

The Intermediate People's Court of Huzhou City of Zhejiang Province  
Civil Judgment

(2020) Zhe 05 Min Chu No. 115

Plaintiff of Public Interest Litigation: Deqing People's Procuratorate

Defendant: Deqing Minghe Thermal Insulation Materials Co., Ltd.; Address: No. 128, Doumenba, Xigang Village, Yuyue Town, Deqing County.

Legal Representative: WANG Meiquan

Attorney: LU Weihui, lawyer of the Eximious Law Office.

The case of the civil public interest litigation over the air pollution liability dispute between Deqing People's Procuratorate and Deqing Minghe Thermal Insulation Materials Co., Ltd. (hereinafter referred to as "Minghe Company") was accepted on October 19, 2020 by the Court, after which the Court applied the ordinary procedures and notified the Huzhou Municipal Bureau of Ecology and Environment in writing according to the law. After investigation, Deqing People's Procuratorate released relevant facts of the case on March 6, 2020. During the publicity period, there was no civil public interest litigation initiated by any organs or related organizations required by the law. The court formed a collegial bench in accordance with the law, organized an exchange of evidence on January 26, 2021, and openly heard the case on March 24, 2021. Deqing People's Procuratorate appointed prosecutors DONG Tingting and PAN Yaping to perform their duties before the court. Defendant entity Minghe Company engaged LU Weihui as the attorney to appear in court for the litigation. The trial of the case has concluded.

Deqing People's Procuratorate raised claims to the Court for compensation of damages to the ecological environment of 746,421 Yuan and the appraisal fee of 150,000 Yuan from defendant Minghe Company. Facts and grounds: From August and September 2017 to May and June 2019, QI Erming, the legal representative of the defendant, knowing that trichlorofluoromethane (CFC-11) is a controlled ozone-depleting substance (ODS) and is prohibited from being used in production, still purchased 849.5 tons of trichlorofluoromethane in total from LI, HAN, GE and XUE, and used it in the production of polyurethane (PU) rigid foam composite polyether thermal insulation materials of at least 2,427 tons and sold them, obtaining illegal gains of more than 1.46 million Yuan. Minghe Company did not adopt pollution prevention facilities in the production process and caused trichlorofluoromethane gas discharged directly into the air. Hangzhou Environmental Protection Research Institute Co., Ltd. of China Coal Technology and Engineering

Group calculated that the defendant discharged a total of 3049.7 kg of trichlorofluoromethane during the production process. The Environmental Science Research and Design Institute of Zhejiang Province evaluated that the ecological and environmental damage caused by the environmental pollution behavior of Minghe Company was from 746,421 to 866,244 Yuan, and the evaluation fee was 150,000 Yuan. The evidences for ascertaining the above facts are as follows: the testimony of witness QI Erming and others, the list of evidence obtained and bank statements, business license, site photos, evaluation reports of ecological and environmental damage, audit reports, accounting reports, test reports, on-site inspection records, etc. The plaintiff of public interest litigation held that the defendant violated national regulations by discharging trichlorofluoromethane, a kind of harmful substance, to the environment during the production process, which damaged the ecological environment and harmed the public interest. According to Article 64 of *the Environmental Protection Law of the People's Republic of China*, Articles 4 and 15 of *the Tort Liability Law of the People's Republic of China*, and Articles 18 and 22 of *the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Public Interest Litigations*, it is stipulated that the defendant shall be liable for damages to the ecological environment. The procuratorate performed the announcement procedure on March 6, 2020 after discovering the defendant's illegal act. After the expiration of the announcement period, no related organ or social organization filed a lawsuit, and public interest was still in a state of infringement. According to Paragraph 2, Article 55 of *the Civil Procedure Law of the People's Republic of China* and Article 13 of *the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law for Cases regarding Procuratorial Public Interest Litigation*, the case was brought therefrom.

Defendant Minghe Company argued that it had no objection to the facts stated by the plaintiff of public interest litigation and is willing to bear the legal responsibility for its act. The defendant is currently under suspension of production and operation, thus unable to pay the damages for the time being. During the criminal case handling, it already paid over 700,000 Yuan and was confiscated of illegal gains. Therefore, the defendant petitioned the court to take into account the actual business operations and to reduce the fees born by the defendant.

The plaintiff of public interest litigation Deqing People's Procuratorate submitted the following evidence materials to the Court in support of the litigation claims:

Evidence set I: 1. The Unified Social Credit Code Certificate of Deqing People's Procuratorate; 2. The Announcement (De Jian Min Gong [2020] No. 33052100022) proving that the plaintiff of public interest litigation legally initiated the litigation;

Evidence set II: 3. (2019) Zhe 0521 Xing Chu No. 592 Criminal Judgment; 4. Business license of Minghe Company; 5. The proportioning sheet of the foaming agent producing polyether; 6. Report Form of the Environmental Impact of the Construction Project, Approval Opinions of Deqing Bureau of Environmental Protection on the Environmental Impact Report Form of the Project of 4,000 tons Polyurethane Rigid Foam Combined Polyether New Insulation Materials Annual Production of Deqing Minghe Thermal Insulation Materials Co., Ltd. (De Huan Jian [2017] No. 113); 7. Investigation Report on the Suspected Environmental Pollution Crime of Deqing Minghe Insulation Materials Co., Ltd.; 8. Announcement on Prohibition of the Use of Chlorofluorocarbons (GFCs) as Foaming Agents (Announcement No. 45 in 2007), Announcement on the release of "List of Controlled Ozone Depleting Substances in China" (Announcement No. 72 of 2010); 9. Copy of purchase orders; 10. List of obtained evidence and bank statements; 11. Two pieces of testimony of witness QI Erming; 12. Testimony of witness HAN; 13. Testimony of witness GE; 14. Testimony of witness XUE; 15. Testimony of witness LI; 16. Testimony of witness HE; 17. Calculation Report of Trichlorofluoromethane Emission; 18. Audit Report (No. 115, 2019) of Detian Accounting & Auditing; 19. Test Report (Zhe Hua Jian Zi No. 2019201011), Inspection and Test Report (2019SJZGH-WT1953); 20. Site inspection (surveying) transcripts and photos. The second set of evidence proves that the defendant used and discharged trichlorofluoromethane in production and was sentenced to a fine of 700,000 Yuan for environmental pollution;

The Appraisal Report of Ecological and Environmental Damage proves that trichlorofluoromethane is an ozone depleting substance and is hazardous, causing ecological and environmental damage to be estimated at 746,421 to 866,244 Yuan, with an appraisal fee of 150,000 Yuan.

The defendant had no objection to the evidence submitted by the plaintiff of public interest litigation.

The defendant submitted no evidence.

Upon review, the Court confirmed the above-mentioned evidence submitted by the plaintiff to public interest litigation is legal.

The Court found through trial that defendant Minghe Company has been mainly engaged in

the production of polyurethane rigid foam combination polyether insulation materials, as well as the wholesale and retail of polyurethane insulation materials, chemical raw materials, plastic materials and building materials since established. From August 2017 to June 2019, defendant Minghe Company purchased a total of 849.5 tons of trichlorofluoromethane. Hangzhou Environmental Protection Research Institute Co., Ltd. of China Coal Technology and Engineering Group calculated that the defendant discharged a total of 3049.7 kg of trichlorofluoromethane waste during the production process. On October 23, 2019, the Huzhou Municipal Bureau of Ecology and Environment issued a notice of administrative penalty decision (Hu De Huan Fa [2019] No. 59) to Minghe Company and imposed a fine of 200,000 Yuan for storing n-pentane and other chemicals in its container freezer and raw material warehouse and using them in production, which did not meet the requirements of the environmental assessment. On the same day, the Huzhou Municipal Bureau of Ecology and Environment issued a notice of administrative penalty decision (Hu De Huan Fa [2019] No. 60) to Minghe Company and imposed a fine of 500,000 Yuan for suspectedly using ozone depleting substances in excess of the use quota permit. On July 23, 2019, Huzhou Municipal Bureau of Ecology and Environment Deqing Branch transferred the case of defendant Minghe Company and the then legal representative QI Erming to the Deqing County Public Security Bureau for the suspected environmental pollution crime. The Bureau conducted an official investigation on the day. On March 6, 2020, Deqing Primary People's Court made the criminal judgment (2019) Zhe 0521 Xing Chu No. 592, that defendant Minghe Company committed the environmental pollution crime and shall be fined 700,000 Yuan (should be paid within 30 days after the judgment takes effect; after the Administrative Penalty Decision Notice Hu De Huan Fa (2019) No. 60 takes effect, the fine therein may be offset from that fine and will not be executed repeatedly); that defendant QI Erming was sentenced to ten-month imprisonment for the crime of environmental pollution and a fine of 50,000 Yuan; that defendant Minghe Company's illegal gains of 1,461,296.7 Yuan shall be confiscated. In August 2020, for the case of Minghe Company discharging 3049.7 kg of trichlorofluoromethane during production, the Ecological and Environmental Science & Technology Research Institute of Zhejiang Province issued the Appraisal Report of Ecological and Environmental Damage, confirming the ecological and environmental damage of 746,421 to 866,244 Yuan, with an appraisal fee of 150,000 Yuan.

The Court held that the issue of the dispute in this case was whether defendant Minghe Company should bear the ecological environment damage compensation of 746,421 Yuan and the

appraisal fee of 150,000 Yuan for its discharge of 3049.7 kg of trichlorofluoromethane during production. Article 64 of *the Environmental Protection Law of the People's Republic of China* stipulates that where any damage is caused by environmental pollution or ecological disruption, the tortfeasor shall assume tort liability in accordance with the relevant provisions of *the Tort Liability Law of the People's Republic of China*. Article 125 of *the Atmospheric Pollution Prevention and Control Law of the People's Republic of China* stipulates that an entity causing damage by discharging atmospheric pollutants shall assume tort liabilities according to the law. The illegal act of defendant Minghe Company's use of trichlorofluoromethane to produce composite polyether insulation materials during the production process was confirmed by the effective criminal judgment (2019) Zhe 0521 Xing Chu No. 592 issued by Deqing Primary People's Court. According to the Announcement of Releasing the List of Controlled Ozone Depleting Substances in China (Announcement 2010 No. 72) jointly published by the then Ministry of Environmental Protection, National Development and Reform Commission and Ministry of Industry and Information Technology, trichlorofluoromethane belongs to the first category of CFCs and is marked as Xn and N for dangerous goods, standing for hazardous substance and environmentally hazardous substance respectively. According to the provisions of *the Montreal Protocol on Substances That Deplete the Ozone Layer*, since January 1, 2010, except for special purposes, production and use of trichlorofluoromethane are completely prohibited. In this case, the trichlorofluoromethane waste gas produced by the defendant was not properly disposed of and was discharged into the surrounding environment. The west of the plant was a tributary of the Beijing-Hangzhou Canal, and the opposite bank of the tributary and the east of the plant were residential areas and farmland. The discharge could damage the surrounding environment and the air quality in residential areas. The substance could diffuse into the stratosphere and destroy the ozone layer through catalytic decomposition. The destruction of the ozone layer will result in excessive ultraviolet radiation to reach the ground, thereby impairing human health and damaging the environment and ecology. Therefore, the defendant shall be liable for damages caused by its discharge of trichlorofluoromethane. In this case, the Appraisal Report of Ecological and Environmental Damage issued by the Ecological and Environmental Science & Technology Research Institute of Zhejiang Province confirmed the damaged value to the ecological environment. The Institute has the qualification for appraisal, and the report issued in accordance with the standardized appraisal procedures complied with the law. According to the

above Appraisal Report, the plaintiff of public interest litigation Deqing People's Procuratorate's claims of 746,421 Yuan compensation for ecological damage and 150,000 Yuan for the appraisal fee had a factual and legal basis, which the Court supported herein.

In conclusion, according to Article 64 of *the Environmental Protection Law of the People's Republic of China*, Article 125 of *the Atmospheric Pollution Prevention and Control Law of the People's Republic of China*, Item 6, Paragraph 1 of Article 15 and Article 65 of *the Tort Liability Law of the People's Republic of China*, and Articles 22 and 23 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation* (adopted by the Judicial Committee of the Supreme People's Court on December 8, 2014), the judgment is made as follows:

I . Defendant Deqing Minghe Thermal Insulation Material Co., Ltd. shall pay 746,421 Yuan as compensation for damaging the ecological environment;

II . Defendant Deqing Minghe Thermal Insulation Material Co., Ltd. shall pay for the appraisal fee of 150,000 Yuan;

The above payment shall be transferred to the account designated by the Huzhou Intermediate People's Court within one month after the judgment takes effect (Account opening bank: Agricultural Bank of China Huzhou Hongfeng Sub-branch; account name: Special Enforcement Account of the Huzhou Intermediate People's Court, Zhejiang; bank account number: ×××65).

The case acceptance fee of 11,264 Yuan shall be born by defendant Deqing Minghe Insulation Materials Co., Ltd.

If any party refuses to accept the judgment, it or he may, within 15 days after the judgment is served upon it or him, submit a written appeal to the Court, provide the photocopies thereof in the number of the other parties, and appeal to the High People's Court of Zhejiang Province.

Presiding Judge XU Tingting

Judge XU Jinrong

Judge PENG Weiwei

People's Assessor ZHOU Jianhu

People's Assessor SHEN Wenting

People's Assessor JIANG Qiqin

People's Assessor SHI Liuhui

March 24, 2021  
Clerk LING Lien

Note: The judgment of first instance has come into effect.