SPP Guiding Case No. 254: People’s Procuratorate of Baotou, Inner Mongolia Autonomous Region v. Company A (Civil Public Interest Litigation for Environmental Pollution by Hazardous Waste)

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

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Keywords

Civil public interest litigation / clues from central environmental protection inspection / review of technical evidence / expert opinions / mediation / environmental remediation

Holding

When handling civil public interest litigation cases, the people's procuratorate shall objectively review technical evidence such as judicial appraisals in accordance with law, comprehensively investigate and collect evidence, and accurately ascertain the facts of the case. Where the defendant acknowledges the facts of public interest damage and all litigation claims, has the willingness and capacity to proactively remediate the ecological environment, and does not harm the social public interest, mediation may be conducted under the auspices of the court. During the execution of the case, the people's procuratorate may strengthen coordination between law enforcement and the judiciary to supervise the responsible party's performance of remediation obligations.

Basic Facts

Company A in Baotou ("Company A") is an electrolytic aluminum producer. The spent cathode lining generated in the electrolytic aluminum production process (commonly known as "major repair slag") is a toxic hazardous waste. In 2016, the Baotou Municipal Ecology and Environment Bureau approved Company A's Environmental Impact Report for the Harmless Treatment Project of Aluminum Electrolysis Spent Cathode Lining, requiring comprehensive utilization of all post-treatment waste residue. From 2017 to 2018, the company, without taking any anti-seepage measures, buried, leveled, covered with soil, and planted trees over 11,100 tons of post-treatment residue from major repair slag. In September 2020, the central ecological environmental protection inspection forwarded clues stating that "Company A illegally buried post-treatment residue from major repair slag (hazardous waste), posing an extremely high environmental risk." In October of the same year, Company A excavated the buried waste residue and temporarily piled it at the company's solid waste storage center, but the environmental pollution risk persisted.

Procuratorial Performance of Duties

Discovery of clues. The Office of the Central Ecological Environmental Protection Inspection forwarded to the Supreme People's Procuratorate clues of Company A's environmental pollution. In November 2020, the Supreme People's Procuratorate transferred the relevant materials to the People's Procuratorate of Inner Mongolia Autonomous Region ("the Inner Mongolia Procuratorate") and supervised their handling. The Inner Mongolia Procuratorate transferred the case to the Baotou Municipal People's Procuratorate ("the Baotou Procuratorate") for handling according to territorial jurisdiction.

Filing and investigation. On January 24, 2021, the Baotou Procuratorate filed the civil public interest litigation against Company A, and obtained evidence including the ledger of post-treatment residue from major repair slag, the Hazardous Characteristics Identification Report, and the Environmental Damage Appraisal and

Assessment Report.

In March 2021, Company A commissioned an appraisal institution to issue a Hazardous Characteristics Identification Report, opining that the post-treatment residue from major repair slag was not hazardous waste, and issued an Environmental Damage Appraisal and Assessment Report opining that the post-treatment residue used for site leveling had not caused soil environment or groundwater pollution. To accurately ascertain the facts of the case, the procuratorial organ focused its investigation and verification on the hazardous characteristics of the post-treatment residue and the environmental pollution caused by its burial. First, it obtained documentary evidence from the administrative organ. The procuratorial organ obtained the Preliminary Sampling Investigation Report of Company A's Site from the Inner Mongolia Autonomous Region Department of Ecology and Environment. The report showed that in the soil of Company A's plant area, dibenzo[a,h]anthracene and benzo[a]pyrene exceeded standards by maximum multiples of 1.2 and 6.9 times respectively, and pollutants such as ammonia nitrogen and fluoride in groundwater exceeded the Class III groundwater limits. Second, it questioned the appraisal personnel. The appraisal institution involved issued an Explanation on Matters Related to the Identification of the Hazardous Characteristics of Company A's Post-treatment Residue from Major Repair Slag. The differing conclusions arose from different understandings of whether the major repair slag treatment project constituted "utilization" or "disposal" of hazardous waste. Third, it consulted expert opinions. The Inner Mongolia Procuratorate consulted the Research Center for Eco-Environmental Sciences of the Chinese Academy of Sciences on hazardous waste identification rules and related requirements. In August 2021, the Inner Mongolia Procuratorate invited experts from the Research Center for Eco-Environmental Sciences of the Chinese Academy of Sciences and other institutions to conduct expert argumentation; the participating experts opined that Company A's act of physically crushing major repair slag and then adding chemical substances to reduce the hazardous characteristics of the waste did not constitute "utilization," i.e., "extracting substances from solid waste as raw materials or fuel," but remained "disposal," and that the post-treatment residue from major repair slag was hazardous waste. Fourth, it conducted further investigation and assessment. Regarding whether the post-treatment residue caused environmental pollution, the Inner Mongolia Procuratorate obtained from the Chinese Research Academy of Environmental Sciences the Environmental Investigation and Assessment Report of the Soil and Groundwater of Company A's Plant Area and Surroundings. The report showed that the burial of post-treatment residue was the direct cause of the decline in soil environment quality; the depth and degree of soil pollution in the burial area were higher than in other areas of the plant; five pollutants exceeded standards; and the maximum pollution depth was 5.5 meters. The burial of post-treatment residue was an important cause of groundwater pollution; the pollution indicators in the burial area were consistent with the groundwater pollution area and indicators, and showed significant differences from upstream and downstream points, with nine characteristic pollutants exceeding standards.

Institution of civil public interest litigation. The Baotou Procuratorate issued a public announcement; after the announcement period expired, no qualified subject instituted litigation, and the ecological environment damage compensation obligee had also not initiated the ecological environment damage compensation procedure. On December 1, 2021, the Baotou Procuratorate instituted civil public interest litigation in the Baotou Intermediate People's Court, requesting an order that Company A lawfully dispose of the mixture of post-treatment residue from major repair slag in accordance with hazardous waste disposal standards, and remediate the polluted soil and groundwater.

The Baotou Intermediate People's Court notified the Baotou Municipal Ecology and Environment Bureau to participate in the litigation. During the hearing, the Baotou Procuratorate and Company A presented and cross-examined evidence on the focal issues of whether the post-treatment residue from major repair slag was hazardous waste and whether it had caused environmental pollution. Company A argued that the Hazardous Characteristics Identification Report and the Environmental Damage Appraisal and Assessment Report were appraisal opinions issued by specialized institutions with appraisal qualifications and had high

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probative force. The Baotou Procuratorate argued that the Hazardous Characteristics Identification Report did not conform to the General Rules for the Identification Standards of Hazardous Waste (GB 5085.7-2019) and conflicted with the expert opinions; Company A's "harmless treatment" project for major repair slag constituted "disposal" rather than "utilization" of electrolytic aluminum major repair slag, and the post-treatment residue was hazardous waste; the Environmental Damage Appraisal and Assessment Report contradicted the expert opinions, the Environmental Investigation and Assessment Report of the Soil and Groundwater of Company A's Plant Area and Surroundings, and other evidence, and the depth and degree of soil pollution in the burial area of the post-treatment residue were higher than in other areas of the plant, while the content of pollutants such as fluoride in the groundwater of the burial area was significantly higher than in other areas of the plant; and the expert opinions, the Preliminary Sampling Investigation Report of Company A's Site, and the Environmental Investigation and Assessment Report of the Soil and Groundwater of Company A's Plant Area and Surroundings corroborated one another and were sufficient to prove that the post-treatment residue from major repair slag caused soil and groundwater pollution.

After trial, Company A acknowledged the evidence and litigation claims provided by the procuratorial organ, expressed to the court its willingness to mediate, and was willing to assume responsibility for remediation of the ecological environment, remediate the polluted soil and groundwater, and provided an Environmental Governance and Remediation Plan issued by the Chinese Research Academy of Environmental Sciences. The plan adopted the remediation path of "removing pollution sources — remediating polluted soil — blocking transmission and diffusion — long-term monitoring," specifying an investment of RMB 1.88 million, a construction period of nine months, and monitoring of the remediation effect for three consecutive years. On December 30, 2021, the Baotou Procuratorate invited deputies to the People's Congress and members of the CPPCC to hold a hearing on the remediation plan and the method of closing the case. On the same day, under the auspices of the court, the Baotou Procuratorate and Company A reached a Mediation Agreement: (1) confirming that Company A had committed acts damaging the ecological environment and shall bear governance and remediation responsibility for the damaged ecological environment; (2) Company A shall lawfully dispose of the mixture of post-treatment residue from major repair slag in accordance with hazardous waste disposal standards; and (3) Company A shall implement soil remediation and cleanup, soil covering and greening, and groundwater prevention and control measures in accordance with the remediation plan issued by the Chinese Research Academy of Environmental Sciences. (4) The Baotou Municipal Ecology and Environment Bureau shall be responsible for supervising the remediation process and evaluating and accepting the remediation results. The Baotou Municipal Ecology and Environment Bureau signed and sealed the mediation agreement. On January 5, 2022, the Baotou Intermediate People's Court publicly announced the mediation agreement. On February 14 of the same year, the court lawfully issued a civil mediation document.

Remediation and execution. Company A performed its remediation obligations in accordance with the plan, lawfully transferred and harmlessly treated all the post-treatment residue from major repair slag, and excavated, remediated, and re-planted and re-greened the soil of three foundation pits. The Baotou Municipal Ecology and Environment Bureau dispatched personnel to supervise the entire process. On September 22, 2022, after the Baotou Municipal Ecology and Environment Bureau accepted the results, it issued a Report on the Supervision of the Pollution Remediation and Governance of Company A's Site and delivered it to the Baotou Intermediate People's Court and the Baotou Procuratorate. The procuratorial organ supervised, in accordance with law, Company A's performance of its ecological environment remediation obligations.

Guiding Significance

(1) When handling public interest litigation cases, the people's procuratorate shall conduct investigation and verification in accordance with law, objectively, and comprehensively, and accurately ascertain the facts of the case. It may comprehensively collect evidence by obtaining documentary evidence, questioning, and

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consulting expert opinions, and conduct substantive review of evidence such as appraisal opinions that affect the determination of case facts. An appraisal opinion whose appraisal process and methods do not conform to relevant professional standards shall not serve as the basis for determining case facts.

(2) Civil public interest litigation may be mediated in accordance with law under the auspices of the court, and the mediation agreement shall not reduce or waive the civil liability specified in the litigation claims, nor harm the social public interest. Where, after trial, the case facts are clear and the legal liability is definite, and the defendant has the willingness and capacity to remediate the ecological environment and does not harm the public interest, the people's procuratorate may, under the auspices of the court, mediate with it. The mediation agreement shall be specific, clear, and feasible in terms of measures, time limits, costs, acceptance, and supervision. The mediation procedure and the mediation agreement shall be subject to public supervision.

(3) During the execution of civil public interest litigation cases, the people's procuratorate may strengthen coordination between law enforcement and the judiciary to supervise the responsible party's performance of remediation and governance obligations. In the execution of mediated civil public interest litigation cases, the people's procuratorate may, by strengthening cooperation with administrative organs, supervise the ecological environment remediation in accordance with law and evaluate the effect of the remediation, ensuring the realization of the purpose of public interest protection.

Relevant Legal Provisions

Articles 179, 1234, and 1235 of the Civil Code of the People's Republic of China (effective 2021).

Articles 5 and 79 of the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste (2020 Revision).

Articles 1, 12, and 15 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 (2020 Amendment).

Articles 98 and 99 of the Rules for the Handling of Public Interest Litigation Cases by People's Procuratorates (effective 2021).

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