

## **Civil environmental public interest litigation by Chongqing Volunteer Federation against Enshi Mining Co., Ltd. over environmental pollution**

### **Adjudication Rules**

In environmental civil public interest litigation, if the people's court orders the polluter to cease its infringement, it may order the polluter to conduct a re-assessment of environmental impact. The polluter shall not resume production until the environmental impact assessment document has been reviewed and approved and the supporting environmental protection facilities have been checked and accepted.

### **Basic Facts**

The plaintiff, Chongqing Volunteer Federation, filed an environmental civil public interest lawsuit against the defendant Enshi Mining Co., Ltd. (hereinafter referred to as the Mining Company), requesting that the defendant cease the infringement and assume the responsibility for ecology and environment restoration. The Second Branch of the People's Procuratorate of Chongqing Municipality supported the prosecution.

After the hearing, the court found that Qianzhangyan Reservoir is located at the junction of Wushan County and Fengjie County in Chongqing and Jianshi County in Hubei Province. The designed storage capacity of the reservoir is 4.05 million cubic meters and the construction began in 2008. On December 6, 2013, it was recognized as a centralized drinking water source protection area by the People's Government of Chongqing Municipality, supplying drinking water and production water for more than 50,000 people in the surrounding area. Jianshi County, Hubei Province is adjacent to Wushan County, Chongqing Municipality. The mineral processing plant of the defendant—the Mining Company is located in a forest farm in Yezhou Town, Jianshi County, about 2.6 kilometers away from Qianzhangyan Reservoir in Wushan County. This area is a mountainous area with karst landform, underground cracks and many underground rivers. The Mining Company's pyrite processing project compiled a feasibility study report in 2009, which was approved by the Development and Reform Commission of Enshi Tujia and Miao Autonomous Prefecture on April 23, 2010. In July 2010, the environmental impact assessment work was carried out, and on May 16, 2011, the environmental impact assessment approval was obtained from the Environmental Protection Bureau of Enshi Tujia and Miao Autonomous Prefecture. Construction started in 2012 and was basically completed in June 2014, but water pollution prevention and control facilities have not yet been completed. Due to the discharge of wastewater and tailings in the production of pyrite in the concentrating mill of the Mining Company, it was a construction project that discharges pollutants. Its project construction feasibility report clearly pointed out that the reservoir area of the tailings pond is a karst depression formed naturally, and the karst in the reservoir area is manifested as karst fissures and caves. At the same time, the tailings pond project safety pre-evaluation report stated: "It is suggested that the following revisions and supplements be made to the evaluation report: 1. Evaluate the seepage of the reservoir area by separate unit and propose countermeasures; 2. Supplementary evaluation of flood and drainage issues after the operation of the tailings pond." However, the Mining Company did not actually implement the amendments and supplementary measures.

On August 10, 2014, the mineral processing plant of the Mining Company used about 500 tons of pyrite raw ore, ethyl sodium xanthate, and No.2 oil for illegal production, and the wastewater and tailings untreated were discharged into the nearby nature hollow where karst funnel was developing. On August 12, 2014, residents of Hongchun Village, Wushan County reported that the water quality at the drinking water intake of Qianzhangyan

Reservoir was abnormal, and Wushan County launched a contingency plan for major environmental emergencies. The emergency monitoring results showed that the polluted water had no heavy metal toxicity, but had organic toxicity. COD (chemical oxygen demand) and Fe (iron) exceeded the standard by 0.25 times and 30.3 times respectively, and the suspended solids are as high as 260mg/L. Relevant departments in Chongqing locked the polluted water in reservoirs, and implemented emergency measures such as drug purification for the polluted water.

After the Qianzhangyan Reservoir water pollution incident, the former Ministry of Environmental Protection made it clear that the incident constituted a major environmental emergency. The Environmental Risk and Damage Appraisal and Evaluation Research Center, subordinate to the Chinese Academy of Environmental Planning of the Ministry of Environmental Protection, issued the Report on Environmental Damage Assessment of Emergent Environmental Incidents at Qianzhangyan Reservoir, Hongchun Town, Wushan County, Chongqing Municipality. The report evaluates the pollutants of environmental pollution, the direct economic loss caused by the environmental emergency, and the impact of the pollution on the ecology and environment of the reservoir. The report also decided that the incident has no long-term adverse effects on the aquatic ecology environment of the reservoir, and there is no need for subsequent restoration of the ecology and environment and no further medium and long-term damage assessment. The Environmental Protection Department of Hubei Province made an administrative penalty decision on September 4, 2014, affirming that the Mining Company's pyrite processing project had not completed the water pollution prevention and control facilities, began production without authorization, and illegally discharged and dumped the wastewater and tailings generated by the production into the hollow below the factory building, causing waste water and waste residue to leak through the cracks at the bottom of the depression then resulting in water pollution of Qianzhangyan Reservoir. The decision ordered the Mining Company to cease production until it passed the acceptance inspection and took treatment measures to eliminate pollution within a time limit, and imposed a fine of RMB 1 million. After the administrative penalty decision was made, the Mining Company only paid a fine of RMB 1 million but did not take effective measures to eliminate pollution.

On April 26, 2015, based on the plaintiff's application, the court entrusted to appraise the ecological restoration and its expenses of the Qianzhangyan environmental pollution incident. The appraisal held that: 1. The Mining Company was the only source of pollution for the damage to the ecology environment of the Qianzhangyan Reservoir, the subject of responsibility is clear, and the causal relationship of the environmental damage is clear. 2. Recognized the evaluation conclusion of the Report on Environmental Damage Assessment of Emergent Environmental Incidents at Qianzhangyan Reservoir, Hongchun Town, Wushan County, Chongqing Municipality, that there had no long-term adverse effects on the ecology and environment of the reservoir, no need for follow-up ecology and environment restoration, and no need for medium and long-term damage assessment. 3. This ecology and environment damage assessment of the polluted soil confirmed that after nine months, the ethyl sodium xanthate in the soil of the incident area had been degraded and will not cause further damage to the local ecology and environment. However, the Fe pollutants in the soil of the depression had not been naturally degraded, exceeding the local ecological baseline, and could not be recovered naturally in the short term. This would bring potential pollution risks to the Qianzhangyan Reservoir and the surrounding ecology and environment, and artificial intervention was required for ecological restoration. According to the Recommended Method for Environmental Damage Assessment during the Emergency Response Stage of Emergent Environmental Incidents [Environmental Protection Office (2014) No.118], the cost of soil ecological restoration in hollow to be about RMB 991,000 was calculated by using the

virtual governance cost method. 4. It was recommended to further develop a detailed ecological restoration plan, carry out the restoration of the ecology and environment damage in the accident area, and do a good job in the post-supervision work to ensure the safety of drinking water in Qianzhangyan Reservoir and the safety of the surrounding ecology and environment. During the trial of the case, Chongqing Volunteer Federation applied to notify the expert witness to appear in court to accept inquiries and give opinions on ecological restoration. The appraiser held that the soil element itself is not a controlling indicator. In terms of drinking water safety, Fe in the soil of the hollow was higher than the drinking water safety standard; the location of the mineral processing plant of the defendant the Mining Company has many underground rivers, and the area has a large amount of precipitation, causing pollution. Drinking water has a higher risk of being polluted.

### **Adjudication Result**

On January 14, 2016, the Primary People's Court of Wanzhou District of Chongqing Municipality made a civil judgment [2014, Wanzhou Court Environmental Public Interest Action First Trial, No.00001] 1. The Mining Company immediately ceases its infringement on the drinking water source of the Qianzhangyan Reservoir in Wushan County, re-evaluated the environmental impact, and was not allowed to produce without approval and the acceptance check of the environmental protection facilities. 2. Within 180 days after the judgment came into effect, the Mining Company formulates a restoration plan for the ecological restoration of the hollow soil concerned, and carries out ecological restoration. The Mining Company bears the repair cost of RMB 991,000 and pays it to the designated account if it fail to perform the restoration obligation within the appointed time limit or fail to meet the restoration requirements. 3. The Mining Company apologizes in the national media for its actions of polluting the ecology and environment and harming public interests. 4. The Mining Company pays a total of RMB 150,000 reasonable expenses and attorney fees incurred by Chongqing\* Volunteer Federation's filing of a lawsuit. 5. Reject other claims of Chongqing Volunteer Federation. After the sentence of the first trial, the Mining Company refused to accept it and filed an appeal. On September 13, 2016, the Second Intermediate People's Court of Chongqing Municipality issued a civil judgment [2016, Chongqing, 02, Civil Final Trial, No.772]: the appeal was rejected and the original judgment was upheld.

### **Adjudication Reasoning**

According to the effective judgment of the court, one of the focal issues in this case was whether it was necessary to order the cessation of the infringement and re-evaluate the environmental impact.

The pollution of the environment and the destruction of ecology and resources caused by environmental torts are often irreversible. The polluted environment and the damaged ecological resources are often difficult to recover, and the economic compensation after the event is not enough to make up for the losses caused to the ecology and environment. Environmental torts should focus on preventing problems before they happen, in order to truly achieve the purpose of environmental protection. In this case, the Mining Company only temporarily stopped production, The illegal situation has not been actually eliminated like its "three simultaneity" work is seriously delayed, and the environmental protection facilities are not completed and the illegal production may resume at any time. Due to the previous pollution behavior of the Mining Company, some ecological indicators in the soil in the relevant area exceeded the ecological baseline. Due to the large amount of local precipitation and the location in a karst mountainous area, there are many fissures and karst caves, and underground rivers are crisscrossed. The underground rivers are the source of water accumulation of Qianzhangyan Reservoir, and the risk of pollution obviously exists.

Considering that the illegal situation of the Mining Company has not been eliminated, and the geological and geographical conditions of the project area are complex and special, on the premise that it cannot ensure that the resumption of production will not cause environmental pollution again, it should be prohibited from resuming production. Only in this way, it can effectively avoid the local ecology and environment from being damaged again by the pollution and it can also avoid the risk of a separate lawsuit if the Mining Company is found to resume illegal production in the future, reducing the burden of lawsuits by the parties and saving judicial resources. Therefore, although the Mining Company ceased production before suing, it should still be ordered to cease infringing on the drinking water source of Qianzhangyan Reservoir.

In addition, the construction of Qianzhangyan Reservoir began in 2008, and the environmental impact assessment work of the Mining Company project was carried out in July 2010. The approval of the local environmental administrative department was not obtained until May 16, 2011. The third paragraph of Article 23 of the Environmental Impact Assessment Law of the People's Republic of China stipulates that if a construction project may cause adverse environmental impacts across administrative regions and the relevant environmental protection administrative departments have a dispute over the environmental impact assessment conclusion of the project, the environmental impact assessment documents shall be examined and approved by the common superior environmental protection administrative department. Considering the nature of the project, its relative position with the reservoir, and the special local geological and geographical conditions, the impact on Qianzhangyan Reservoir should have been considered in particular in the environmental impact assessment of the project at that time. However, the two are located in different provincial administrative regions, as a result, the Qianzhangyan Reservoir was not involved in the environmental impact assessment at that time. It can be seen that the environmental impact assessment was not comprehensive and had obvious deficiencies. Due to the newly added Qianzhangyan Reservoir, an environmental protection target that needs to be considered in particular, the basis of original environmental impact assessment. In the reality that major environmental emergencies have occurred, the project involved clearly should make significant changes in terms of measures for the prevention and control of pollution and ecological damage. According to the first paragraph of Article 24 of the Environmental Impact Assessment Law of the People's Republic of China, "after the environmental impact assessment document of the construction project is approved, the nature, scale, location, production technology adopted or measures of pollution prevention and ecological damage prevention of the construction project have a major change, the construction entity shall re-submit the environmental impact assessment document of the construction project". According to the stipulation of Water Pollution Prevention and Control Law of the People's Republic of China (revised in 2008), the third paragraph of Article 17 stipulates that "The water pollution prevention and control facilities of the construction project shall be designed, constructed and put into use at the same time as the main project. Water pollution prevention and control facilities shall be inspected and accepted by the competent department of environmental protection, and if they fail to pass the inspection and acceptance, the construction project shall not be put into production or use." In view of the importance of Qianzhangyan Reservoir, its environmental sensitivity as a first-class drinking water source protection area, and the potential huge pollution risk to the reservoir by the project involved, it should have been included in the environmental impact assessment of the construction project as a key environmental protection target, but it had not been included. In addition, in the case of objectively causing major environmental emergencies, considering that the basis of the original environmental impact assessment has changed, for the protection of key environmental protection objectives and the maintenance of public

interests, the Mining Company should re-evaluate the project's environmental impact on the basis of considering the environmental impact of the Qianzhangyan Reservoir and go through the statutory examination and approval procedures. Without approval and the acceptance check of environmental protection facilities, the production shall not be allowed.