

## **Civil environmental public interest litigation by the People's Procuratorate of Xuzhou City of Jiangsu Province against Suzhou Handicraft Co., Ltd., etc. over environmental pollution**

### **Adjudication Rules**

In environmental civil public interest litigation, if the plaintiff has evidence to prove that the defendant produced hazardous waste and disposed of pollutants, and the defendant refuses to provide environmental information such as its disposal of pollutants, making it impossible to ascertain the whereabouts of the pollutants, the people's court can presume that the environmental pollution facts claimed by the plaintiff are established.

### **Basic Facts**

In May and June 2015, Suzhou Handicraft Co., Ltd. (hereinafter referred to as the Handicraft Company) handed over 83 barrels of sulfuric acid waste liquid produced in its industrial production activities to Huang Feng to dispose of at a price ranging from RMB 1,300 to RMB 3,600 per barrel. Huang Feng transported the above-mentioned sulfuric acid waste liquid to the yard he rented in Suzhou, and then entrusted He Yi to dispose of it at a price of RMB 2,000 per barrel. He Yi then entrusted Wang Yi to dispose of it at a price of RMB 1,000 per barrel. Wang Yi went to the roadside of the logistics park and other places to randomly contact the owners or drivers of trucks with a license of other cities, and transported the above-mentioned 83 barrels of sulfuric acid waste liquid directly from Huang Feng's storage place for a plurality of times, asking them to dispose of the waste liquid at will after they were taken out of Suzhou. The freight paid is RMB 43,000 in total. Among them, after Wei Dong transported 15 barrels of sulfuric acid waste liquid from Suzhou to the Economic Development Zone of Peixian County, he dumped three barrels in the farmland, and the remaining 12 barrels were discarded on a certain construction site. Except for the above 15 barrels, Wang Yi could not explain the whereabouts of the remaining 68 barrels of sulfuric acid waste liquid. In December 2015, the environmental protection department of Peixian County found 12 barrels of waste sulfuric acid during an inspection. The waste liquid was identified as hazardous waste. In October 2016, the Handicraft Company legally disposed of 12 barrels of sulfuric acid waste liquid and paid the cost of RMB 116,740.08.

On August 2, 2017, the People's Procuratorate of Peixian County of Jiangsu Province filed a public prosecution against the Handicraft Company, Jiang Ming, Huang Feng, He Yi, Wang Yi, Wei Dong et al. to the Railway Transportation Primary Court of Xuzhou. After the second trial of the Intermediate People's Court of Xuzhou City of Jiangsu Province, the final judgment adjudicated that the Handicraft Company, Jiang Ming, Huang Feng, He Yi, Wang Yi, Wei Dong et al. constituted the crime of polluting the environment.

After the People's Procuratorate of Xuzhou City of Jiangsu Province discovered the above-mentioned acts of damaging the ecology and environment during the performance of its duties, it announced the relevant situation of preparing to file a lawsuit in accordance with the law. During the announcement period, no legally stipulated agency or relevant organization filed a lawsuit. In May 2018, the People's Procuratorate of Xuzhou City of Jiangsu Province filed this lawsuit with the Intermediate People's Court of Xuzhou City of Jiangsu Province, requesting a judgement for the Handicraft Company, Huang Feng, He Yi, Wang Yi, and Wei Dong, to jointly compensate for the restoration costs of ecology and environment caused by dumping three barrels of sulfuric acid waste liquid and illegally disposing of 68 barrels of sulfuric acid waste liquid, as well as the expert witness consulting fee and announcement fee paid by it for this case and requiring the five defendants to jointly make a public apology on the provincial media.

## **Adjudication Result**

On September 28, 2018, the Intermediate People's Court of Xuzhou City of Jiangsu Province made a civil judgment [2018, Jiangsu, 03, Civil First Trial, No.256]: 1. The Handicraft Company, Huang Feng, He Yi, Wang Yi, and Wei Dong, within 30 days after the judgment came into effect, jointly compensated RMB 204,415 for ecology and environment restoration caused by dumping three barrels of sulfuric acid waste liquid, and paid to the special fund account of Xuzhou Environmental Protection Public Welfare Fund; 2. The Handicraft Company, Huang Feng, He Yi, and Wang Yi, within 30 days after the judgment came into effect, jointly compensated RMB 4,630,852 for the restoration of the ecology and environment caused by the illegal disposal of 68 barrels of sulfuric acid waste liquid, and paid to the special fund account of Xuzhou Environmental Protection Public Welfare Fund; 3. The Handicraft Company, Huang Feng, He Yi, Wang Yi, and Wei Dong jointly paid the reasonable expenses of RMB 3,800 paid by the People's Procuratorate of Xuzhou City of Jiangsu Province for this case within 30 days after the judgment became effective; 4. The Handicraft Company, Huang Feng, He Yi, Wang Yi, and Wei Dong jointly made a public apology on the provincial media for the illegal disposal of sulfuric acid waste liquid within 30 days after the judgment came into force. After the judgment of the first trial was pronounced, none of the parties appealed, and the judgment had taken legal effect.

## **Adjudication Reasoning**

The effective judgment of the court held that:

1. With regard to the damage to the ecology and environment caused by dumping three barrels of sulfuric acid waste liquid in the Economic Development Zone of Peixian County, whether the five defendants should bear joint and several liability for compensation and how to determine the amount of compensation

Article 55 of the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes (2015 Amendments) stipulates that "Entities that produce hazardous waste must dispose of hazardous waste in accordance with relevant state regulations, and shall not dump or stack them without authorization." Article 57 stipulates that "Entities engaged in the collection, storage, and disposal of hazardous waste must apply to the environmental protection administrative department of the people's government at or above the county level for a business license... It is prohibited to engage in the business activities of collecting, storing, utilizing and disposing of hazardous waste without a business license or not in accordance with the regulations of the business license. In this case, the Handicraft Company clearly knew that Huang Feng did not have a hazardous waste business license, but still handed over the hazardous waste-sulfuric acid waste liquid to him for disposal; Huang Feng, He Yi, Wang Yi and Wei Dong clearly knew that they did not have a hazardous waste business license but still accepts sulfuric acid waste liquid from the Handicraft Company and disposed of it illegally. The Handicraft Company, Huang Feng, He Yi, Wang Yi and Wei Dong respectively carried out illegal acts, obtained illegal benefits, and eventually led to the illegal disposal of hazardous waste. The defendants should be liable for compensating for the damage to the ecology and environment. The behaviors of the five defendants are all necessary conditions for the damage to the ecology and environment, constituting a joint infringement, and they should bear joint and several liabilities within the scope of the amount of hazardous waste they each illegally disposing of.

In this case, the dumping of three barrels of sulfuric acid waste liquid polluted the soil objectively. However, the pollution had been occurring for more than three years, and the

dumping site had undergone industrial construction, and the damaged soil cannot be completely restored at present. According to the Recommended Methods for Environmental Damage Identification and Assessment (Edition II) and the former Ministry of Environmental Protection's Explanation on the Application and Calculation Method of the Virtual Governance Cost Method, the cost of ecology and environment restoration caused by dumping three barrels of sulfuric acid waste liquid can be determined by applying the Virtual Governance Cost Method. The calculation formula is: pollutant discharge amount  $\times$  pollutant unit governance cost  $\times$  damaged environment sensitivity coefficient. The advice put forward by the technical experts entrusted by the plaintiff of public interest litigation that the cost of ecology and environment restoration caused by dumping three barrels of sulfuric acid waste liquid was RMB 204,415 ( $4.28 \times 6,822.92 \times 7$ ) has sufficient grounds and should be adopted. The damage to the ecology and environment was caused by the joint illegal activities of five defendants, the Handicraft Company, Huang Feng, He Yi, Wang Yi and Wei Dong and the five defendants should be jointly and severally liable for compensation of RMB 204,415.

2. Regarding whether the five defendants should bear the liability for ecology and environment damage for the remaining 68 barrels of sulfuric acid waste liquid, and how to determine the amount of compensation

According to the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes and other laws and regulations, China implements a hazardous waste transfer associated bills system, and reporting and registering the flow and disposal of hazardous waste is the legal obligation of hazardous waste generating entities; it is the legal obligation of hazardous waste management entities to truthfully record the sources, whereabouts, and disposal of hazardous wastes; entities and individuals that generate, collect, store, transport, utilize, and dispose of hazardous wastes should set up hazardous waste identification signs; and all have a legal obligation to take measures to prevent environmental pollution by hazardous waste. In this case, the Handicraft Company failed to fulfill the obligation to declare and register sulfuric acid waste liquid, and failed to apply for a hazardous waste transfer associated bills in accordance with the law. The three defendants, Huang Feng, He Yi and Wang Yi illegally engaged in hazardous waste business activities and failed to record the flow and disposal of sulfuric acid waste liquid. The four defendants of the Handicraft Company, Huang Feng, He Yi and Wang Yi evaded state supervision and illegally transferred hazardous waste. The disposal of the 68 barrels of sulfuric acid waste liquid could not be explained, no measures had been taken to prevent the waste sulfuric acid liquid from polluting the environment, and none of the 68 barrels of sulfuric acid waste liquid had a hazardous waste identification mark. There was a water outlet on the container. Although it was transported out of Suzhou and was discarded as a whole, there was also a great risk that the liquid would flow out and pollute the environment or even endanger the safety of personal and property. Therefore, according to the stipulation of Article 13 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases Involving Environmental Civil Public Interest Litigations, "the plaintiff requests the defendant to provide environmental information such as the name of the main pollutants it discharges, the method of discharge, the concentration and total amount of discharge, the situation of excessive discharge, the construction and operation of pollution prevention and control facilities. If laws, regulations, and rules stipulate that the defendant should hold the information or have evidence to prove that the defendant holds it but refuse to provide it the people's court can presume that the claim is established." In this case, it should be presumed that the remaining 68 barrels of sulfuric acid waste liquid were illegally disposed of and polluted the environment.

With regard to the amount of compensation for the damage. According to the Explanation on the Application and Calculation Method of the Virtual Governance Cost Method, the specific circumstances of the damage are not clear, and the ecology and environment restoration costs incurred by it can also be determined by applying the Virtual Governance Cost Method. As mentioned above, the weight of 68 barrels of sulfuric acid waste liquid should still be calculated at 1.426 tons per barrel, a total of 96.96 tons; the unit governance cost should still be determined at RMB 6,822.92. With regard to the sensitivity coefficient of the damaged environment. In this case, the illegal disposal of 68 barrels of sulfuric acid waste liquid actually damaged what kind of environmental media and what type of environmental functional areas are unknown, and the environmental media that might be damaged include one or more of soil, surface water, or groundwater. Different environmental media and different types of environmental function zones had different sensitivity coefficients, and there were many possibilities from two kinds to 11 kinds. The plaintiff of public interest litigation claimed that the applicable coefficient of 7 was in the middle of the environmental sensitivity coefficient, corresponding to Class II surface water, Class II soil, and Class III groundwater, and the environmental medium actually polluted by the three barrels of sulfuric acid waste liquid that had been identified in this case is Class II soil. At the same time, the four defendants also failed to provide evidence to prove that the 68 barrels of sulfuric acid waste actually polluted the environmental media with a lower sensitivity coefficient. Therefore, the claim of the plaintiff of public interest litigation was reasonable, and at the same time reflected the appropriate punishment for illegal acts of evading state supervision and illegally transferring and disposing of hazardous waste, and should be adopted. To sum up, the plaintiff of public interest litigation claimed that the cost of ecology and environment restoration caused by the illegal disposal of 68 barrels of sulfuric acid waste liquid is RMB 4,630,852 ( $96.96 \times 6,822.92 \times 7$ ), which should be supported. At the same time, if it is found in the future that the 68 barrels of sulfuric acid waste liquid actually polluted the environmental media with a higher sensitivity coefficient, and the above repair costs are not enough to make up for the damage to the ecology and environment, the legally stipulated authorities and relevant organizations can still claim the newly discovered facts to the defendant separately. The damage to the ecology and environment was caused by the joint illegal activities of four defendants, the Handicraft Company, Huang Feng, He Yi, and Wang \*Yi, and the four defendants should be jointly and severally liable for compensation of RMB 4,630,852.

In conclusion, there is no substitute for the ecology and environment, and everyone is responsible for protecting the ecology and environment. Entities and individuals that generate, collect, store, transport, utilize, and dispose of hazardous waste must strictly fulfill their legal obligations and take practical measures to prevent environmental pollution from hazardous waste. The defendants, the Handicraft Company, Huang Feng, He Yi, Wang \*Yi and Wei \*Dong failed to fulfill their legal obligations, evaded state supervision, illegally transferred and disposed of hazardous waste, and allowed hazardous waste to pollute the environment. The defendants should be liable for the damage caused by the infringement on the ecology and environment according to the law.