

Civil environmental public interest litigation by the People's Government of Chongqing Municipality and Chongqing Voluntary Service Development Center against Chongqing Property Management Co., Ltd. and Chongqing Environmental Protection Technology Co., Ltd. over ecology and environment damage compensation and environmental pollution

Adjudication Rules

1. Any company that has obtained the pollutant discharge license shall assume the statutory obligation of ensuring the normal operation of its pollutant discharge disposal equipment and the compliance of its emissions with the national and local emission standards. In the event that it entrusted any other entity for the disposal, it shall be liable for the supervision of the entrusted entity; Those that are fully aware of the illegal pollution discharge of the entrusted entity but fail to stop or facilitate the entrusted entity shall assume joint and several liabilities for the damage of environmental pollution.

2. Where a polluter's discharge of pollutants into a water area causes ecology and environment damage and it is difficult to calculate the ecology and environment restoration costs, the damage consequences may be quantified by the use of the virtual governance cost method in accordance with the relevant provisions of the environmental protection agency on the appraisal and evaluation of ecology and environment damage. And the quantified amount of ecology and environment damage shall be calculated based on the type and amount of pollutants illegally discharged, as well as the exclusivity of the pollution sources and other factors.

Basic Facts

Chongqing Electroplating Industrial Park is located in an industrial park in Jiangbei District, Chongqing and is the only electroplating industrial park there, which is home to several electroplating enterprises. Chongqing Property Management Co., Ltd. (hereinafter referred to as the "Property Management Company") provides property management services for the enterprises settled in the Park and is responsible for the disposal of wastewater generated by the enterprises there. The Property Management Company, with a pollutant discharge license and the facilities and equipment for wastewater disposal, entered into an Agreement of Entrustment Operation and Contract Management on Disposal of Electroplating Wastewater (hereinafter referred to as the "Entrustment Operation Agreement") with Chongqing Environmental Protection Technology Co., Ltd. (hereinafter referred to as the "Environmental Protection Company") on December 5, 2013, the term of which is four years. According to the Entrustment Operation Agreement, the Environmental Protection Company undertook the wastewater disposal project from the industrial park to dispose of the wastewater of the latter handed over by the Property Management Company using the wastewater disposal equipment owned by the Property Management Company.

On April 21, 2016, during an on-site inspection of a wastewater disposal station of the Property Management Company, law enforcement officers of the Chongqing Municipal Environmental Supervision Corps found that neither the two total chromium reactors nor one integrated reactor facility in the wastewater disposal station was operational, and that the wastewater generated was discharged into the external environment without disposal. From April 22, 2016 to April 26, 2016, after sampling, monitoring and analysis by law enforcement officers, it was found that the heavy metals in the discharged wastewater exceeded the permitted limit. The total chromium concentration in the illegal discharge wastewater was 55.5mg/L, the total zinc concentration was 2.85×10^2 mg/L, the total copper concentration was 27.2mg/L, and the total nickel concentration was 41mg/L, which exceeded the permitted

limits stipulated in the Emission Standard of Pollutants for Electroplating (GB 21900-2008) by 54.5 times, 189 times, 53.4 times and 81 times respectively and has caused serious impact and damage to the ecology and environment. On May 4, 2016, law enforcement officers conducted another on-site inspection and found that the heavy metal wastewater from the No.1 comprehensive wastewater regulation tank of the wastewater disposal station concerned was directly discharged to the external environment through the 120mm diameter pipe network on the pool wall without normal disposal, and flowed into the municipal pipe network of the industrial park and then entered the Yangtze River. After monitoring, the concentration of hexavalent chromium in the wastewater leaking in the No.1 pond was 6.10mg/L, and the total chromium concentration was 10.9mg/L, which exceeded the permitted limits under the national standard by 29.5 times and 9.9 times respectively. From September 1, 2014 to May 5, 2016, a total of 145,624 tons of wastewater was illegally discharged. It was also found that in August 2014, the Property Management Company transformed the original waste acid collection tank into the No.1 comprehensive wastewater conditioning tank, and the transmission of wastewater was also changed from an underground pipe network to a high-altitude pipe network. On the wall of the pool, there was one 110mm and one 120mm caliber pipe network respectively. Only the 110mm caliber pipe network but not the 120mm caliber pipe network was closed in revamp. The unclosed pipe network is a concealed pipe buried underground. Since September 2014, the Environmental Protection Company, knowing that there was a 120mm pipe network in the pool connecting to the external environment, had been using such pipe network to discharge undisposed wastewater containing heavy metal directly to the external environment.

As entrusted by the People's Government of Chongqing Municipality, Chongqing Research Institute of Environmental Sciences has appraised and assessed the ecology and environment damage caused by the Property Management Company and the Environmental Protection Company's illegal discharge of wastewater exceeding the prescribed limits, and issued the Appraisal and Assessment Report in April 2017, which specifies that the pollution act in this incident is clear, the migration path of pollutants is reasonable, the source of pollution is homologous to the pollutants in the wastewater illegally discharged into the external environment, and the source of pollution is exclusive. The pollution occurred from September 1, 2014 to May 5, 2016, and a total of 145,624 tons of wastewater was illegally discharged. The main pollution factors were hexavalent chromium, total chromium, total zinc, total nickel, etc., causing serious damage to the water body of the Yangtze River. The Appraisal and Assessment Report adopted the virtual governance cost method recommended by the General Principles of Technical Guidelines for Identification and Assessment of Environmental Damage and the Recommended Methods for Environmental Damage Identification and Assessment (Edition II) to quantify the ecology and environment damage, and calculated the virtual governance cost as RMB 3,203,728 based on the actual disposal cost of RMB 22 per ton multiplying by the amount of illegal wastewater discharge. As the wastewater was illegally discharged in the water area of the main urban section of the mainstream of the Yangtze River, the applicable function should be categorized as Class III water bodies. With the multiples of Class III water bodies ranging from 4.5 to 6 times the virtual governance costs according to the "principle of determining pollution remediation costs" of the virtual governance cost method, and with the lowest multiple being selected for this assessment, the quantitative amount of ecology and environment pollution damage caused by the illegal discharge of wastewater by the two defendants should be RMB 14,416,776 (that is, RMB 3,203,728 × 4.5 times = RMB 14,416,776). For the background information, Chongqing Research Institute of Environmental Sciences is the qualified identification and assessment institution identified in the Circular on Printing and Distributing

the Directory of Recommended Institutions for Environmental Damage Identification and Assessment (the First Batch) issued by the Ministry of Environmental Protection.

On June 30, 2016, the Chongqing Municipal Environmental Supervision Corps imposed an administrative penalty decision on the grounds that from September 1, 2014 to May 5, 2016, the Property Management Company had directly discharged wastewater containing heavy metals into the municipal wastewater pipe network of the Gangcheng Park into the Yangtze River through the 120mm pipe network in the No.1 comprehensive regulation tank without disposal at the main discharge outlet of the wastewater disposal station. Therefore, the Chongqing Municipal Environmental Supervision Corps fined the Property Management Company RMB 5,807,200. The Property Management Company disagreed with the administrative penalty decision and applied for administrative review before Chongqing Municipal Environmental Protection Bureau which affirmed the administrative penalty decision in its administrative review. Subsequently, the Property Management Company filed an action with the Primary People's Court of Yubei District of Chongqing Municipality, requesting to overturn the administrative penalty decision and the administrative review decision. On February 28, 2017, the Primary People's Court of Yubei District of Chongqing Municipality rendered an administrative judgment [2016, Chongqing, 0112, Administrative First Trial, No.324] to dismiss the claims of the Property Management Company. After the judgment was issued, the Property Management Company did not institute any appeal, so the judgment became final and took force.

On November 28, 2016, the People's Procuratorate of Yubei District of Chongqing Municipality initiated a public prosecution before the Primary People's Court of Yubei District of Chongqing Municipality, accusing that the Environmental Protection Company and its legal representative—Cheng et al. committed the crime of environmental pollution and shall be held criminal liability in accordance with the law. On December 29, 2016, the Primary People's Court of Yubei District of Chongqing Municipality rendered the criminal judgement [2016, Chongqing, 0112, Criminal First Trial, No.1615], holding that the Environmental Protection Company, and Cheng et al. accountable for the crime of environmental pollution. After the judgement was issued, the Environmental Protection Company and Cheng et al. did not protest and appeal, so the judgement became final and took force.

Adjudication Result

On December 22, 2017, the First Intermediate People's Court of Chongqing Municipality rendered the civil judgment [2017, Chongqing, 01, Civil First Trial, No.773], holding that: 1. The defendants—the Property Management Company and the Environmental Protection Company shall jointly and severally indemnify RMB 14,416,776 for ecology and environment restoration costs, which shall be paid to the special account of Chongqing Municipal Finance Bureau within ten days after the judgment took force and used by the plaintiffs the People's Government of Chongqing Municipality and the department designated by it, and Chongqing Voluntary Service Development Center for the purpose of alternative remediation in light of the ecology and environment damage in the region. 2. Within ten days after the judgment took force, the defendants—the Property Management Company and the Environmental Protection Company shall make a public apology to the society through media at the provincial level or above. 3. Within ten days after the judgment took force, the defendants—the Property Management Company and the Environmental Protection Company shall pay the plaintiff the People's Government of Chongqing Municipality the appraisal fees of RMB 50,000 and the attorney fee of RMB 198,000. 4. Within ten days after the judgment took force, the defendants—the Property Management Company and the Environmental Protection Company shall pay the plaintiff Chongqing Voluntary Service Development Center

the appraisal fees of RMB 80,000. 5. Other claims of plaintiffs—the People's Government of Chongqing Municipality and Chongqing Voluntary Service Development Center were dismissed. After the judgment was rendered, none of the parties concerned filed an appeal within the statutory period, therefore, the judgment became final and took force.

Adjudication Reasoning

The Court held in its valid judgement that the People's Government of Chongqing Municipality was entitled to file an ecology and environment damage compensation action pursuant to the provisions of the Pilot Reform Program of the Ecology and Environment Damage Compensation System (2015), and Chongqing Voluntary Service Development Center is qualified as a legal subject to bring the environmental public interest litigation, therefore, the two plaintiffs have respective rights of actions based on different regulations, which should both be protected under the law. Considering that the two plaintiffs filed actions against the same defendants based on the same pollution facts, and the claims are basically the same, the two cases shall be heard consolidated.

The issues of this case are:

1. Whether the types of pollutants, the exclusivity of pollution source, measurement of illegally discharged wastewater and quantified damage amount as identified in the Appraisal and Assessment Report are accurate

First, the Court was adjudicating whether the types of pollutants, exclusivity of pollution source, and measurement of illegally discharged wastewater as identified in the Appraisal and Assessment Report are accurate. The administrative judgement [2016, Chongqing, 0112, Administrative First Trial, No.324] confirmed, directly or indirectly, the types of pollutants, the exclusivity of pollution source and measurement of illegally discharged wastewater. The two defendants at issue did not provide contrary evidence to overturn the judgment, so the Court affirmed the above-mentioned environmental pollution facts on which the Appraisal Assessment Report is based. Specifically, first regarding the type of pollutants, in addition to the total chromium and hexavalent chromium as identified under the effective criminal judgment, the wastewater illegally discharged by the two defendants also contained heavy metal substances such as total zinc and total nickel, which were confirmed by the environmental monitoring report issued by the Jiangbei District Environmental Monitoring Station and the Chongqing Environmental Monitoring Center, and the effective administrative judgment [2016, Chongqing, 0112, Administrative First Trial, No.324], and also admitted by Cheng, the legal representative of the Environmental Protection Company in the investigation and questioning stages. Second, regarding the exclusivity of pollution source, the two defendants argued that the sampling points W4 and W6 identified in the Analysis Report (Document No.: Jiangbei Environment [Monitoring] [2016] JD009) issued by the Jiangbei District Environmental Monitoring Station were higher than those of the wastewater disposal station concerned, so the pollutants exceeding the permitted limits detected in these two places could not have been caused by the acts of the two defendants. Due to the characteristics of fluidity and self-purification function of the polluted waters, the water quality has been restored to a certain extent. At the time of appraisal, the appraisal agency can no longer objectively extract the wastewater samples that flow out when the illegal discharge of wastewater occurred around the wastewater disposal station, so it can only be tested on the basis of the illegally discharged wastewater samples fixed by sampling when the environmental administrative law enforcement department investigated the illegal acts of the two defendants. In the process of environmental law enforcement on the wastewater disposal concerned, repeated monitoring and sampling were carried out at multiple sampling points. Besides the Analysis Report (Document No.: Jiangbei Environment [Monitoring]

[2016] JD009), the Jiangbei District Environmental Monitoring Station and the Chongqing Environmental Monitoring Center also issued several monitoring reports. The administrative penalty decision of the Chongqing Municipal Environmental Supervision Corps and the review decision of the Chongqing Municipal Environmental Protection Bureau were both made on the basis of a comprehensive assessment of the above-mentioned monitoring reports instead of only relying on one of the analysis reports or monitoring reports. The legality and rationality of the acts of the environmental protection departments in the whole process of administrative law enforcement (including sampling) have been confirmed by the effective administrative judgment. Meanwhile, the above monitoring results showed that the pollutants in the wastewater were heavy metal wastewater discharged by the electroplating industry, and the evidence on records confirmed that there was only one electroplating industrial park in the area involved. In addition, the type of wastewater illegally discharged by the wastewater disposal station concerned was consistent with the type of wastewater in the environmental monitoring results. Having said that, the above facts can justify that the source of the wastewater discharged from the above-mentioned sampling points is only likely to be from the wastewater disposal station concerned. Therefore, it can be concluded that the source of pollutants is exclusive. Thirdly, regarding the issue of illegal pollution discharge measurement, according to the confirmation of the valid criminal judgment and administrative judgment, combined with the investigation and inquiry records in the process of administrative law enforcement, the facts can be ascertained that the wastewater of the chromium regulation tank entered the No.1 comprehensive wastewater regulation tank, and the wastewater containing heavy metals were directly discharged into the external environment and into the municipal pipe network through the 120mm diameter pipe network installed in the No.1 pool. The Court held after review that, the Appraisal and Assessment Report, in combination with various evidences, calculated the amount of illegal wastewater discharged by subtracting the total amount of water consumption, sludge water content, in-pipeline drainage, and holiday discharge. The evidence and facts on which the Appraisal and Assessment Report were based have either been recognized by the defendants or confirmed by effective judgments, or the relevant administrative acts have passed the legality review of administrative litigation procedures. Therefore, the measurement used in the Appraisal and Assessment Report is found as scientific and reasonable. In summary, the objections raised by the Property Management Company and the Environmental Protection Company regarding the types of pollutants, the amount of wastewater illegally discharged and the exclusivity of pollution sources were dismissed.

Second, regarding whether the quantified damage amount as recognized in the Appraisal and Assessment Report is accurate. The plaintiffs entrusted Chongqing Research Institute of Environmental Sciences to conduct the appraisal and assessment of the ecology and environment damage of this case and issue the Appraisal and Assessment Report, which determined the quantified amount of the ecology and environment damage caused by the two defendants as RMB 14,416,776. After investigation, the Court found that Chongqing Research Institute of Environmental Sciences is a qualified identification and assessment institution identified by the Circular on Printing and Distributing the Directory of Recommended Institutions for Environmental Damage Identification and Assessment (the First Batch) issued by the Ministry of Environmental Protection. Therefore, such entrustment by the plaintiff for the appraisal of the ecology and environment damage in this case complies with the provisions of judicial interpretations as Chongqing Research Institute of Environmental Sciences is qualified for the appraisal. According to the General Principles of Technical Guidelines for Identification and Assessment of Environmental Damage and Recommended Methods for Environmental Damage Identification and Assessment (Edition II) organized and formulated by the Ministry of Environmental Protection, the virtual

governance cost method can be used for the appraisal and assessment to quantify the ecology and environment damage. And the quantitative results can be used as the basis for compensation for ecology and environment damage. In view of the long duration of the illegal pollutant discharge in this case, the large volume of illegal discharge, and the dynamics of the Yangtze River water body, it is difficult to directly calculate the cost of ecology and environment restoration, so it is not improper to use the virtual governance cost method to quantify the damage results in the Appraisal and Assessment Report. The actual unit disposal cost of RMB 22 per ton as determined in the Appraisal and Assessment Report was based on the on-site verification of the financial vouchers of the Property Management Company by the Chongqing Municipal Environmental Supervision Corps, in combination with the investigation and inquiry record of Sun Liang, the legal representative of the Property Management Company. According to the Recommended Methods for Environmental Damage Identification and Assessment (Edition II), the Appraisal and Assessment Report determined that the cost of restoration of Class III surface water pollution was 4.5 to 6 times the cost of virtual governance. Combined with the pollution facts of this case, the smallest multiple, that is, 4.5 times, was taken to calculate the quantified amount of damage as $\text{RMB } 3,203,728 \times 4.5 \text{ times} = \text{RMB } 14,416,776$, which is appropriate.

In summary, as the appraisal institution and appraisers for the Appraisal and Assessment Report are qualified and the procedures for appraisal and assessment entrustment comply with the law, the person in charge of the appraisal and assessment project also appeared in court for examination at the request of the Court, the facts on which the appraisal and assessment are based are supported by effective legal documents, and the calculation methods and conclusions adopted are scientific and well-founded. Therefore, the Court admitted the Appraisal and Assessment Report and the relevant evidence on which it is based.

2. Whether the property management company and the environmental protection company constitute contributory infringement

Without doubt, the Environmental Protection Company was fully aware of the existence of the 120mm diameter pipe network on the wall of No.1 Wastewater Regulating Tank and intentionally made use of it to discharge pollution in violation of the laws, therefore, should be liable for damages. The key to this issue lies in how to evaluate the acts of the Property Management Company and whether it constitutes contributory infringement with the Environmental Protection Company. The Court held that the Property Management Company and the Environmental Protection Company constituted contributory infringement and shall bear joint and several liability.

First, China adopts the pollutant discharge licensing system, through which the State can effectively regulate the polluters and under which any enterprise that obtains a pollutant discharge license as a pollutant discharging entity shall be obliged to discharge pollutants according to law; otherwise, it shall bear corresponding legal liability. The Property Management Company holds a pollutant discharge license and shall ensure that it discharges pollutants in accordance with the provisions and requirements of the license. The Property Management Company's entrustment to the Environmental Protection Company specializing in environmental disposal (including the operation of industrial wastewater) to conduct wastewater disposal according to the Entrustment Operation Agreement is not prohibited by laws. However, no matter whether it discharges pollutants by itself or by entrusting others to discharge pollutants, the Property Management Company shall ensure that its wastewater disposal station operates normally, and that the discharges meet national and local discharge standards, which is the legal liability of an enterprise obtaining a

pollutant discharge license and such liability shall not be relieved through a civil agreement. In other words, the Property Management Company, as a pollutant discharger, had the statutory responsibility to supervise the legal pollution discharge of the Environmental Protection Company. In addition, it also had the obligation to supervise the daily pollution discharge of the Environmental Protection Company according to the Entrustment Operation Agreement. However, the illegal pollutant discharge in this case lasted for one year and eight months. The Property Management Company obviously failed to fulfill its supervision obligations.

Second, either according to the statutory responsibility of the owner of the discharge equipment and the pollutant discharging entity, or in compliance with the Agreement between the two parties, the Property Management Company should ensure that the wastewater disposal facilities and equipment are operated normally and intact. In August 2014, when the Property Management Company transformed the waste acid pond into the No.1 wastewater conditioning tank and changed the underground pipe network to a high-altitude pipe network, it failed to seal the 120mm diameter hidden pipe in the pool in accordance with the normal disposal method and it did not provide evidence to prove the reasonable legality of not sealing the hidden pipe. It was through the hidden pipe that the Environmental Protection Company carried out illegal discharge. In other words, the Property Management Company knowingly left a pipe network for the wastewater disposal equipment provided by the Environmental Protection Company that could carry out illegal discharge. In view of the above, it could be determined that the Property Management Company had the intention for violations, and objectively provided conditions for the illegal discharge.

Third, as the wastewater to be disposed of was provided by the Property Management Company to the Environmental Protection Company, the former should have known the amount of the wastewater to be disposed of. In the meantime, as the pollutant discharging entity, the Property Management Company is responsible for paying the pollutant discharge fee to the environmental protection authority and it also should have known the amount of the wastewater legally discharged. In addition, as the property management authority, it knows well the actual water consumption of the enterprises located in the park. In combination with the above, one can ascertain the existence of illegal discharge. Therefore, it can be determined that the Property Management Company knew the Environmental Protection Company's illegal discharge of pollutants. However, it overlooked the Environmental Protection Company's discharging wastewater in violation of the law, and continued to hand the wastewater over to the Environmental Protection Company for disposal. It can be deemed that they have reached a tacit understanding, had the intention for contributory infringement, and jointly caused the pollution results.

Fourth, given that environmental tort cases feature the multiplicity of infringement methods, the complexity of the infringement process, and the concealment and long-term consequences, proving environmental tort cases, especially proving the subjective intent of a polluter discharging pollutants in violation of the law, is relatively difficult. Furthermore, this case also involves the harm to environmental public interests. Therefore, the particularity of such cases should be fully considered to avoid evasion of liability and damage to public interests by accurately applying the principles of burden of proof and attribution of responsibility. In summary, based on the facts and evidence of this case, the evidence to prove that the Environmental Protection Company and the Property Management Company constituted contributory infringement of environmental pollution has satisfied the civil standard of preponderance of the evidence. Therefore, it should be found by the Court that as the Environmental Protection Company and the Property Management Company had

subjective joint intention and objectively engaged in joint acts of illegal pollution discharge, the two defendants constituted contributory infringement and should bear joint and several liability accordingly.