

## **Discharge of Acid-Containing Wastewater**

### **Case Facts**

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In June 2016, Mr. Ding Peng, the prosecutor of Hezi City, was reviewing a case that the local police office referred to the prosecutor office. The potential defendant in this case, Mr. Wang, operated a small quartz processing plant in Siqui Village, Hezi City between April 2015 and May 2016. Mr. Wang employed hydrochloric acid and hydrofluoric acid in pickling the quartz stones and discharged the waste pickle liquor without a pollution discharge license. As a result, a total of over 100 tons of acid-containing wastewater was discharged to Lixi Canal and the connected Liangpu river, causing damages to the waterbodies.

The investigation on this case began after an environmental protection NGO in Hezi City discovered and reported the wastewater discharge by Mr. Wang to the Environmental Protection Bureau (EPB) of Hezi City in April 2016. The multiple tests by EPB on the wastewater and the surface water of Lixi Canal and the connected Liangpu river showed that the pH and fluoride values considerably exceeded the permissible emission standards; the highest pH value exceeded the emission standard by 4.38 times and the highest fluoride value exceeded the emission standard by 45.8 times. The Environmental Protection Science Research Institute of Hezi City estimated the resulting damage to the waterbodies to be equivalent to CNY 200,999. The police office confirmed that the processing plant had stopped production in May 2016; Mr. Wang was bankrupt and facing difficulty in paying debt.

The police office established that Mr. Wang had committed an environmental crime and referred the case to the prosecutor office in June 2016. It is Mr. Ding Peng's duty to review and take further actions pertaining to this case if necessary.

### **Case Introduction**

The prosecutor of Hezi City, Mr, Ding Peng was reviewing a case in which a former owner of a quartz processing plant discharged more than 100 tons of acid-containing wastewater into Lixi Canal and the connected Liangpu river without a pollution discharge license, causing damages to the waterbodies. After investigation, the police office established that the owner, Mr. Wang, had committed an environmental crime and referred the case to the prosecutor office. Mr. Ding Peng needed to decide the potential further actions pertaining to this case.

### **What Happened**

This case is adapted from the real case of Lianyungang City v. Wang Shengjie<sup>1</sup>. In the real case, the polluter discharged over 100 tons acid-containing wastewater into a trunk canal located in Ganyu District, Lianyugang City, causing environmental damage worth CNY 7,5000. A local NGO, Environmental Protection Association of Ganyu District, filed a public interest litigation against Mr. Wang with the allegation of the People's Procuratorate of Lianyungang City. The Intermediate People's Court of Lianyungang City, Jiangsu Province supported the public interest

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<sup>1</sup> Accessed from PKULaw. Citing Code is CLI.C.8411553.

litigation that it supported the action in which defendant was required to compensate for the damage to public interest. The court ruled that the defendant should (1) compensate CNY 51,000 for the environmental damage he caused, (2) provide a total of 960 hours of environmental voluntary labor (no less than six hours per time and at least six times per month) to make up the remaining part of the compensation, and (3) pay the plaintiff, Environmental Protection Association of Ganyu District, CNY3,500 for the litigation expenses.

### **Potential Relevant Legal Codes**

- Water Pollution Prevention and Control Law of the People's Republic of China (2017 Revision) [Article 21, 33, 96]
- Criminal Law of People's Republic of China (2017 Amendment Version) [Article 338]
- Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in the Handling of Criminal Cases of Environmental Pollution (2016) [Article 1, 3]
- Directory of National Hazardous Wastes (2016 Revision)
- Identification Standards for Hazardous Wastes-Identification for Corrosivity (GB 5085.1-2007)
- Tort Law of the People's Republic of China [Article 65]
- Environmental Protection Law of People's Republic of China [Article 64]
- Civil Procedure Law of the People's Republic of China [Article 55, 58, 257]
- Criminal Procedure Law of the People's Republic of China (2018 Amendment) [Part One Chapter III, Article 101]

### **Appendix: One Analysis of Mr. Wang's Criminal Liability**

Wang's act of discharging acid-containing wastewater did not constitute an environmental pollution crime stipulated by Article 338 of the Criminal Law of People's Republic of China (2017 Amendment Version)<sup>2</sup> (hereafter referred to as Criminal Law).

Article 338 defines environmental pollution crimes as acts that "ha[ve] caused serious environmental pollution (严重污染环境)" or "ha[ve] particularly serious consequences (后果特别严重)" by discharging, dumping, or disposing of radioactive waste, waste containing pathogens of infectious disease, poisonous substance, or hazardous substance. Although the wastewater containing hydrochloric acid discharged by Wang does not fall into the first three categories of radioactive waste, waste containing pathogens of infectious disease, or poisonous substance, it is one type of hazardous substance ("有害物质"). So, whether Wang's act is an environmental pollution crime hinges on what is recognized as "ha[ving] caused serious environmental pollutions" or "ha[ving] particularly serious consequences" and whether Wang's act meets the criteria.

Article 1 and Article 3 in the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in the Handling of Criminal Cases of Environmental Pollution (2016)<sup>3</sup> (hereafter referred to as the Interpretation)

<sup>2</sup> Accessed from PKULaw. Citing code is CLI.1.256346.

<sup>3</sup> Accessed from PKULaw. Citing code is CLI.3.287324.

stipulates the conducts which shall be determined to “have caused serious environmental pollution” and “have particularly serious consequences”, respectively. Within the 17 circumstances in Article 1 which are explicated described<sup>4</sup>, the 2<sup>nd</sup> and 10<sup>th</sup> are potentially applicable to Wang’s case – “illegally discharging, dumping or disposing of three tons or more of hazardous wastes” and “inflicting serious damage on eco-environment.”

First, it is necessary to look at whether the discharged wastewater containing hydrochloric acid is among hazardous wastes (“危险废物”), which are defined in the Directory of National Hazardous Wastes (2016 Revision)<sup>5</sup> (hereafter referred to as the Directory). Hydrochloric acid belongs to HW34 900-300-34 in the Directory, which is acid wastewater produced during the process of acid pickling. According to the Identification Standards for Hazardous Wastes-Identification for Corrosivity (GB 5085.1-2007)<sup>6</sup>, only wastes which have  $\text{pH} \geq 12.5$  or  $\leq 2.0$  are considered hazardous wastes of corrosivity. Based on EPB’s test result that the highest pH value exceeded the emission standard by 4.38 times, it can be calculated that the highest pH value is about 5.3, which is much higher than 2.<sup>7</sup> Therefore, although the wastewater Wang discharged was waste water containing acid waste after using for acid pickling, it did not meet the standard to be identified as hazardous wastes.

Second, it is necessary to determine whether the discharging act “[has inflicted] serious damage on eco-environment” to see if Wang’s act falls in the 10<sup>th</sup> circumstance in Article 1 of the Interpretation. There is no legal definition of “serious damage on eco-environment” to refer to. But it is plausible to grasp the extent of severity which can be recognized as “serious damage on eco-environment” by looking at the other circumstances in this same Article. For example, the 9<sup>th</sup> circumstance is “illegal income or resulting in the loss of public or private property of more than 300,000 yuan,” and the 11<sup>th</sup> circumstance is “resulting in more than 12 hours of interruption of centralized water drawing from the drinking water source at or above the township level,” etc. It is clear that all the 17 circumstances in Article 1 of the Interpretation reach a high level of seriousness that Wang act did not match. Furthermore, Article 6 of the Guide of Jiangsu High People's Court on the Application of Law in the Handling of Criminal Cases of Environmental Pollution<sup>8</sup> stipulates when the remediation cost to reverse the environmental damage exceeds CNY 2,000,000, the pollution conduct can be considered as “inflicting serious damage on eco-environment.” The remediation in Wang’s case is estimated at CNY 200,999, much lower than CNY 2,000,000. It is safe to say that although Wang’s discharging act has caused water pollution and environmental damage to waterbodies, it cannot be recognized as “inflicting serious damage on eco-environment.”

Because Wang’s act does not fall in either the 2<sup>nd</sup> or the 10<sup>th</sup> circumstance in Article 1 in the Interpretation, his act is not recognized as “ha[ving] caused serious environmental pollutions,” let alone “ha[ving] particularly serious consequences.” Therefore, although Wang has discharged

<sup>4</sup> The 18th is “Other circumstances that cause serious environmental pollution.”

<sup>5</sup> Accessed from PKULaw. Citing code is CLI.4.272731.

<sup>6</sup> Accessed from Ministry of Ecology and Environment at [http://bz.mep.gov.cn/bzwb/gthw/wxfwjfbfbz/200705/t20070522\\_103953.shtml](http://bz.mep.gov.cn/bzwb/gthw/wxfwjfbfbz/200705/t20070522_103953.shtml).

<sup>7</sup> The emission standard of pH is 6-9. The calculation takes 6 as the emission standard which leads to a low-end estimate of the pH value EPB tested to make sure that we do not underestimate the corrosivity of the wastewater.

<sup>8</sup> Accessed from PKULaw. Citing Code is CLI.13.1469629.

acid-containing wastewater to waterbody, he shall not assume criminal liability.

Furthermore, by comparing Wang's case with previous environmental pollution crime cases, it is clear that Wang's case is unlikely to be recognized as a crime by the court. For example, in the Case of Environmental Pollution by Wang Yongping<sup>9</sup> where the polluter was sentenced to imprisonment and a fine by the court, the discharged poisonous substance containing chromium in the sink, which is hazardous than Hydrochloric acid, and falls in the 3<sup>rd</sup> Article of the Interpretation pertaining to conducts which "have caused serious environmental pollution." Another example is People's Government of Yexie Township, Songjiang District, Shanghai Municipality v. Jiang Rongxiang et al. for Dispute over Water Pollution Liability<sup>10</sup> in which the polluters were also convicted criminals. In this judicial case, the pollution resulted in remediation which costed the local government CNY 887,266, a lot higher than CNY 200,999 in Wang's case, and falls in the 9<sup>th</sup> circumstance of Article 1 of the Interpretation. Take one more example, in the environmental pollution criminal case of People v. Fan Aidong, Wang Shenghua, and Cai Jun<sup>11</sup>, the discharge not only caused serious environmental damage but also caused the death of one person. But this level of severe damage to human or the environment does not present in Wang's case.



<sup>9</sup> Accessed from PKULaw. Citing Code is CLI.C.2433503.

<sup>10</sup> Accessed from PKULaw. Citing Code is CLI.C.3564432.

<sup>11</sup> Accessed from PKULaw. Citing Code is CLI.C.2456523.