

The Primary People's Court of Sanyuan County of Shaanxi Province
Administrative Judgment

(2016) Shaan 0422 Xing Chu No.21

Plaintiff of Public Interest Litigation: The People's Procuratorate of Sanyuan County.
Domicile: West section of South Ring Road, Sanyuan County, Shaanxi Province.

Legal Representative: YANG Yin, Chief Procurator of the Procuratorate.

Defendant: The People's Government of Dacheng Town, Sanyuan County. Domicile:
Dacheng Town, Sanyuan County.

Certificate of Organization Code: XXXXXXXXX-X. Legal Representative: GUO Hu, Mayor
of the town.

Agent ad litem: WANG Minghui, lawyer from Shaanxi Chiyang Law Firm. Scope of
authorization: special authorization.

The People's Procuratorate of Sanyuan County, the plaintiff of public interest litigation, filed
an administrative public interest litigation with this court on October 24, 2016, as it was in the
opinion that the defendant, People's Government of Dacheng Town, Sanyuan County did not
perform the statutory duties of environmental protection and pollution prevention and control.
After accepting the case, this court served a copy of the written complaint and the notice for
response on the defendant on October 27, 2016. This court formed a collegial bench according to
law and heard the case in public on April 11, 2017.

LI Jun and WANG Dongan (Procurators) appointed by the People's Procuratorate of Sanyuan
County (the plaintiff of public interest litigation) and GUO Hu, person in charge of People's
Government of Dacheng Town, Sanyuan County (the defendant), and its agent ad litem WANG
Minghui (lawyer), appeared in court to participate in the litigation. The trial of this case has
concluded.

The plaintiff of public interest litigation claimed that: sewage discharged in excess of the
standards at the south sewage outlet of A Village, Dacheng Town of Sanyuan County, polluted the
Qinghe River and damaged the public interest. On April 15, 2016, the People's Procuratorate of
Sanyuan County issued a procuratorial proposal to People's Government of Dacheng Town,
Sanyuan County, advising it to perform its statutory duties in accordance with the law, construct
the sewage treatment facilities and supporting pipe network, and ensure that the sewage discharged
to the Qinghe River meet the relevant national standards. People's Government of Dacheng Town,

Sanyuan County neither provided a written reply after receiving the procuratorial proposal nor performed its duties in accordance with the law. Sewage discharge issues remained. On June 19, the People's Procuratorate of Sanyuan County authorized Xi'an Yuchi Testing Technology Co., Ltd. to test sewage discharged from the case-related sewage outlet. After three irregular tests from June 20 to July 4, it was found that BOD5, CODcr, ammonia nitrogen and suspended matter in the sewage all exceeded in varying degrees the integrated wastewater discharge standard of the Yellow River Basin (Shaanxi part) and the Grade 1 standard prescribed in the Integrated Wastewater Discharge Standard of the Nation (GB8978-1996). The public interests were still impaired.

The plaintiff of public interest litigation claimed that, in accordance with Article 50 and Article 51 of *the Environmental Protection Law of the People's Republic of China* and Article 54 of *the Regulation of Shaanxi Province on Administration of the Weihe River Basin*, the People's Government of Dacheng Town, Sanyuan County, as the responsible department for the environmental protection along the tributary of the Weihe River, had the duties of constructing sewage pipe network and facilities for centralized treatment of sewage in rural areas, and shall ensure environmental protection and water pollution prevention and control, however, they failed to perform their duties in accordance with the law, resulting in the discharge of excessive sewage into Qinghe River and the damage to public interests. Therefore, it requested people's court: 1. to confirm that the failure of the People's Government of Dacheng Town, Sanyuan County to perform the duties of environmental protection and pollution prevention and control in accordance with the law was illegal; 2. to order the People's Government of Dacheng Town, Sanyuan County to continue the performance of its statutory duties in accordance with the law, construct the sewage treatment facilities and supporting pipe network, and ensure that the sewage discharged into Qinghe River meet the relevant standards.

To support its claims, the plaintiff of public interest litigation submitted the following legal basis and evidence to this Court:

The first group of legal basis: 1. *Decision of the Standing Committee of the National People's Congress on Authorizing the Supreme People's Procuratorate to Launch the Pilot Program of Initiating Public Interest Actions in Certain Areas*; 2. *Plan for the Pilot Project of Instituting Public Interest Litigations by the Procuratorial Organs by the Supreme People's Procuratorate*; 3. *Implementation Plan for Pilot Program of Public Interest Litigations Instituted by the Procuratorial Organs by Shaanxi Provincial People's Procuratorate*; and 4. *Implementation Plan for Pilot*

Program of Public Interest Litigations Instituted by the Procuratorial Organs issued by Xianyang Municipal People's Procuratorate. To prove that: the People's Procuratorate of Sanyuan County is eligible as the public interest litigant for this case.

The second group of legal basis and evidence: 1. Articles 6, 50 and 51 of *the Environmental Protection Law of the People's Republic of China*; 2. Articles 29 and 54 of *the Regulation of Shaanxi Province on Administration of the Weihe River Basin*. 3. a copy of the explanation on the situation of Qinghe River and a copy of drawing by Water Affairs Bureau of Sanyuan County. To prove that: People's Government of Dacheng Town, Sanyuan County (defendant) has statutory duties to construct the sewage treatment facilities and supporting pipe network, and ensure that the sewage discharged to the Qinghe River meet the relevant national standards.

The third group of evidence: 1. a copy of the notes of the spot investigation; 2. copies of four photos of the case; 3. a copy of statements made by GUO Hu, the Mayor of Dacheng Town; and 4. a copy of the inquiring record of WANG Xinmin. To prove that: People's Government of Dacheng Town, Sanyuan County (defendant) is slack in performing its duties, resulting in the impairment of the public interests.

The fourth group of evidence: a copy of procuratorial proposal issued by the People's Procuratorate of Sanyuan County and a copy of the acknowledgment of service. To prove that: The People's Procuratorate of Sanyuan County has completed the pre-litigation procedures for initiating the public interest litigation.

The fifth group of legal basis and evidence: 1. two copies of the Integrated Wastewater Discharge Standard of the People's Republic of China (GB8978-1996) and the integrated wastewater discharge standard of the Yellow River Basin (Shaanxi part); 2. three copies of the inspecting and testing report issued by Yuchi Testing Center of Xi'an; 3. copies of eight photos of the case; and 4. a copy of the Statement of People's Government of Dacheng Town on the Sewage Discharge Situation within the Jurisdiction. To prove that: the defendant did not reply with the rectification status within one month as required after receiving the procuratorial proposal issued by the People's Procuratorate of Sanyuan County on April 15, 2016. The defendant did not reply until October 20, 2016, and the issue of sewage discharge in excess of the standards from the sewage outlet involved remained unsolved.

The defendant raised no objection to the authenticity and proof purpose of the first group of legal basis submitted by the plaintiff of public interest litigation, and acknowledged the subject

eligibility of the People's Procuratorate of Sanyuan County as the plaintiff of public interest litigation of the case to file the public interest litigation; the defendant raised no objection to the authenticity and proof purpose of the second group of evidence submitted by the plaintiff of public interest litigation; the defendant raised no objection to 1, 2, 3 of the third group of evidence submitted by the plaintiff of public interest litigation, but believed that 4 of the third group of evidence, the inquiring record of WANG Xinmin, were testimony of witness and such witness shall testify in court, therefore such evidence shall not be admissible; the defendant raised no objection to the authenticity and proof purpose of the fourth group of evidence submitted by the plaintiff of public interest litigation, and; the defendant raised no objection to the legitimacy of 1, 2, 3, 4 of the fifth group of evidence submitted by the plaintiff of public interest litigation, but believes that this group of evidence can not prove defendant's nonfeasance in performing its duties.

Upon court cross-examination, the court determines the basis and evidence submitted by the plaintiff of public interest litigation as follows: the court affirms the part of the basis and evidence submitted by the plaintiff of public interest litigation to which the defendant did not object. Among the third group of evidence submitted by the plaintiff of public interest litigation, the inquiring record of WANG Xinmin is from investigation activities over someone who knows the situation by the procuratorial organ according to its functions and powers; therefore, the opinion put forward by the defendant that the witnesses shall testify in court cannot be adopted by this court. The above basis and evidence submitted by the plaintiff of public interest litigation can prove that the defendant has the statutory duties to construct public sewage pipe network and facilities for centralized treatment of sewage in rural areas as regulated by the local regulations. In addition, after receiving the procuratorial proposal from the People's Procuratorate of Sanyuan County, the defendant failed to reply with the rectification status within the required time limit. Up to now, the issue of sewage discharge in excess of the standards from the sewage outlet involved remains unsolved.

The defendant argued that: 1. The litigation filed by the public interest litigant violated Articles 39 and 41 of *the Measures for the Implementation of the Pilot Program of Initiating Public Interest Actions by People's Procuratorates*. In 2012, the defendant proposed to invest 71.38 million yuan in the construction of sewage treatment plant and sewage pipe network to the County's Development and Reform Commission, Environmental Protection Bureau, Bureau of Land Resources and Bureau of Housing and Urban-rural Development for approval. At present,

land requisition for the sewage treatment plant is basically completed and construction will soon commence. Meanwhile, at the beginning of 2016, the defendant applied for the national key "three-year rolling plan project", through which the defendant will lay a sewerage pipeline within Dacheng Town, Sanyuan County for wastewater collection with a total length of 20 kilometers and a total investment of 25 million yuan, and the application procedure for this project is basically completed. Provision (2) of Article 39 of *the Measures for the Implementation of the Pilot Program of Initiating Public Interest Actions by People's Procuratorates* provides that, if, the administrative authority has corrected its illegal administrative activities or has performed its duties according to the law before the issuance of procuratorial proposals by the people's procuratorate, the people's procuratorate shall conclude the investigation. The defendant was performing its duties in accordance with the law before the People's Procuratorate of Sanyuan County made the procuratorial proposal on April 15, 2016; therefore, the action filed by the People's Procuratorate of Sanyuan County violates Article 41 of *the Measures for the Implementation of the Pilot Program of Initiating Public Interest Actions by People's Procuratorates*. 2. The claims of this public interest litigation are unclear. According to Article 43 of *the Measures for the Implementation of the Pilot Program of Initiating Public Interest Actions by People's Procuratorates* and Article 13 of *the Measures for the Implementation of the Pilot Program of Trial by People's Courts of Public Interest Litigations Instituted by People's Procuratorates by the Supreme People's Court*, when filing a public interest lawsuit, the people's procuratorate may request the people's court to order defendant to "perform its statutory duties within a prescribed time limit". However, the second claim in this case is unclear, raising requests on both action and result. Therefore, the defendant requested the people's court to dismiss the claims of the plaintiff of public interest litigation.

To support its arguments, the defendant submitted the following evidence to this Court:

The first group of evidence: 1. a copy of the feasibility study report; 2. a copy of Report on Submission of Proposal regarding Dacheng Town's Sewage Treatment Plant and Sewage Pipe Network Construction Project by People's Government of Dacheng Town; 3. a copy of approval on the Dacheng Town's Sewage Treatment Plant and Sewage Pipe Network by the Development and Reform Bureau of Sanyuan County; 4. a copy of the Approval of the Report on Environmental Impact of Dacheng Town's Sewage Treatment Plant and Sewage Pipe Network Construction issued by the Environmental Protection Bureau of Sanyuan County; 5. a copy the Preliminary Examination Letter on Land Use for Dacheng Town's Sewage Treatment Plant Project of Sanyuan

County issued by the Bureau of Land and Resources of Sanyuan County; 6. a copy of the Opinion on Site Selection for the Construction Project by the Housing and Urban-rural Development Bureau of Sanyuan County; and 7. copies of four photos of sewage treatment plant site's fences enclosing construction. To prove that: in 2012, People's Government of Dacheng Town, Sanyuan County already applied for construction of sewage treatment plant and sewage pipe network and obtained approval; the sewage treatment plant's land requisition has been completed and the infrastructure is under construction. The opinion of the plaintiff of public interest litigation that the defendant did not perform its duties in accordance with law and constituted an administrative nonfeasance is untenable.

The second group of evidence: 1. three copies of People's Government of Dacheng Town's meeting minutes; 2. a copy of the construction contract on Dacheng Town's drainage network construction; 3. a copy of the contract on cleaning up and dredging the open channel of Xizhang to Wangdian section's drainage channel of Dacheng Town; 4. a copy of the construction contract for construction project of Shaanxi Province. To prove that: People's Government of Dacheng Town, Sanyuan County attached great importance to the construction of drainage pipe network and has partially performed the preliminary supporting facilities construction of the project. The opinion of the plaintiff of public interest litigation that the defendant did not perform its duties in accordance with law and constituted an administrative nonfeasance is untenable.

The third group of evidence: 1. a copy of the Approval of the Dacheng Town's Proposal for the Drainage Engineering Construction Project by the Development and Reform Bureau of Sanyuan County; 2. a copy of the Letter of Acceptance for Dacheng Town's Drainage Pipe Network Construction Project by the Development and Reform Bureau of Sanyuan County; 3. a copy of the Approval of the Report on Environmental Impact of Dacheng Town's Drainage Pipe Network Construction Project issued by the Environmental Protection Bureau of Sanyuan County; 4. a copy of Application Report on Land Use for Dacheng Town's Drainage Pipe Network Construction Project by People's Government of Dacheng Town, Sanyuan County; 5. a copy of the Pre-examination Opinion Letter on Land Use for Dacheng Town's Sewage Discharge Pipe Network Construction Project of Sanyuan County issued by the Bureau of Land and Resources of Sanyuan County. To prove that: in order to completely improve the environmental situation, People's Government of Dacheng Town actively applied for projects and funding while moving forward the sewage treatment plant and the sewage pipe network construction project. People's

Government of Dacheng Town attached great importance to the construction of drainage pipe network and has partially performed the preliminary works of the project. The opinion of the plaintiff of public interest litigation that the defendant did not perform its duties in accordance with law and constituted an administrative nonfeasance is untenable.

The plaintiff of public interest litigation had no objection to the authenticity of the above evidence submitted by the defendant, but argued that the pollution problem remained and therefore the evidence provided by the defendant cannot prove that the defendant had performed its statutory duties.

Upon court cross-examination, the court determines the evidence submitted by the defendant as follows: the court affirms the above three groups of evidence submitted by the defendant since the plaintiff of public interest litigation did not object to their authenticity and legality. The above evidence can prove that the defendant had performed some specific work in the prevention and control of sewage discharge within the jurisdiction of the town. However, according to review of the *status quo*, the pollution problem of the sewage discharged to Qinghe River from the south sewage outlet of A Village, Dacheng Town of Sanyuan County still exists. Therefore, the evidence provided by the defendant cannot prove that the defendant has fully performed its statutory duties.

Based on the above valid evidence and statements agreed by both parties, this Court finds the following case facts:

In 2012, in order to resolve sewage discharge problems of four administrative villages and seven enterprises in the east of Dacheng Town, the defendant laid the drainage pipe network for centralized discharge of the sewage ditches built in 1960s for sewage discharge to Qinghe River from the south sewage outlet of A Village, Dacheng Town. In 2012, for the purposes of optimizing the environment and solving the direct discharge of sewage, the defendant applied for the project of "Constructing Dacheng Town's Sewage Treatment Plant and Sewage Pipe Network" to the Development and Reform Bureau of Sanyuan County; the Environmental Protection Bureau of Sanyuan County; the Bureau of Land and Resources of Sanyuan County and the Housing and Urban-rural Development Bureau of Sanyuan County successively and obtained approval. Thereafter, the defendant completed the land requisition for the sewage treatment plant, but the sewage treatment plant and sewage pipe network have not been constructed and the sewage discharge still continued. On April 15, 2016, the People's Procuratorate of Sanyuan County issued a procuratorial proposal to the defendant, advising that: "Dacheng Town's partial sewage from

production and living was discharged into Qinghe River via the left side of Jigeng Road, the south end of A Village, Dacheng Town. Due to inadequate construction of sewage treatment facilities and supporting pipe network, the discharged sewage affected the production, living and environmental quality of residents nearby", and "A Village of your Town failed to actively perform its duties with respect to the sewage discharge and disposal, which caused damages to the public interest." The People's Procuratorate of Sanyuan County advised the defendant to perform its statutory duties of improving environmental quality in accordance with the law, construct the sewage treatment facilities and supporting pipe network, and ensure that the sewage discharged to the Qinghe River meet the relevant national standards. The defendant failed to reply within the prescribed time limit after receiving the procuratorial proposal, nor did it commence the construction of the sewage treatment plant and sewage pipe network. After that, the People's Procuratorate of Sanyuan County authorized Xi'an Yuchi Testing Technology Co., Ltd. to test sewage discharged from the case-related sewage outlet. After three irregular tests on June 20, June 22 and July 4, 2016, it was found that BOD5, CODcr, ammonia nitrogen and suspended matter in the sewage all exceeded in varying degrees the integrated wastewater discharge standard of the Yellow River Basin (Shaanxi part) and the Grade 1 standard prescribed in the Integrated Wastewater Discharge Standard of the nation (GB8978-1996). The problem of sewage discharge remained. On October 24, 2016, the People's Procuratorate of Sanyuan County filed a public interest litigation before this Court, requesting people's court (1) to confirm that the failure of the People's Government of Dacheng Town, Sanyuan County to legally perform the duties of environmental protection and pollution prevention and control for sewage discharge to Qinghe River from the south sewage outlet of A Village, Dacheng Town, was illegal; (2) to order the People's Government of Dacheng Town, Sanyuan County to continue the performance of its statutory duties in accordance with the law, construct the sewage treatment facilities and supporting pipe network, and ensure that the sewage discharged into Qinghe River meets the relevant standards.

In addition, the feasibility study report submitted by the defendant on the project of "Constructing Dacheng Town's Sewage Treatment Plant and Sewage Pipe Network" specified that the construction period of the project was 25 months.

This court held that the area under the jurisdiction of the defendant, People's Government of Dacheng Town, Sanyuan County, is located in the north bank of the Qinghe River, a tributary of

the Weihe River, and the defendant has statutory duties to construct public sewage pipe network and facilities for centralized treatment of sewage in rural areas as specified in the the Regulation of Shaanxi Province on Administration of the Weihe River Basin. In 2012, the defendant submitted applications to the relevant departments for optimizing town environment. The defendant applied for the project of "Constructing Dacheng Town's Sewage Treatment Plant and Sewage Pipe Network" to the Development and Reform Bureau of Sanyuan County; the Environmental Protection Bureau of Sanyuan County; the Bureau of Land and Resources of Sanyuan County and the Housing and Urban-rural Development Bureau of Sanyuan County and obtained approval from these four departments for the construction, environmental impact, land use and site selection of this project. However, within over four years after the approval of the project involved, the defendant failed to commence construction. As a result, the long-existing sewage discharge problems of four administrative villages and seven enterprises in the east of Dacheng Town, Sanyuan County have never been treated in a centralized method and the sewage is discharged directly to Qinghe River exceeding the prescribed standards from the south sewage outlet of A Village, Dacheng Town, Sanyuan County, which has affected the production and living of residents nearby and the quality of environment. Such action violated Article 54 of *the Regulation of Shaanxi Province on Administration of the Weihe River Basin*. After the plaintiff of public interest litigation issued the procuratorial proposal to the defendant, the defendant still failed to effectively solve the problem of sewage discharge at south sewage outlet of A Village of Dacheng Town, and the public interests are still impaired. Therefore, the defendant's argument that it already performed its statutory duties by acting actively regarding the sewage discharge issues of Dacheng Town could not be upheld. The plaintiff of public interest litigation requested the court to confirm that it was illegal for the defendant not to conduct centralized treatment for sewage in the east of Dacheng Town, Sanyuan and discharge via south sewage outlet of A Village of Dacheng Town directly into Qinghe River, and for being slack in performing its duties of environmental protection and pollution prevention and control. Also, the plaintiff of public interest litigation requested the court to order the defendant to continue the performance of statutory duties in accordance with the law, construct the sewage treatment facilities and supporting pipe network, and ensure that the sewage discharged into Qinghe River meets the relevant standards. For the above claims of the plaintiff of public interest litigation, this Court upholds such claims in accordance with the law. The construction period of Dacheng Town's sewage treatment facilities and sewage pipe network

project may be determined by reference to the feasibility study report on the project of "Constructing Dacheng Town's Sewage Treatment Plant and Sewage Pipe Network". According to Article 72 and Item 2(1) of Article 74 of *the Administrative Litigation Law of the People's Republic of China*, as well as Article 54 of *the Regulation of Shaanxi Province on Administration of the Weihe River Basin*, the verdict is as follows:

I. It is confirmed that the defendant (the People's Government of Dacheng Town, Sanyuan County)'s sewage discharge in excess of the standards from the south sewage outlet of A Village, Dacheng Town, Sanyuan County and failing to fully perform the statutory duties of environmental protection and pollution prevention and control, is illegal.

II. The defendant, the People's Government of Dacheng Town, Sanyuan County, is required to complete construction of the public sewage pipe network and facilities for centralized treatment of sewage and in Dacheng Town, Sanyuan County within 25 months upon effectiveness of the judgment and ensure that the sewage discharged to the Qinghe River meet the discharge standards.

The case trial fee of 50 Yuan shall be borne by the People's Government of Dacheng Town, Sanyuan County.

If any party disagrees with the judgment, an appeal may be submitted to this court within 15 days from the day when the judgment is served, and the copies thereof shall be provided according to the number of persons of the other party and an appeal shall be filed to the Intermediate People's Court of Xianyang City of Shaanxi Province.

Presiding Judge QUAN Junxi

Judge WANG Jingfeng

Judge SUN Fangfang

11 April, 2017

Clerk, XU Zhangbo

Note: The judgment of first instance has come into effect.