SPP Guiding Case No. 4: Case of Cui Jianguo for Dereliction of Duty in Environmental Supervision

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Keywords

Subject of the crime of dereliction of duty; staff of state-owned public institutions; crime of dereliction of duty in environmental supervision

Holding

In practice, some state-owned companies, enterprises, and public institutions, having been lawfully authorized to carry out specific work in the administration of the market economy and social life, possess certain authority to administer public and social affairs. The staff of such companies, enterprises, and public institutions that actually exercise state administrative authority meet the requirements for the subject of the crime of dereliction of duty; where their dereliction of duty constitutes a crime, they shall be pursued for criminal liability in accordance with the provisions of the Criminal Law on the crime of dereliction of duty.

Basic Facts

The defendant Cui Jianguo, male, born in 1960, formerly the head of the Second Brigade of the Environmental Supervision Detachment of the Drinking Water Source Protection Zone of Yancheng City, Jiangsu Province.

Jiangsu Province Yancheng City Biaoxin Chemical Co., Ltd. (hereinafter referred to as “Biaoxin Company”) is located upstream of the Mangshe River, the water intake river within the Grade II drinking water protection zone of the city. According to the relevant laws, regulations, and documents of the State, the city, and the district, Biaoxin Company was a key pollution source and a “zero-discharge” enterprise. Biaoxin Company obtained approval from the Yancheng City Environmental Protection Bureau of Jiangsu Province in May 2002 to construct a project with an annual output of 500 tons of chlorinated ether ketone, and passed acceptance inspection in August 2004. In November 2005, Biaoxin Company, without approval, produced ganbaosu (climbazole) in tandem in its existing chlorinated ether ketone production workshop. In September 2006, a dedicated workshop for ganbaosu production was completed, containing eleven reaction kettles. The wastewater generated during the production of chlorinated ether ketone included potassium salt water, mother liquor, acidic wastewater, indirect cooling water, and domestic sewage. According to the acceptance report, the mother liquor should be sold externally, and the potassium salt water, acidic wastewater, and indirect cooling water should all be reused after neutralization and adsorption (the potassium salt water could also be collected and sold to qualified entities). However, Biaoxin Company had never used the relevant technical facilities for treating pollution discharge since it began production. Apart from selling some potassium salt wastewater (about 50 tons in total) to Funing Auxiliary Agent Factory in 2006 and 2007, Biaoxin Company directly discharged the potassium salt wastewater and other wastewater generated by its production into the river on the north or east side of the plant, leading to a serious pollution incident of the drinking water source in the urban area of Yancheng City in February 2009. The water sources of the Chengxi Water Plant and the Yuehe Water Plant of Yancheng City were seriously polluted, and the phenol content in the tap water produced seriously exceeded the standard, forcing the interruption of domestic drinking water for nearly 200,000 residents of Yancheng City and the water supply to some entities for 66 hours and 40 minutes, causing direct economic losses of more than 5.43 million yuan and a seriously adverse social impact.

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The Environmental Supervision Detachment of the Drinking Water Source Protection Zone of the Yancheng City Environmental Protection Bureau was responsible for environmental protection and pollution prevention and control in the drinking water source protection zone of the urban area of Yancheng City. Biaoxin Company was located within the Grade II drinking water source protection zone of the city and fell under the jurisdiction of the Second Brigade of the Detachment. The defendant Cui Jianguo, as head of the Second Brigade, bore direct leadership responsibility for the environmental protection supervision of Biaoxin Company. Cui Jianguo failed to conscientiously perform his environmental protection supervision duties, and on multiple occasions from 2006 to 2008 accepted small amounts of money and goods from Hu XX, the legal representative of Biaoxin Company. In his routine inspections, Cui Jianguo repeatedly discovered that Biaoxin Company was discharging cooling water and wastewater, but failed to require Biaoxin Company to provide ledgers, contracts, invoices, and other materials of the mother liquor as required; he merely filled in on-site supervision records and did not report Biaoxin Company's illegal discharge to the Environmental Supervision Detachment of the Drinking Water Source Protection Zone of Yancheng City. On December 6, 2008, the Environmental Supervision Detachment of the Drinking Water Source Protection Zone of Yancheng City conducted a special rectification campaign targeting key chemical enterprises in the protection zone and issued a rectification notice to Biaoxin Company, but Cui Jianguo did not organize the Second Brigade's supervisory personnel to conduct follow-up inspections of Biaoxin Company or supervise its rectification. It was not until February 18, 2009, when Cui Jianguo inspected Biaoxin Company, that he merely filled in one on-site supervision record at the company's office, and did not conduct an on-site inspection of the discharge situation, failing to promptly discover and stop Biaoxin Company from discharging large quantities of waste liquid into the river outside the plant, thereby causing the serious pollution of the drinking water source in Yancheng City. After the water pollution incident occurred, Cui Jianguo, in order to conceal his gross irresponsibility at work, fabricated two false supervision records dated December 10, 2008 and February 16, 2009 on February 21, 2009, to evade investigation by the relevant departments.

Procuratorate Performance of Duties

On March 14, 2009, Cui Jianguo was placed on file for investigation by the Funing County People's Procuratorate of Yancheng City, Jiangsu Province on suspicion of the crime of dereliction of duty in environmental supervision, was placed in criminal detention on the same day, arrested on March 27, and the investigation was concluded and the case transferred for review and prosecution on May 13. On June 26, 2009, the Funing County People's Procuratorate of Yancheng City, Jiangsu Province initiated a public prosecution against the defendant Cui Jianguo for the crime of dereliction of duty in environmental supervision before the Funing County People's Court. On December 16, 2009, the Funing County People's Court rendered a first-instance judgment, holding that the defendant Cui Jianguo, as a staff member of a state organ bearing the duty of environmental protection supervision and administration, was grossly irresponsible in the performance of his environmental supervision duties, causing a major environmental pollution accident and causing major losses to public and private property, and that his acts constituted the crime of dereliction of duty in environmental supervision; in accordance with Article 408 of the Criminal Law of the People's Republic of China, Cui Jianguo was convicted of the crime of dereliction of duty in environmental supervision and sentenced to two years of fixed-term imprisonment. After the first-instance judgment, Cui Jianguo appealed on the ground that he had only a supervisory duty, and not a regulatory duty, toward Biaoxin Company, and therefore did not meet the requirements for the subject of the crime of dereliction of duty in environmental supervision. The Yancheng Intermediate People's Court held that Cui Jianguo, as a staff member of a state-owned public institution, was grossly irresponsible while performing environmental supervision and administration duties on behalf of a state organ under the entrustment of the state organ, causing a major environmental pollution accident and causing major losses to public and private property, and that his acts constituted the crime of dereliction of duty in environmental supervision. The Environmental Supervision Detachment of the Drinking Water Source Protection Zone of Yancheng City,

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where Cui Jianguo worked, was a state-owned public institution established by the Yancheng Municipal People's Government, and Cui Jianguo exercised environmental supervision authority on behalf of a state organ under the entrustment of the state organ; the original judgment had failed to cite the relevant provisions of the Interpretation of the Standing Committee of the National People's Congress on the Application of the Subject of the Crime of Dereliction of Duty in Chapter IX of the Criminal Law of the People's Republic of China and directly determined that Cui Jianguo was a staff member of a state organ, which was improper, and this was corrected; the facts found in the original judgment were clear, the characterization correct, the sentencing appropriate, and the trial procedure lawful. On January 21, 2010, the Yancheng Intermediate People's Court rendered a final second-instance ruling dismissing the appeal and affirming the original judgment.

Relevant Legal Provisions

Article 408 of the Criminal Law of the People's Republic of China; the Interpretation of the Standing Committee of the National People's Congress on the Application of the Subject of the Crime of Dereliction of Duty in Chapter IX of the Criminal Law of the People's Republic of China.

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