste (2020 Amendment).

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