

Environmental public interest litigation by the People's Procuratorate of Baishan City of Jilin Province against Baishan Health Bureau and Baishan Hospital

Adjudication Rules

When hearing cases of environmental administrative public interest litigation brought by the people's procuratorate, the people's courts may, with reference to the provisions of the Administrative Procedure Law and its judicial interpretation, handle the environmental civil public interest litigation brought by the people's procuratorate in relation to the same act of pollution of the environment by filing cases separately, hearing them together and making separate judgments.

Basic Facts

Baishan Hospital built a new complex building which was put into use without building the sewage treatment facilities. The People's Procuratorate of Baishan City of Jilin Province found the clues and conducted an investigation. After investigation, the Procuratorate found that Baishan Hospital discharged medical sewage through seepage wells and seepage pits. After the sampling test of medical sewage discharged and the soil around the seepage well, it was found that chemical oxygen demand, five-day biochemical oxygen demand, suspended solids, total residual chlorine, etc. are more than the national standards. It was also found that Baishan Health Bureau has violated the law by verifying the Practice License of Medical Institutions for Baishan Hospital without submitting a qualified Environmental Impact Assessment (EIA) report, and by failing to stop its illegal discharge of medical effluent in a timely manner. The procuratorate, after fulfilling the preliminaries of the public interest litigation, sued the court, requesting: 1. to confirm that the act the defendant, namely Baishan Health Bureau, which verified the Practice License of Medical Institution for the third party, namely Baishan Hospital on May 18, 2015, was illegal; 2. to order Baishan Health Bureau to perform its statutory regulatory duties, ordering the Bureau to rectify the medical wastewater purification and treatment facilities of Baishan Hospital by a deadline; 3. to order Baishan Hospital to immediately stop the illegal discharge of medical sewage.

Adjudication Result

The Intermediate People's Court of Baishan City of Jilin Province, on July 15, 2016, by the administrative judgment [2016, Jilin, 06, Administrative First Trial, No.4], confirmed that the act of the defendant, namely Baishan Health Bureau, which was examining the Practice License of Medical Institution for the third party, namely Baishan Hospital on May 18, 2015, was illegal; ordered the defendant, namely Baishan Health Bureau, to perform its regulatory duties and to supervise the third party, namely Baishan Hospital to complete the rectification of medical sewage treatment facilities within three months. On the same day, the Intermediate People's Court of Baishan City of Jilin Province, made the civil judgment [2016, Jilin, 06, Civil First Trial, No.19] ordering the defendant Baishan Hospital to immediately stop the illegal discharge of medical sewage. After the judgement of the first trial was delivered, none of the parties appealed, and the judgement had taken legal effect.

Adjudication Reasoning

The judgment which has taken legal effect held that, according to Article 5 and Article 40 of the Regulations of Administration of Medical Institutions by the State Council, Baishan Health Bureau has the statutory duty to supervise and manage medical institutions within its jurisdiction. Article 44 of the Jilin Medical Institution Approval and Management Measures (Trial) provides that medical institutions shall submit an application for verification, changes

in practice registration items, acceptance of rectification, and environmental assessment qualification reports when applying for verification. Baishan Health Bureau verified that Baishan Hospital had passed its Practice License of Medical Institution without submitting a qualified report on environmental assessment, in violation of the above-mentioned provisions, and the verification act was illegal. Baishan Hospital illegally discharged medical effluent, resulting in a significant risk of pollution of the surrounding groundwater and soil. As the competent health administrative department, Baishan Health Bureau failed to stop it in time, and its negligence in performing its supervisory duties was unlawful. Baishan Hospital through seepage wells and seepage pits illegally discharged of medical sewage, and sewage treatment facilities and the EIA's completion and acceptance needed a certain amount of time. So Baishan Health Bureau should continue to fulfill its regulatory responsibilities, to urge Baishan Hospital to complete the sewage treatment project in a timely manner, to meet the requirements of the EIA and put into use, in line with the conditions of verifying the Practice License of Medical Institution as stipulated in the Article 44 of the Jilin Medical Institution Approval and Management Measures (Trial).

Article 65 and Article 66 of the former Tort Liability Law of the People's Republic of China, (now Article 1229 and Article 1230 of the Civil Code of the People's Republic of China) provide that where damage is caused by pollution of the environment, the polluter shall bear tort liability; where a dispute arises from pollution of the environment, the polluter shall be liable for the circumstances provided by law for not being liable or for mitigating liability and for the absence of a causal relationship between his conduct and the damage. The burden of proof shall be on the polluter to prove the existence of a causal relationship. In this case, according to the public interest litigant's evidence and the relevant facts identified, it can be determined that Baishan Hospital did not install sewage treatment equipment that met the requirements of environmental protection, and implemented the act of discharging medical sewage through seepage wells and seepage pits. From the test results and test opinions, it can be seen that the discharge of medical effluent poses a significant risk of environmental contamination to nearby groundwater and surrounding soil, and the environmental pollution has irreversible characteristics, so the judgement of immediately stopping the illegal discharge of medical sewage was made.