

Administrative action by Shanghai Building Materials Development Co., Ltd. against Jinshan District Environmental Protection Bureau in Shanghai over environmental administrative punishment

Adjudication Rules

Where the concentration of odour generated by the piling and disposal of solid waste by enterprises, institutions and other production operators exceeds the emission standards for air pollutants, and the competent environmental protection authorities apply the Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution, which imposes heavier penalties, to punish them, but related enterprises, institutions and other production operators claim that they should be punished by applying the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes. The people's court shall not support the claims.

Basic Facts

The plaintiff, Shanghai Building Materials Development Co., Ltd. (hereinafter referred to as the Building Materials Company) filed an administrative lawsuit against Jinshan District Environmental Protection Bureau in Shanghai (hereinafter referred to as Jinshan Environmental Protection Bureau), claiming that: Jinshan Environmental Protection Bureau improperly applied the Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution to punish the odour concentration of the piled up sludge in its plant for exceeding the standard, and should have applied the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes, and requested that the punishment should be withdrawn.

The court heard and found that: due to reports from the public, on August 17, 2016, law enforcement officers of Jinshan Environmental Protection Bureau went to the Building Materials Company for inspection. Staff from the Jinshan Environmental Monitoring Station conducted gas sampling of the company's factory boundary odour and waste gas emissions. On the 26th of the same month, Jinshan Environmental Monitoring Station issued a Test Report [XF26-2016], which showed that according to the Emission Standards for Odor Pollutants (GB 14554-93), the standard value of odor concentration plant boundary level 2 is 20. Three samples were taken from each of the four monitoring points of the Building Materials Company, and the maximum one-time odour concentration at monitoring point 3# was 25. On September 5, 2016, the aforementioned Test Report was received by Jinshan Environmental Protection Bureau and the case was filed. After investigation, the Jinshan Environmental Protection Bureau made the Notice of Order to Correct ([2016] Jinshan Environmental Protection Correction No.224) and Notice of Administrative Penalty Hearing on November 9, 2016, and delivered it to the Building Materials Company. At the request of the Building Materials Company, the Jinshan Environmental Protection Bureau organised a hearing on November 23, 2016. On December 2, 2016, Jinshan Environmental Protection Bureau made the Decision on Administrative Penalty [No.2020160224], which found that on August 17, 2016, law enforcement officers of Jinshan Environmental Protection Bureau inspected and monitored the disorganized emission of malodorous pollutants from the Building Materials Company. After sampling at the factory boundary of the Building Materials Company, the 3# monitoring points were detected by Jinshan Environmental Monitoring Station, and the one-time maximum value of odor concentration was 25, which exceeded the Emission Standards for Odor Pollutants (GB 14554-93) emission limit 20. The act violated the provisions of Article 18 of the Law of the People's Republic of China on the Prevention

and Control of Atmospheric Pollution (revised in 2015), according to the provisions of Article 99(2) of the law, decided to fine the Building Materials Company RMB 250,000.

Also identified, on November 13, 2009, Jinshan Environmental Protection Bureau approved the Multi-Specification Environmental Protection Type Silt Sintered Porous Brick Technology Transformation Project Environmental Impact Report Form reported by the Building Materials Company. On December 5, 2012, the aforementioned technology transformation project passed the completion inspection and acceptance by Jinshan Environmental Protection Bureau. Meanwhile, the Building Materials Company has been the subject of dozens of complaints from the public since 2015, reflecting environmental problems such as the company's emission of irritating odours. On September 9, 2015, because the maximum determination of odor concentration of the two sampling points of the factory boundary in the Building Materials Company exceeded the standard on July 20 of the same year, Jinshan Environmental Protection Bureau made [2015] No.479 Jinshan Environmental Protection Correction "Notice of Order to Correct", and on September 18 of the same year made No.2020150479 "Decision on Administrative Penalty", decided to fine the Building Materials Company RMB 35,000.

Adjudication Result

The Primary People's Court of Jinshan District of Shanghai Municipality made an administrative judgment [2017, Shanghai, 0116, Administrative First Trial, No.3] on March 27, 2017, dismissing the plaintiff the Building Materials Company's litigation request. After the verdict was delivered, the parties accepted the verdict and did not appeal, and the verdict has taken legal effect.

Adjudication Reasoning

The judgment which has taken legal effect held that, the core controversy of the case was whether it was correct for the Jinshan Environmental Protection Bureau to apply the Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution to punish the Building Materials Company for the acts involved in the case. This involved the choice of application between Article 68(1)(7) and (2) of the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes (amended in 2016) and Article 99(2) of the Law of the People's Republic of China on Prevention and Control of Atmospheric Pollution (amended in 2015).

The Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes (amended in 2016) stipulates that a person who fails to take appropriate precautionary measures, causing industrial solid waste to be dispersed, lost or leaked or causing other environmental pollution, shall be liable to a fine of not less than RMB 10,000 and not more than RMB 100,000. The Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution (amended in 2015) stipulates that anyone who emits air pollutants in excess of the emission standards for air pollutants or exceeds the total emission control targets for key air pollutants shall be ordered by the competent department of environmental protection of the people's government at or above the county level to make corrections or to restrict production or suspend production for rectification, and shall be fined not less than RMB 100,000 but not more than RMB one million; if the circumstances are serious, the person shall report to the people's government with the power of approval for approval and be ordered to cease operation or close down. The former regulates the pollution of the environment by industrial solid waste without precautionary measures, while the latter regulates the emission of air pollutants in excess of the standard. The former can be constituted by failure to take precautionary measures and have certain

environmental pollution consequences, while the latter can only be constituted if the emission of air pollutants from the emission unit exceeds the emission standards or the total emission control targets for key air pollutants. There is no evidence in this case to confirm whether the odor comes from any industrial solid waste, and Jinshan Environmental Protection Bureau received complaints from the public about the Building Materials Company emitting odor after the law enforcement inspection, inspection, monitoring the object of the plaintiff's emissions of air pollutants, the applicable object and air pollution prevention and control law is more compatible. The Monitoring Report showed that the odour concentration exceeded the emission standards for air pollutants, and it was more accurate to apply the provisions of Article 99(2) of the Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution (revised in 2015) in respect of the consequences of the act, so the decision on the administrative penalty sued was not improper in applying the law.