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| Date of the judgment (decision) | 2014.07.29 |
| Case Number | 2012 (Gyo-Hi) 267 |

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| Reporter | Minshu Vol. 68, No. 6 |
| Title | Judgment concerning the standing of the residents who live in the areas surrounding an industrial waste final disposal site to file an action for the revocation of the dispositions to grant licenses for the industrial waste disposal service and for the specially controlled industrial waste disposal service and the dispositions to renew these licenses, and to file an action for the declaration of nullity of said dispositions to grant the licenses |
| Case name | Case to seek the declaration of nullity of the dispositions to grant licenses, mandatory revocation of the licenses, and revocation of the dispositions to renew the licenses |
| Result | Judgment of the Third Petty Bench, partially quashed and decided by the Supreme Court, partially dismissed |
| Court of the Second Instance | Fukuoka High Court, Miyazaki Branch, Judgment of April 25, 2012 |
| Summary of the judgment (decision) | <p>1. Among the residents who live in the areas surrounding an industrial waste final disposal site, those who are likely to directly suffer considerable damage to their health or living environment due to the air pollution, soil contamination, water pollution, offensive odor or the like which may arise from any hazardous substances discharged from the final disposal site have standing to file an action for the revocation of, and an action for the declaration of nullity of, the dispositions to grant and renew a license for the industrial waste disposal service and a license for the specially controlled industrial waste disposal service, which were rendered while designating said final disposal site as the facility to be used for the service.</p> <p>2. The residents who live in the area surrounding an industrial waste final disposal site have standing to file an</p> |

action for the declaration of nullity of the dispositions to grant a license for the industrial waste disposal service and a license for the specially controlled industrial waste disposal service, which were rendered while designating said final disposal site as the facility to be used for the service, and an action for the revocation of the disposition to renew these licenses, given the circumstances described in the judgment such as that these residents live in an area within about 1.8 kilometers from the center of said final disposal site, which is a controlled-type waste disposal site that has a landfill with an area of about 30,000 square meters, and their residences are included in the area covered by the survey of the impact of the establishment of said final disposal site on the living environment that was conducted upon applying for permission for the establishment of the site.

References

(Concerning 1 and 2) Articles 9 and 36 of the Administrative Case Litigation Act, Article 14, paragraphs (6) and (7) and Article 14-4, paragraphs (6) and (7) of the Waste Management and Public Cleaning Act (prior to the revision by Act No. 34 of 2010); (Concerning 1) Article 14, paragraph (10), item (i) and paragraph (11), Article 14-4, paragraph (10), item (i) and paragraph (11), Article 15, paragraphs (3), (4), (5) and (6), Article 15-2, paragraph (1), items (i) and (ii) and paragraph (3) of the Waste Management and Public Cleaning Act (prior to the revision by Act No. 34 of 2010), Article 10-5, item (ii), (a), 1., Article 10-17, item (ii), (a), 1., and Article 11-2 of the Ordinance for Enforcement of the Waste Management and Public Cleaning Act (prior to the revision by Ordinance of the Ministry of the Environment No. 1 of 2011)

Administrative Case Litigation Act

(Standing to Sue)

Article 9

(1) An action for the revocation of an original

administrative disposition and an action for the revocation of an administrative disposition on appeal (hereinafter referred to as "actions for the revocation of administrative dispositions") may be filed only by a person who has legal interest to seek the revocation of the original administrative disposition or of the administrative disposition on appeal (including a person who has legal interest to be recovered by revoking the original administrative disposition or administrative disposition on appeal even after it has lost its effect due to the expiration of a certain period or for other reasons).

(2) When judging whether or not any person, other than the person to whom an original administrative disposition or administrative disposition on appeal is addressed, has the legal interest prescribed in the preceding paragraph, the court shall not rely only on the language of the provisions of the laws and regulations which give a basis for the original administrative disposition or administrative disposition on appeal, but shall consider the purposes and objectives of the laws and regulations as well as the content and nature of the interest that should be taken into consideration in making the original administrative disposition. In this case, when considering the purposes and objectives of said laws and regulations, the court shall take into consideration the purposes and objectives of any related laws and regulations which share the objective in common with said laws and regulations, and when considering the content and nature of said interest, the court shall take into consideration the content and nature of the interest that would be harmed if the original administrative disposition or administrative disposition on appeal were made in violation of the laws and regulations which give a basis therefor, as well as in what manner and to what extent such interest would be harmed.

(Standing to Sue in an Action for Declaration of Nullity, etc.)

Article 36

An action for the declaration of nullity, etc. of an original administrative disposition or administrative disposition on appeal may be filed only by a person who is likely to suffer damage from said original administrative disposition or any disposition following said administrative disposition on appeal or any other person who has legal interest to seek the declaration of nullity, etc. of the original administrative disposition or administrative disposition on appeal, where the person is unable to achieve the purpose by filing an action concerning the existing legal relationship which is based on the existence or non-existence of or validity or invalidity of the original administrative disposition or administrative disposition on appeal.

Waste Management and Public Cleaning Act (prior to the revision by Act No. 34 of 2010)

Article 14

(6) A person who intends to conduct disposal of industrial waste on a regular basis must obtain a license from the prefectural governor who has jurisdiction over the area where the person intends to carry out such service; provided, however, that this does not apply to business operators (limited to cases where the business operators dispose of their industrial waste by themselves), persons who dispose only of such industrial waste that is exclusively intended for recycling on a regular basis, and any other persons specified by Ordinance of the Ministry of the Environment.

(7) The license referred to in the preceding paragraph ceases to be effective upon the expiration of a period of not less than five years as specified by Cabinet Order, unless it is renewed for each such period.

(10) The prefectural governor must not grant the license referred to in paragraph (6) unless the governor finds that the application for the license referred to in said paragraph conforms to the following items:

(i) the facilities to be used for the service and the abilities of the applicant conform to the requirements specified by Ordinance of the Ministry of the Environment as being sufficient for carrying out the service appropriately and continuously.

(11) The license referred to in paragraph (1) or paragraph (6) may be accompanied by any conditions necessary for the conservation of the living environment.

Article 14-4

(6) A person who intends to conduct disposal of specially controlled industrial waste on a regular basis must obtain a license from the prefectural governor who has jurisdiction over the area where the person intends to carry out such service; provided, however, that this does not apply to business operators (limited to cases where the business operators dispose of their specially controlled industrial waste by themselves) and any other persons specified by Ordinance of the Ministry of the Environment.

(7) The license referred to in the preceding paragraph ceases to be effective upon the expiration of a period of not less than five years as specified by Cabinet Order, unless it is renewed for each such period.

(10) The prefectural governor must not grant the license referred to in paragraph (6) unless the governor finds that the application for the license referred to in said paragraph conforms to the following items:

(i) the facilities to be used for the service and the abilities of the applicant conform to the requirements specified by Ordinance of the Ministry of the Environment as being sufficient for carrying out the service appropriately and continuously.

(11) The license referred to in paragraph (1) or paragraph (6) may be accompanied by any conditions necessary for the conservation of the living environment.

Article 15

(3) The written application referred to in the preceding paragraph must be accompanied by a document stating the survey results regarding the impact of the establishment of the industrial waste treatment facility on the living environment of the surrounding areas as provided for by the Ordinance of the Ministry of the Environment; provided, however, that this does not apply in cases specified by Ordinance of the Ministry of the Environment, such as when the matters set forth in items (ii) through (vii) of said paragraph as stated in that written application are the same as those relevant to the license granted in the past as referred to in paragraph (1).

(4) When an application for a license as referred to in paragraph (1) is filed in relation to an industrial waste treatment facility (limited to those specified by Cabinet Order), the prefectural governor must, without delay, give public notice of the matters set forth in paragraph (2), items (i) through (iv), the date of the application and the place for public inspection, and also make the written application referred to in said paragraph and the document referred to in the preceding paragraph (or the written application referred to in paragraph (2) in the case provided in the proviso to the preceding paragraph) available for public inspection for a period of one month from the date of the public notice.

(5) When the prefectural governor gives public notice pursuant to the provisions of the preceding paragraph, the governor must, without delay, notify the mayor of the municipality which is concerned with the establishment of the industrial waste treatment facility in terms of the conservation of the living environment of said municipality, and hear the opinions of the mayor of that municipality from the viewpoint of the conservation of the living environment, while designating a period.

(6) When public notice is given pursuant to the provisions of paragraph (4), any person who is interested in the establishment of the industrial waste treatment facility may

submit a written opinion from the viewpoint of the conservation of the living environment to the prefectural governor concerned prior to the expiration of a period of two weeks from the day following the date of expiration of the period of public inspection referred to in said paragraph.

Article 15-2

(1) The prefectural governor must not grant the license referred to in paragraph (1) of the preceding Article unless the governor finds that the application for the license referred to in said paragraph conforms to both of the following items:

(i) the plan for the establishment of the industrial waste treatment facility conforms to the technical requirements specified by Ordinance of the Ministry of the Environment;

(ii) the plan for the establishment of the industrial waste treatment facility and the plan for the maintenance and management of such facility give adequate consideration to the conservation of the living environment in the areas surrounding the industrial waste treatment facility and to the facilities in the surrounding areas as specified by Ordinance of the Ministry of the Environment.

(3) When the prefectural governor grants the license referred to in paragraph (1) of the preceding Article (limited to such license relating to the industrial waste treatment facility provided in paragraph (4) of said Article), the governor must in advance hear the opinions of persons who have expert knowledge on the matters concerning the conservation of the living environment as specified by Ordinance of the Ministry of the Environment, with regard to the matters set forth in paragraph (1), item (ii).

Ordinance for Enforcement of the Waste Management and Public Cleaning Act (prior to the revision by Ordinance of the Ministry of the Environment No. 1 of 2011)

Article 10-5

The requirements specified by Ordinance of the Ministry of the Environment as provided in Article 14, paragraph (10), item (i) of the Act (including the cases where applied mutatis mutandis pursuant to Article 14-2, paragraph (2) of the Act) are as follows:

(ii) in the case of conducting landfill disposal or ocean dumping on a regular basis:

(a) requirements relating to facilities:

1. if the applicant intends to conduct landfill disposal on a regular basis, the applicant has, depending on the type of industrial waste, a final disposal site that is suitable for landfill disposal of the relevant type of industrial waste, and bulldozers and other facilities;

Article 10-17

The requirements specified by Ordinance of the Ministry of the Environment as provided in Article 14-4, paragraph (10), item (i) of the Act (including the cases where applied mutatis mutandis pursuant to Article 14-5, paragraph (2) of the Act) are as follows:

(ii) in the case of conducting landfill disposal on a regular basis:

(a) requirements relating to facilities:

1. the applicant has, depending on the type of specially controlled industrial waste, a final disposal site that is suitable for landfill disposal of the relevant type of specially controlled industrial waste and that has ancillary equipment which is capable of controlling the quantity and properties of the specially controlled industrial waste to be accepted, as well as bulldozers and other facilities;

Article 11-2

(1) The following matters must be stated in the document referred to in Article 15, paragraph (3) of the Act:

(i) among the matters concerning the air quality, noise, vibration, offensive odor, water quality or groundwater that

may arise due to the establishment of the industrial waste treatment facility which is to be established, the matters surveyed as those which are likely to have an impact on the living environment in the surrounding areas, while taking into account the type and size of that industrial waste treatment facility, as well as the type of the industrial waste to be treated (these matters are hereinafter referred to as the "survey items regarding the impact of the industrial waste treatment facility on the living environment" in this Article);

(ii) the current state of the survey items regarding the impact of the industrial waste treatment facility on the living environment, and the method of identifying such state;

(iii) the current state of the hydrological phenomena, meteorological phenomena and other natural conditions as well as the population, land use and other social conditions which has been identified for the purpose of estimating the degree of the impact of the establishment of the industrial waste treatment facility on the living environment in the surrounding areas, and the method of identifying such state;

(iv) the degree and extent of changes in terms of the survey items regarding the impact of the industrial waste treatment facility on the living environment which are estimated to occur due to the establishment of the industrial waste treatment facility, as well as the method of estimating such changes;

(v) the results of the analysis on the degree of the impact of the establishment of the industrial waste treatment facility on the living environment in the surrounding areas;

(vi) any matters concerning the air quality, noise, vibration, offensive odor, water quality or groundwater which have not been included in the survey items regarding the impact of the industrial waste treatment facility on the living environment, and the reason for excluding these matters; and

(vii) other matters that serve as reference for the survey of the impact of the establishment of the industrial waste treatment facility on the living environment in the

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| | surrounding areas. |
| Main text of the judgment (decision) | <ol style="list-style-type: none"> 1. The judgment in prior instance is quashed with respect to the part concerning the appellants of final appeal except for Appellant X1, and the judgment in first instance is revoked with respect to said part. 2. The case is remanded to the Miyazaki District Court with respect to the part mentioned in the preceding paragraph. 3. The final appeal filed by Appellant X1 is dismissed. 4. Appellant X1 shall bear the cost of the final appeal concerning the preceding paragraph. |
| Reasons | <p>Concerning the reasons for acceptance of final appeal argued by the appeal counsel, KUROHARA Tomohiro</p> <ol style="list-style-type: none"> 1. In this case, with regard to the dispositions to grant licenses for the industrial waste disposal service and for the specially controlled industrial waste disposal service (hereinafter referred to as the "industrial waste, etc. disposal services") and the dispositions to renew the licenses, which were rendered by the governor of Miyazaki Prefecture to the intervener, while designating the industrial waste final disposal site established in Takajo-cho, Kitamorokata-gun, Miyazaki Prefecture (reorganized into Takajo-cho, Miyakonojo City, Miyazaki Prefecture, on January 1, 2006, through the municipality merger; hereinafter referred to as "Takajo-cho" for the periods before and after the merger) as the facility to be used for the services, the appellants of final appeal who live in Takajo-cho and another area sued the appellee of final appeal to seek a declaration of nullity of said dispositions to grant the licenses, mandatory revocation of these dispositions, and revocation of said dispositions to renew the licenses (in the case of Appellant X2, excluding the dispositions to renew the licenses). 2. The outline of the facts determined by the court of prior instance is as follows. <ol style="list-style-type: none"> (1) The intervener is a stock company incorporated for the |

purpose of conducting collection, transport, disposal, etc. of industrial waste and specially controlled industrial waste (hereinafter referred to as "industrial waste, etc.").

(2) On June 10, 2003, the intervener applied for permission for the establishment of an industrial waste treatment facility, and on November 5, 2003, it obtained the permission from the governor of Miyazaki Prefecture. On August 23, 2005, the intervener established the industrial waste treatment facility under said permission (an industrial waste final disposal site which is a facility for conducting landfill disposal of industrial waste, etc.) in Takajo-cho (hereinafter this facility is referred to as the "Disposal Site"). Upon the application for the permission, the intervener submitted a document stating the survey results regarding the impact of the establishment of the Disposal Site on the living environment of the surrounding areas (hereinafter referred to as the "Environmental Impact Survey Report") as an attachment to the written application.

(3) The governor of Miyazaki Prefecture rendered to the intervener a disposition to grant a license for the industrial waste disposal service on October 25, 2005, and a disposition to grant a license for the specially controlled industrial waste disposal service on November 30, 2005, while designating the Disposal Site as the facility to be used for the service (these dispositions are hereinafter referred to as the "Dispositions to Grant the Licenses"). The governor further rendered to the intervener a disposition to renew said license for the industrial waste disposal service on October 25, 2010, and a disposition to renew said license for the specially controlled industrial waste disposal service on November 30, 2010 (these dispositions to renew the licenses are hereinafter referred to as the "Dispositions to Renew the Licenses").

(4) The Disposal Site is a controlled-type waste final disposal site of about 250,000 square meters in total area, including a landfill with an area of about 30,000 square

meters and a capacity of 470,000 cubic meters. It has a main dam, a landfill (including facilities such as seepage control work and leachate collection lines), a leachate controlling facility, a reservoir for disaster management, etc. The types of industrial waste, etc. to be landfilled based on the Dispositions to Grant the Licenses and the Dispositions to Renew the Licenses are: in the category of industrial waste, ash, sludge, waste oil (limited to tar pitch), waste plastic, animal and plant residue, waste rubber, waste metal, waste concrete, slag, debris, soot and dust, etc.: and in the category of specially controlled industrial waste, waste asbestos, etc.

(5) All of the appellants, except for Appellant X1, live in Takajo-cho, and their residences are located in an area within about 1.8 kilometers from the center of the Disposal Site. Appellant X1 lives in Hanaguri-cho, Miyakonojo City, and his/her residence is at least 20 kilometers away from said center.

All of the residences of the appellants except for Appellant X1 are included in the area covered by the survey in the Environmental Impact Survey Report, and Appellant X1's residence is not included in this area.

3. The court of prior instance, holding as summarized below, determined that the appellants do not have standing to seek the declaration of nullity of the Dispositions to Grant the License and mandatory revocation of these dispositions (hereinafter referred to as a "declaration of nullity, etc. of the Dispositions to Grant the License") or seek revocation of the Dispositions to Renew the Licenses (in the case of Appellant X2, excluding the Dispositions to Renew the Licenses; the same applies hereinafter), and dismissed without prejudice their actions to seek the declaration of nullity, etc. of the Dispositions to Grant the License and revocation of the Dispositions to Renew the Licenses.

It is not clear even from the entirety of evidence produced in this case whether or not any hazardous substances scatter

into the air from or any contaminated water flows out of the Disposal Site and to what extent such incidents would occur. Moreover, even if such incidents could cause damage to the appellants' lives, bodies and living environment, etc., there is no evidence to find the details and degree of such damage. Therefore, it is difficult to find that the appellants' lives, bodies and living environment are harmed or are likely to be necessarily harmed by the disposal of industrial waste, etc. at the Disposal Site, and hence the appellants do not have standing to seek the declaration of nullity, etc. of the Dispositions to Grant the Licenses and revocation of the Dispositions to Renew the Licenses.

4. However, although we can affirm the abovementioned holdings of the court of prior instance for its conclusion that Appellant X1 does not have standing to seek the declaration of nullity, etc. of the Dispositions to Grant the Licenses and revocation of the Dispositions to Renew the Licenses, we cannot affirmed the rest of the holdings, on the following grounds.

(1) A. Article 9 of the Administrative Case Litigation Act provides for standing to file an action for revocation of an original administrative disposition. The "person who has legal interest" to seek revocation of the disposition as referred to in paragraph (1) of said Article means a person whose right or legally-protected interest has been harmed or is likely to be necessarily harmed by the disposition. If it is construed that the administrative legislation that governs the disposition is not only intended to have a specific interest of many and unspecified persons merely absorbed and dissolved into the general public interest but also intended to protect such specific interest as an individual interest of each person who is entitled to said specific interest, said specific interest falls within the scope of legally-protected interest mentioned herein, and therefore any person whose interest in this sense has been harmed or is likely to be necessarily

harm by the disposition should be deemed to have standing to file an action for revocation of the disposition. When judging whether or not any person, other than the person to whom an original administrative disposition is addressed, has such legally-protected interest as explained above, the court shall not rely only on the language of the provisions of the laws and regulations which give a basis for the disposition, but shall consider the purposes and objectives of said laws and regulations as well as the content and nature of the interest that should be taken into consideration in making the disposition. In such case, when considering the purposes and objectives of said laws and regulations, the court shall take into consideration the purposes and objectives of any related laws and regulations which share objectives in common with said laws and regulations, and when considering the content and nature of said interest, the court shall take into consideration the content and nature of the interest that would be harmed if the disposition were made in violation of the laws and regulations which give a basis therefor, as well as in what manner and to what extent such interest would be harmed (paragraph (2) of said Article; see 2004 (Gyo-Hi) No. 114 of 2004, judgment of the Grand Bench of the Supreme Court of December 7, 2005, Minshu Vol. 59, No. 10, at 2645). Article 36 of the Administrative Case Litigation Act provides for the standing to file an action for the declaration of nullity, etc. It is appropriate to interpret the "person who has legal interest" to seek the declaration of nullity, etc. of the disposition in question as referred to in said Article in the same meaning as in the case of the standing to file an action for the revocation of an original administrative disposition mentioned above (see 1989 (Gyo-Tsu) No. 130, judgment of the Third Petty Bench of the Supreme Court of September 22, 1992, Minshu Vol. 46, No. 6, at 571).

B. Article 37-2, paragraph (3) of the Administrative Case Litigation Act provides for the standing to file a mandamus

action which is provided for in Article 3, paragraph (6), item (i) of said Act. It is also appropriate to determine the "person who has legal interest" to seek the mandatory revocation of the disposition in question from the same perspective as in the case of the standing to file an action for the revocation of an original administrative disposition mentioned in A. above (see Article 37-2, paragraph (4) of said Act).

(2) From the standpoint shown above, we examine whether or not the appellants have standing to seek the declaration of nullity, etc. of the Dispositions to Grant the Licenses and revocation of the Dispositions to Renew the Licenses.

A (A) The Waste Management and Public Cleaning Act (prior to the revision by Act No. 34 of 2010; hereinafter referred to as the "Waste Management Act") provides for the legislative purpose of conducting the proper management of waste, etc., and thereby ensuring the conservation of the living environment and improving public health (Article 1). It adopts the licensing system which authorizes the prefectural governor to grant a license for the industrial waste, etc. disposal service (Article 14, paragraph (6) and Article 14-4, paragraph (6)), on condition that the facilities to be used for the service and the abilities of the applicant conform to the requirements specified by Ordinance of the Ministry of the Environment as being sufficient for carrying out the service appropriately and continuously (Article 14, paragraph (10), item (i) and Article 14-4, paragraph (10), item (i)). In line with these provisions, the Ordinance for Enforcement of the Waste Management and Public Cleaning Act (prior to the revision by Ordinance of the Ministry of the Environment No. 1 of 2011; hereinafter referred to as the "Enforcement Ordinance") specifies the abilities that a person who intends to carry out the industrial waste, etc. disposal service is required to have, and also provides that such person should have a facility depending on the type of industrial waste, etc. and the disposal method, as the requirement relating to the facility to be used for the service

(Articles 10-5 and 10-17). In particular, in the case of conducting landfill disposal on a regular basis, the Enforcement Ordinance provides that the person who intends to carry out such service should have, depending on the type of industrial waste, etc., a final disposal site that is suitable for landfill disposal of the relevant type of industrial waste, and other facilities (Article 10-5, item (ii), (a), 1., and Article 10-17, item (ii), (a), 1.).

With regard to the industrial waste final disposal site, the Waste Management Act provides for the conditions for granting permission for the establishment of such site, that is, the plan for the establishment of the industrial waste treatment facility should conform to the technical requirements specified by Ordinance of the Ministry of the Environment (Article 15-2, paragraph (1), item (i)), and the plan for the establishment of the industrial waste treatment facility and the plan for the maintenance and management of such facility should give adequate consideration to the conservation of the living environment in the surrounding areas (item (ii) of said paragraph), and as the requirement for use of such facility, it also provides that the facility should undergo the inspection by the prefectural governor and be found to conform to the abovementioned plan for its establishment (paragraph (5) of said Article). Said Act further provides that the facility should be maintained and managed in accordance with the abovementioned plan for its maintenance and management (Article 15-2-2). In line with these provisions, the Ministerial Ordinance to Specify the Technical Requirements for General Waste Final Disposal Sites and Industrial Waste Final Disposal Sites (prior to the revision by Ordinance of the Ministry of the Environment No. 1 of 2011) specifies the technical requirements for final disposal sites of industrial waste and maintenance and management thereof (Article 2), and it provides, inter alia, that the final disposal site should, depending on the type of the final disposal site, have facilities for preventing

industrial waste and any hazardous substances contained therein from flowing out or leaching out of the site, and take any other necessary measures (in the case of a controlled-type waste final disposal site, Article 1, paragraph (1), item (iv) and item (v) (a), etc. of said Ordinance as applied mutatis mutandis pursuant to Article 2, paragraph (1), item (iv) of said Ordinance). In light of the particulars of the technical requirements provided with regard to industrial waste final disposal sites as mentioned above, as well as the provision that adequate consideration is required to be given to the conservation of the living environment in the surrounding areas, said Act is construed to be requiring, as the condition, etc. for granting permission for the establishment of an industrial waste final disposal site, that whether or not the final disposal site conforms to the abovementioned technical requirements should also be examined from the perspective of ensuring the conservation of the living environment in the surrounding areas. Thus, the final disposal site that a person who is to conduct landfill disposal on a regular basis is required to have as a condition for obtaining a license for the industrial waste, etc. disposal service is supposed to go through said examination as a condition for obtaining permission for the establishment of the site. Since such a final disposal site is required to be suitable for landfill disposal also as a condition for obtaining a license for the industrial waste, etc. disposal service, said site is considered to also be required to conform to the abovementioned technical requirements. Accordingly, it is appropriate to construe that as a condition for granting a license for the industrial waste, etc. disposal service as well, the Waste Management Act requires that whether or not the person who intends to carry out the industrial waste, etc. disposal service has a final disposal site that conforms to the abovementioned technical requirements as a facility to be used for the service should also be examined from the perspective of ensuring the conservation of the living

environment in the surrounding areas.

(B) In addition, the Waste Management Act provides that a license for the industrial waste, etc. disposal service may be accompanied by any conditions necessary for the conservation of the living environment (Article 14, paragraph (11) and Article 14-4, paragraph (11)). It also provides that the prefectural governor may order suspension of the whole or part of the service or rescind the license if the facility used for the service that is carried out by the licensee no longer conforms to the prescribed requirements (Article 14, paragraph (10), item (i), and Article 14-4, paragraph (10), item (i)) or if the licensee violates any of the conditions attached to the license as the conditions necessary for the conservation of the living environment (Article 14-3, items (ii) and (iii), Article 14-3-2, paragraph (2), and Article 14-6). Said Act further provides that the license for the industrial waste, etc. disposal service ceases to be effective upon the expiration of a period of not less than five years as specified by Cabinet Order, unless it is renewed for each such period (Article 14, paragraph (7) and Article 14-4, paragraph (7)), so that examination on the conditions for granting a license for the industrial waste, etc. disposal service as described in (A) above will be conducted in predetermined intervals.

(C) The Waste Management Act also requires that the plan for the establishment of an industrial waste treatment facility gives adequate consideration to the conservation of the living environment in the surrounding areas, as described in (A) above, as a condition for granting permission for the establishment of such facility. Accordingly, said Act further provides that a document stating the survey results regarding the impact of the establishment of the facility on the living environment of the surrounding areas (hereinafter referred to as an "environmental impact survey report") should be attached to a written application filed for such permission, and be made available for public inspection (Article 15,

paragraphs (3) and (4)), specifies the procedure for hearing the opinions of the municipal mayor and interested persons from the viewpoint of the conservation of the living environment (paragraphs (5) and (6) of said Article), and also requires opinions to be heard from persons with expert knowledge concerning the conservation of the living environment (Article 15-2, paragraph (3)). In line with these provisions of the Waste Management Act, the Enforcement Ordinance provides that an environmental impact survey report should contain [i] among the matters concerning the air quality, noise, vibration, offensive odor, water quality or groundwater that may arise due to the establishment of the industrial waste treatment facility which is to be established, the matters surveyed as those which are likely to have an impact on the living environment in the surrounding areas, while taking into account the type and size of that industrial waste treatment facility, as well as the type of the industrial waste to be treated, as well as the current state of these matters, etc.; [ii] the current state of the hydrological phenomena, meteorological phenomena and other natural conditions as well as the population, land use and other social conditions which has been identified for the purpose of estimating the degree of the impact of the establishment of the industrial waste treatment facility on the living environment in the surrounding areas, etc.; and [iii] the results of the analysis on the degree of the impact of the abovementioned matters (Article 11-2). In order to ensure that said survey will be conducted in an appropriate and reasonable manner, the Ministry of the Environment publicized the "Survey Guidelines for the Impact of Industrial Waste Treatment Facilities on the Living Environment," in which the ministry compiled technical matters regarding the survey based on scientific knowledge. According to these guidelines, the area covered by the survey should be selected as the area where the establishment of the facility in question is likely to have an

impact on the living environment, in consideration of the type and size of the facility, the meteorological phenomena and other natural conditions as well as the population and other social conditions at the location of the facility.

Upon the establishment of an industrial waste final disposal site with a certain size, which is larger than the Disposal Site, it is required to conduct an environmental impact assessment and prepare an environmental impact assessment report under the Environmental Impact Assessment Act (Article 2, paragraph (2), item (i), (f) and paragraph (3), Article 12, paragraph (1), and Article 21, paragraph (2) of said Act, and Articles 1 and 7 and Appended Table 1 of the Order for Enforcement of the Environmental Impact Assessment Act). The Basic Environment Act, which is the basic law on environmental conservation which provides for the responsibility of the State for the promotion of environmental impact assessments and gives a legislative basis for the Environmental Impact Assessment Act, sets it as its purpose to promote policies for environmental conservation, etc., thereby contributing to ensuring wholesome and cultured living for citizens (Article 1). It defines the term "environmental pollution" as referring to, among problems in environmental conservation, the air pollution, soil contamination, water pollution, offensive odor or the like which may arise due to business activities and other human activities and affect an extensive area, causing damage to human health or the living environment (Article 2, paragraph (3)), and provides, inter alia, that regulatory measures, etc. should be taken as necessary for preventing environmental pollution (Article 21, paragraph (1), item (i)).

(D) The provisions mentioned in (A) through (C) above have remained substantially unchanged before and after the revisions to the Waste Management Act and the related laws and regulations that were made during the period after the Dispositions to Grant the Licenses had been rendered until the Dispositions to Renew the Licenses were rendered.

B. With regard to an industrial waste final disposal site, etc., which is a facility for conducting landfill disposal of industrial waste, etc. that contains hazardous substances, if any hazardous substances are discharged out of the site due to a defect or flaw involved therein, this could generate air pollution, soil contamination, water pollution, offensive odor or the like, which are the causes of environmental pollution as defined in Article 2, paragraph (3) of the Basic Environment Act, and it is not only likely to damage the living environment of the residents who live in the areas surrounding the final disposal site but also likely to harm their health and ultimately threaten their lives and bodies. In light of this, and presumably with the intention of preventing the occurrence of the abovementioned situation, the Waste Management Act provides for regulations for an industrial waste final disposal site, as explained in A. above, so that the final disposal site will conform to the technical requirements necessary for securing its safety and the living environment in the surrounding areas will be conserved. Such an intention may also be behind the provisions of the Waste Management Act, namely, as a condition for granting a license for the industrial waste, etc. disposal service, said Act requires that whether or not the final disposal site conforms to the abovementioned requirements should also be examined from the perspective of ensuring the conservation of the living environment, and further provides that the license may be accompanied by any conditions necessary for the conservation of the living environment, and that the prefectural governor may order suspension of the service or rescind the license on the grounds of violation of such conditions.

Hence, the provisions of the Waste Management Act concerning the grant and renewal of a license for the industrial waste, etc. disposal service are understood as being established for the purpose and objective of preventing the air pollution, soil contamination, water pollution,

offensive odor or the like which may arise from any hazardous substances discharged from the industrial waste final disposal site from causing damage to the health or living environment of the residents who live in the areas surrounding the final disposal site, thereby ensuring wholesome and cultured living of these residents and conserving a good living environment.

The damage that the residents who live in the areas surrounding the industrial waste final disposal site would directly suffer due to the air pollution, soil contamination, water pollution, offensive odor or the like which may arise from any hazardous substances discharged from the final disposal site could be as serious as causing considerable damage to the health or living environment of these residents, depending on how close their residences are located to the final disposal site. In view of the abovementioned purpose and objective, the provisions of the Waste Management Act concerning the grant and renewal of a license for the industrial waste, etc. disposal service can be understood as aiming to protect the specific interest of the residents who live in the areas surrounding the industrial waste final disposal site to avoid suffering considerable damage to their health or living environment due to the air pollution, soil contamination, water pollution, offensive odor or the like which may arise from any hazardous substances discharged from the final disposal site. In light of such content, nature, degree, etc. of the damage as mentioned above, it must be said that such specific interest would be difficult to absorb and dissolve into the general public interest.

C. In consideration of the abovementioned purpose and objective of the provisions of the Waste Management Act concerning the grant and renewal of a license for the industrial waste, etc. disposal service, as well as the content, nature, etc. of the interest that these provisions aim to protect through the licensing procedure for the industrial waste, etc.

disposal service, it is appropriate to construe that said Act is intended to regulate the industrial waste, etc. disposal service from the viewpoint of public interest such as improving public health by means of these provisions, and is also intended to protect the interest of individual residents who are likely to directly suffer considerable damage to their health or living environment due to the air pollution, soil contamination, water pollution, offensive odor or the like which may arise from any hazardous substances discharged from the industrial waste final disposal site to avoid suffering such damage, as an individual interest of each such resident.

Consequently, among the residents who live in the areas surrounding an industrial waste final disposal site, those who are likely to directly suffer considerable damage to their health or living environment due to the air pollution, soil contamination, water pollution, offensive odor or the like which may arise from any hazardous substances discharged from the final disposal site can be regarded as persons who have legal interest to seek the revocation of, and the declaration of nullity of, the dispositions to grant and renew a license for the industrial waste, etc. disposal service, which was rendered while designating the final disposal site as the facility to be used for the service, and therefore they have standing to file an action for the revocation of, and an action for the declaration of nullity of, such dispositions. Based on the explanation given in (1) B. above, this reasoning is also applicable to a mandamus action to seek the revocation of said disposition to grant the license (see Article 14-3-2, paragraph (2) and Article 14-6 of the Waste Management Act).

D. Whether or not the residents who live in the areas surrounding the industrial waste final disposal site can be regarded as persons who are likely to directly suffer considerable damage to their health or living environment due to the air pollution, soil contamination, water pollution,

offensive odor or the like which may arise from any hazardous substances discharged from the final disposal site should be determined on the basis of whether or not the areas where these residents live are the areas where the residents are expected to directly suffer such considerable damage, and this issue should be determined reasonably in light of the socially accepted standards, while taking into consideration the specific conditions such as the type and size of the industrial waste final disposal site and focusing on the distance between the areas where these residents live and the location of the final disposal site (see the aforementioned judgment of the Third Petty Bench of the Supreme Court).

In an environmental impact survey report, which is to be submitted as an attachment to a written application upon applying for permission for the establishment of an industrial waste final disposal site and then examined, the area covered by the survey of the impact of the establishment of the final disposal site on the living environment in the surrounding areas should be considered in light of the fact that the air pollution, soil contamination, water pollution, offensive odor or the like which may arise from any hazardous substances discharged from the final disposal site could be in nature extensive over a certain range of areas surrounding the site, as well as the survey items and particulars that are required to be stated in said environment impact survey report as reviewed in A.(C) above, the standards for selection of the area covered by the survey, and other matters, and also taking into consideration all of these matters as well as the specific conditions including the type and size of the final disposal site and the type, etc. of the industrial waste, etc. to be landfilled, and the area covered by said survey should be generally selected as the area where the establishment of the final disposal site is likely to have an impact on the living environment.

This reasoning can be applied in this case as follows.

According to the facts mentioned above, the type and size of the Disposal Site and the type, etc. of the industrial waste, etc. to be landfilled are as described in 2.(4) above. The appellants except for Appellant X1 live in an area within about 1.8 kilometers from the center of the Disposal Site, and their residences are included in the area covered by the survey in the Environmental Impact Survey Report. In light of the type, size, etc. of the Disposal Site mentioned above, and in consideration of the distance between the location of the site and said residences, as well as the fact that the area covered by the survey in an environmental impact survey report is generally selected, as described above, as the area where the establishment of the final disposal site in question is likely to have an impact on the living environment, it can be said that the abovementioned applicants live in the area where they are expected to directly suffer considerable damage to their health or living environment which may arise from the air pollution, soil contamination, water pollution, offensive odor or the like due to any hazardous substances discharged from the Disposal Site, and these appellants can be regarded as persons who are likely to directly suffer such considerable damage, and therefore it is appropriate to construe that they have standing to seek the declaration of nullity, etc. of the Dispositions to Grant the Licenses and revocation of the Dispositions to Renew the Licenses.

On the other hand, according to the facts mentioned above, Appellant X1's residence is at least 20 kilometers away from the center of the Disposal Site and it is not included in the area covered by the survey in the Environmental Impact Survey Report. In light of the type, size, etc. of the Disposal Site mentioned above, as well as the distance of more than 20 kilometers between the location of the site and said residence, it cannot be said that Appellant X1 lives in the area where he/she is expected to directly suffer considerable damage to his/her health or living environment which may

arise from the air pollution, soil contamination, water pollution, offensive odor or the like due to any hazardous substances discharged from the final disposal site, and said appellant cannot be regarded as a person who is likely to directly suffer such a considerable damage. Apart from this, there is no evidence to consider that Appellant X1 has standing, and therefore Appellant X1 cannot be considered to have standing to seek the declaration of nullity, etc. of the Dispositions to Grant the Licenses and revocation of the Dispositions to Renew the Licenses.

5. For the reasons stated above, the holdings of the court of prior instance, in which it determined that the appellants except for Appellant X1 do not have standing to seek the declaration of nullity, etc. of the Dispositions to Grant the Licenses and revocation of the Dispositions to Renew the Licenses, involve violation of laws and regulations that apparently affects the judgment. The appeal counsel's arguments are well-grounded to the extent he alleges this point, and therefore the judgment in prior instance should inevitably be quashed with respect to the part concerning the abovementioned appellants, and the judgment in first instance that dismissed without prejudice their actions to seek the declaration of nullity, etc. of the Dispositions to Grant the Licenses and revocation of the Dispositions to Renew the Licenses should also inevitably be revoked. Consequently, in order to have the legality, etc. of the Dispositions to Grant the Licenses and the Dispositions to Renew the Licenses further examined, this case should be remanded to the court of first instance with respect to the part of the judgment in prior instance concerning said appellants.

On the other hand, the holdings of the court of prior instance can be affirmed in that the court concluded that Appellant X1 does not have standing to seek the declaration of nullity, etc. of the Dispositions to Grant the Licenses and revocation

of the Dispositions to Renew the Licenses and therefore his/her actions should be dismissed without prejudice. Consequently, Appellant X1's final appeal is hereby dismissed with prejudice on the merits.

Therefore, the judgment has been rendered in the form of the main text by the unanimous consent of the Justices.

Presiding Judge

Justice OKABE Kiyoko
Justice OTANI Takehiko
Justice OHASHI Masaharu
Justice KIUCHI Michiyoshi
Justice YAMASAKI Toshimitsu

(This translation is provisional and subject to revision.)

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