

## Intermediate People's Court of Dezhou, Shandong Province

### Civil Judgement

(2015) De Zhong Huan Gong Min Chu Zi No.1

Plaintiff: All-China Environment Federation. Address: Level 6, Huabiao Building, Qingniangoudong Road, Hepingli No.14, Chaoyang District, Beijing.

Principal: XIE Yuhong, Deputy Secretary General of the federation.

Attorney: ZHANG Meng, lawyer, Shandong Kangqiao Law Firm.

Attorney: LI Shusen, lawyer, Shandong Kangqiao Law Firm.

Defendant: Dezhou Jinghua Group Zhenhua Decoration Glass Co., Ltd. Address: 55 Hubinnan Road, Decheng District, Dezhou, Shandong.

Legal representative: WANG Jinping, General Manager of the company.

Attorney: ZHANG Shunhua, lawyer, Shandong Tongjing Law Firm.

Attorney: LIU Hongzan, lawyer, Hebei Heming Law Firm.

The plaintiff All China Environment Federation (**ACEF**) filed a public-interest litigation against Dezhou Jinghua Group Zhenhua Decoration Glass Co., Ltd. (hereinafter referred to as "**Zhenhua**") over air pollution. This court accepted the case on March 24, 2015 and announced the acceptance on March 25, 2015. No application for joining the litigation was received from any other public authorities or social organizations during the announcement period. In accordance with the law, this court established a collegiate panel which heard the case publicly on June 24, 2016. The attorneys of ACEF, LI Shusen and ZHANG Meng, as well as the attorneys of Zhenhua, ZHANG Shunhua and LIU Hongzan, were present in the litigation. The trial has now been completed.

The plaintiff ACEF made the following complaints to this court: Zhenhua used to have three production lines of float glass. Line 1# was shut down in 2011, but line 2# and line 3# remained in use due to special technique requirements of glass production and for heating in winter. Although investment was made in dedusting and desulfurization facilities for the two remaining lines, Zhenhua continued to discharge excessive loads of pollutants, causing serious air pollution and affecting residents nearby. Despite repeated sanctions by environmental protection authorities, Zhenhua never took rectification measures and continued to discharge pollutants against the limit. In accordance with *the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations* (hereinafter referred to as "**EPIL Interpretation**"), ACEF brought the present litigation and requested Ruihua be ordered to:

1. Terminate excessive emission of pollutants immediately and expand its air pollution prevention facilities. Production and operations must be suspended until the acceptance of its air pollution prevention facilities by competent environmental protection authorities and have been put into use. 2. Compensate for the damage caused by its excessive emission of pollutants in the amount of CNY 20.4 million as (calculation based on the amount of investment needed for air pollution prevention facilities and operation costs for the facilities). 3. Be liable for CNY 7.8 million of compensation for the damage caused by its repeated failure to reduce the excessive emission of pollutants to be within the limit (CNY 100,000 penalty per day from January 1, 2015 to March 19, 2015). 4. Apologize to the public through media at provincial or higher levels. 5. Bear the litigation expenses, lawyers fees and all expenses incurred by onsite inspections, damage assessments, expert witness and etc. The compensations in the second and third requests shall be paid to a dedicated account of the local government for controlling air pollution in Dezhou city. The plaintiff later modified the compensation amount in the second request to CNY 27.46 million.

Zhenhua the defendant made the following responses: 1. It had already ceased the infringements. 2. The causal relationship between its emission and air pollution was difficult to establish. Due to the liquidity of air pollution, it was impossible to determine that the defendant company was the only cause for the air pollution. 3. The environmental damage assessment results were provided unilaterally by the plaintiff and were not recognized by the defendant. There was no factual grounding for the plaintiff to request the foregoing amounts of compensation or public apologies. The plaintiff should have taken account of the operating costs of existing pollution prevention facilities invested by the defendant when claiming the requested compensation. 4. The defendant accepted the request that the compensations should be paid to a dedicated account of the local government.

This court has found that: the plaintiff ACEF was registered on April 22, 2005 with the Ministry of Civil Affairs. It aims to serve as a bridge between the government and the public in implementing the sustainable development strategy, achieving national objectives on protecting the environment and protecting the environment rights of the public. It promotes the development of a resource-conserving and environmental-friendly society, contributing to a better environment in China and the world at large. ACEF's work include: organizing forums on environment and development as well as introduction and promotion of environmental protection technologies; hosting exhibitions entrusted by the government or based on environmental priorities, contributing to an environmental-friendly resource-conserving and society; organizing research and activities on protection of environmental rights, promoting legislation and law enforcement of environmental rights, establishing and improving a system for safeguarding environmental rights, providing legal assistance for disadvantaged groups affected by environmental damages; leading, facilitating and building the platform for public participation and

supervision in environment issues; providing advisory and consultant services on environmental policies, laws, regulations and technologies; Organizing education programs and awareness campaigns on protecting the environment and environmental rights to raise the public's awareness; promoting international people-to-people communication on environmental issues; carrying out international environmental cooperation programs entrusted by competent government authorities; carrying out environmental public-interest activities and other activities entrusted by the government. Annual inspections conducted by the Ministry of Civil Affairs showed that ACEF's operations reached the highest standard in 2009, 2010 and 2013, and the second highest standard in 2011 and 2012. ACEF also submitted their annual reports of each year from 2009 to 2013, demonstrating their work in environmental issue surveys, environmental consultancy, undertaking national projects, hosting seminars and workshops on theoretical issues and etc. ACEF also declared no records of law-violations since its founding.

The defendant Zhenhua was founded in 2000 and is involved in power generation, plate glass manufacturing, glass block manufacturing, deep processing of glass and glass products manufacturing. The company's 600 T/D premium ultra-thick glass project passed the environmental impact assessment (EIA) in December 2002 and the "three simultaneous" assessment in November 2003. Its premium auto float glass project passed the EIA in November 2007 and the "three simultaneously" assessment in February 2009.

According to Dezhou Environmental Monitoring Center, Zhenhua did not reach emission limits for waste gas in March, May, August, December of 2012 and in January, May and August of 2013, and discharged excessive loads of sulphur dioxide, nitrogen oxide, smoke and dust in February 2015. Zhenhua received administrative fines of CNY 100,000 each time from Dezhou Environmental Protection Bureau in December 2013, September and November 2014 and February 2015, and from Shandong Environmental Protection Department in December 2014. On March 23, 2015, Dezhou Environmental Protection Bureau ordered Zhenhua to suspend production until April 1, 2015 and stop excessive emission of pollutants. After being sued by ACEF, Zhenhua terminated all lines of production and selected a new site in Yangma Village to the north of Tianqu Industrial Park, Decheng District, ready for relocation.

During the trial of the case, to prove the damage caused by excessive emission of Zhenhua, ACEF signed a technical consultant agreement with the Chinese Academy for Environmental Planning (CAEP) in December 2015, entrusting CAEP to evaluate the losses to public and private properties caused by the pollution, including direct property losses and actual reduced value of the properties, as well as the costs for necessary measure to be taken to prevent the expansion of the pollution and to eliminate the pollution. Based on the evidence acquired by this court and cross-examined by both parties, CAEP Environmental Risk and Damage Assessment

Center provided the following assessment results in May 2016: Zhenhua was located in Decheng District in the inner city of Dezhou, surrounded by residential buildings. It used to have three production lines of float glass. Line 1# was shut down in October 2011, while line 2# (600 T/D premium ultra-thick glass) and line 3# (400 T/D premium auto float glass) remained in use.

1. Pollutants: Pollutants emitted by Zhenhua were mostly smoke, dust, sulphur dioxide and nitrogen oxide. According to the Report of Execution of Rectification Measures of Zhenhua, as of March 17, 2015, denitration and desulfurization facilities had not been installed or running on line 2#. Dedusting and desulfurization facilities on Line 3# had been in use since September 2014.
2. Period of non-compliance: It was verified that Zhenhua emitted excessive amount of sulphur dioxide for 68 days from June 10, 2014 to August 17, 2014; excessive emission of nitrogen oxide lasted for 327 days from November 5, 2013 to June 23, 2014 and from October 22, 2014 to January 27, 2015; excessive emission of smoke and dust lasted for 230 days from November 5, 2013 to June 23, 2014.
3. Emission loads: During the assessment period, 255 tons of sulphur dioxide was emitted directly into the air due to the absence of desulfurization facilities; the absence of denitration facilities caused direct emission of 589 tons of nitrogen oxide into the air; 19 tons of smoke and dust was emitted directly into the air due to the absence or insufficient capacity of dedusting facilities.
4. Unit disposal cost: According to database information, the unit disposal cost for sulphur dioxide is CNY 5,600 per ton, nitrogen oxide – CNY 6,800 per ton, smoke and dust – CNY 3,300 per ton.
5. “Virtual restoration cost”: According to *Ambient Air Quality Standards, Recommended Methods of Assessing Environmental Pollution Damages (2<sup>nd</sup> Edition)* and *Technical Specifications Environmental Damage Assessment in Emergency Response to Environmental Accidents*, the site involved in this case falls under Category II environmental function zones, whose sensitive coefficient range shall be 3-5 times the base virtual restoration cost. Taking a coefficient of 5 in the present report, the virtual restoration cost for the damage caused by excessive sulphur dioxide emission is CNY 7.13 million, that of nitrogen oxide is CNY 20.02 million and that of smoke and dust is CNY 310,000. The conclusion of the assessment is as follows: In total, 255 tons of sulphur dioxide, 589 tons of nitrogen oxide and 19 tons of smoke and dust have been discharged against the limit; The unit disposal costs of the three pollutants are determined at CNY 5,600 per ton, CNY 6,800 per ton and CNY 3,300 per ton, respectively. In conclusion, virtual restoration costs for the damage caused by the three pollutants are CNY 7.13 million, CNY 20.02 million and CNY 310,000 respectively, amounting to CNY 27.46 million in total.

During the hearing, this court has allowed ACEF to invite WU Qiong, an expert from CAEP to attend the trial to advise on the damages caused by excessive emission of sulphur dioxide, nitrogen oxide, smoke and dust, including the length non-compliance period, loads of the excessive emission, unit disposal costs, virtual restoration costs, the amount of ecological damage compensation and whether the operating facilities have an effect on virtual restoration costs. WU believes that sulphur dioxide, nitrogen oxide, smoke and dust may lead to the formation acid deposition. Excessive emission

of these substances will undoubtedly cause damages to properties, people's health, air quality and the eco service function of ambient air. The site involved in the case is environmentally sensitive because it is surrounded by residential buildings. Therefore, the highest coefficient, 5, was chosen in the assessment report to calculate virtual restoration costs for the environmental damage. The calculation has already taken into consideration of the existing pollution prevention facilities in use and the current amount does not include any punitive compensations.

In addition, the plaintiff ACEF paid CNY 100,000 for technical consultancy. Furthermore, according to the attorney agreement made and entered into force on April 20, 2016 between ACEF and Shandong Kangqiao Law Firm, the attorney fee was set at CNY 436,100, based on the value of the subject matter of the litigation at CNY 27.46 million. However, no payment evidence or invoice was submitted to this court. ACEF also acknowledged that the fee has not been paid up until the date of this court session. ACEF claimed another CNY 10,000 for transportation and accommodation expenses incurred by the litigation but did not provide any payment evidence.

This court has also found that the defendant Zhenhua established construction or sales contracts with Dezhou Fengcheng Hydraulic Machinery Co., Ltd., Zhangjiagang Jinming Environmental Protection Engineering Equipment Co., Ltd., and Dezhou Haishan Utilities Equipment Installation Co., Ltd. for the supply, construction, installation and manufacturing of desulfurization and dedusting facilities on line 2# and line 3#. The total costs agreed in these contracts amount to CNY 18.15 million, which the defendant claimed should be deducted from the due compensation.

The foregoing facts can be proved by ACEF Articles of Association, ACEF announcements, ACEF annual reports from 2009 to 2013, EIA report and EIA approval on Zhenhua's 600 T/D premium ultra-thick glass production line, EIA report and EIA approval on Zhenhua's auto float glass project, environmental inspection report and approval upon the completion of Zhenhua's upgrading project for its 600 T/D glass production line involving energy conservation facilities to replace oil with gas, environmental inspection report and approval upon the completion of the premium auto float glass project, Zhenhua's waste gas monitoring report, administrative penalty decision on Zhenhua by Dezhou Environmental Protection Bureau, Technical Consultant Agreement, environmental damage assessment opinions and contracts, investigation records, pre-sessional meeting records, inquisition records and court records.

Through reviewing the claims and the responses of the two parties, this court believes the trial of the present case shall focus on two aspects: 1. Are the plaintiff and the defendant eligible entities in the litigation? 2. What civil liabilities shall Zhenhua the defendant bear and how shall the amount of compensations be calculated?

Focus 1#: Are the plaintiff and the defendant eligible entities in the litigation?

According to Article 58 of *Environmental Protection Law of China*, “For activities that cause environmental pollution, ecological damage and public interest harm, social organizations that meet the following conditions may file litigation to the people’s courts: (1) Have their registration at the civil affair departments of people’s governments at or above municipal level with sub-districts in accordance with the law; (2) Specialize in environmental protection public interest activities for five consecutive years or more, and have no law violation records. The plaintiff, ACEF, is a social organization registered at Ministry of Civil Affairs on April 22, 2005, which is more than five years before the date of the litigation. ACEF has been involved in environmental public-interest activities for more than five years with no records of violation of law. In the trial, the defendant Zhenhua did not raise objection to the standing of ACEF as an environmental public-interest organization. Therefore, the plaintiff ACEF is an eligible entity in the present case.

According to Article 1 of EPIL Interpretation, “Where an authority or relevant organization as prescribed by law files a lawsuit against any conduct that pollutes the environment and damages the ecology, which has damaged the public interest or has the major risk of damaging the public interest, in accordance with the provisions of Article 55 of the Civil Procedure Law, Article 58 of the Environmental Protection Law, and other laws, if the provisions of item (2), (3) or (4) of Article 119 of the Civil Procedure Law are complied with, the people’s court shall accept the lawsuit.” According to Article 18 of EPIL Interpretation, “For any conduct that pollutes the environment and damages the ecology, which has damaged the public interest or has the major risk of damaging the public interest, the plaintiff may request the defendant to assume the civil liabilities including but not limited to the cessation of the tortious act, removal of the obstruction, elimination of the danger, restoration to the original state, compensation for losses, and apology.” This court finds that discharging pollutants above emission limits or the emission quota for key pollutants under the cap emission scheme can be perceived as serious threats to social public interests. Excessive loads of sulphur dioxide, nitrogen oxide, smoke and dust discharged by Zhenhua weakened the eco-service function of the air. Furthermore, acid deposition, which can be caused by excessive loads of sulphur dioxide and nitrogen, as well as reduced visibility and compromised air quality caused by excessive loads of smoke and dust, would cause damages to properties and people. Since November 2013, Zhenhua has been discharging excessive loads of sulphur dioxide, nitrogen oxide, smoke and dust into the air for multiple times. Despite repeated administrative penalties, Zhenhua did not take rectification measures. This is an action that “harms the public interests”. Therefore, Zhenhua is an eligible defendant in the present case.

Focus 2#: What civil liabilities shall the defendant Zhenhua bear and how should the amount of compensations be calculated?

According to Article 18 of EPIL Interpretation, the plaintiff may request the defendant to assume the civil liabilities including but not limited to the six following ways: “the cessation of the tortious act, removal of the obstruction, elimination of the danger, restoration to the original state, compensation for losses, and apology.” There is a legal grounding for the plaintiff to request that the defendant immediately stop discharging excessive loads of pollutants and apologize publicly on media at provincial level or above. This court has ascertained that the defendant has already shut down production and the original production site on March 27, 2015, which can be perceived as cessation of the tortious act. Environmental interests are public interests. In economics, environmental resources are a type of property. In aesthetics, recreation in nature is good for human body and soul. It is justified to request Zhenhua to apologize in public because its excessive emission harms the public’s interests in enjoying a healthy and pleasant environment.

On the amount of compensation for ecological damages: the plaintiff ACEF entrusted CAEP to assess the amount of compensations based on the evidence presented by the two parties and the evidence acquired by this court from environmental protection authorities. The conclusion of the assessment is as follows: sulphur dioxide --- unit disposal cost: CNY 5,600 per ton, excessive emission against limit: 255 tons, virtual restoration cost: CNY 1.428 million ( $5,600 \times 255$ ); nitrogen oxide --- unit disposal cost: CNY 6,800 per ton, excessive emission against limit: 589 tons, virtual restoration cost: CNY 4.0052 million; smoke and dust --- unit disposal cost: CNY 3,300 per ton, excessive emission against limit: 19 tons, virtual restoration cost CNY 62,700. This court finds: 1. Although the assessment report was unilaterally submitted by ACEF, the assessor is legally qualified to conduct such assessment; the subject of the assessment is relevant to the facts to be proved in court; the reasoning for the conclusion of the assessment has been cross-examined by the plaintiff and the defendant and has been proven to be true, objective and relevant; the defendant did not present any evidence overthrowing the assessment report. Therefore, this court accepts the report as valid evidence to prove the findings of fact. 2. In accordance with the *Opinions on EIA Standards in the Case of Zhenhua Premium Auto Float Glass, Ambient Air Quality Standards (GB3095-2012), Recommended Methods of Assessing Environmental Pollution Damages (2<sup>nd</sup> Edition)* and *Technical Specifications Environmental Damage Assessment in Emergency Response to Environmental Accidents*, the environmental damages calculated by the “virtual restoration cost” method can be applied to determine the amount of compensations for ecological damages. The ambient air zone where Zhenhua is in is a Category II zone. Accordingly, the ecological compensation should be 3-5 times the virtual restoration cost. This court decides to adopt the coefficient of 4 to calculate the ecological compensation and the result is: CNY 21.9836 million ( $\text{CNY } 1.428 \text{ million} \times 4 + \text{CNY } 4.0052 \text{ million} \times 4 + \text{CNY } 62,700 \times 4$ ). 3. According to Article 66 of *Tort Law of the People’s Republic of China*, “where any dispute arises over an environmental pollution, the polluter shall assume the burden to prove that it should not be liable or its liability could be mitigated under certain circumstances as provided for by law or

to prove that there is no causation between its conduct and the harm.” According to Article 7 of *Interpretation of the Supreme People's Court of Several Issues on the Application of Law in the Trial of Disputes over Liability for Environmental Torts*, “Where the polluter provides evidence to prove any of the following circumstances, the people's court shall determine that the polluter's pollution has no causal relationship with the damage. Where the polluter provides evidence to prove any of the following circumstances, the people's court shall determine that the polluter's pollution has no causal relationship with the damage. (1) The discharged pollutants could not possibly have caused the damage. (2) The discharged pollutants that may cause the claimed damage have not reached the place where the damage occurred. (3) The damage has occurred before the discharge of the claimed pollutants. (4) Any other circumstance under which it can be proven that there is no causal relationship between the pollution and the claimed damage.” The defendant Zhenhua maintained that it had already invested desulfurization facilities, whose operational costs of CNY 18.15 million shall be deducted from the total compensation. However, this court believes that the current compensation claim in the assessment report has already taken account of Zhenhua’s existing desulfurization and dedusting facilities, hence the defendant’s request does not meet the criteria of waiving or reducing liabilities. Therefore, this court does not support the defendant on this issue.

On the plaintiff’s claim requesting the defendant to pay CNY 7.8 million for the damages caused by excessive emission of pollutants: This court believes that the plaintiff’s claim was based on Article 99 of *Law on Preventing and Controlling Air Pollution of the People’s Republic of China* and Article 59 of *Environmental Protection Law of the People’s Republic of China*. These two provisions are targeted at administrative penalties rather than civil liabilities. In addition, EPIL Interpretation did not mention any punitive compensations. Therefore, this court will not support the plaintiff on this issue for lack of legal grounding.

On the plaintiff’s claim to request the defendant to “expand air pollution prevention facilities” and that to “suspend production and operations until its air pollution prevention facilities have been inspected and approved by environmental protection authorities and put into use”: The claim does not fall into any forms of assuming liabilities prescribed in EPIL Interpretation. Furthermore, considering the fact that Zhenhua has already shut down production and the original site and is ready for relocation, this court will not support the plaintiff on this claim.

On assessment fees, attorney fees and other litigation costs: According to Article 22 of EPIL Interpretation, “where the plaintiff requests the defendant to assume the inspection and identification expenses, reasonable attorney fee and other reasonable expenses for litigation, the people's court may support such a request in accordance with law”. This court supports the reasonable cost of CNY 100,000 for the assessment as claimed by the plaintiff. However, the plaintiff admitted that the attorney fees of CNY 400,000 have not been paid and that there was no payment evidence for other

litigation costs of CNY 10,000. Therefore, this court does not support these two claims.

In conclusion, in accordance with Article 124 of *General Principle of the Civil Law of the People's Republic of China*, Article 66 of *the Tort Law of the People's Republic of China*, Article 58 of *Environmental Protection Law of the People's Republic of China*, Article 8 of *Interpretation of the Supreme People's Court of Several Issues on the Application of Law in the Trial of Disputes over Liability for Environmental Torts*, and Articles 1, 2, 18, 20, 22 and 23 of *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations*, this court made the following judgements:

1. The defendant Zhenhua shall pay CNY 21.9836 million to the dedicated account of Dezhou Municipality as the compensation for the damages caused by excessive emission of pollutants to help restore the air quality of Dezhou.
2. The defendant Zhenhua shall apologize to the public on media at provincial level or above.
3. The defendant Zhenhua shall reimburse the plaintiff ACEF CNY 100,000 for the assessment fees within ten days as of the date of this Judgement taking effect.
4. Other claims made by the plaintiff ACEF are rejected.

In accordance with Article 253 of the *Civil Procedure Law of the People's Republic of China*, where the defendant fails to perform any obligation of pecuniary payment within the period specified in this judgement, it shall pay double interest for the debt for the period of deferred performance.

Litigation fees incurred in this trial of 182,000 shall be assumed by Zhenhua the defendant.

If the parties concerned are not satisfied with this Judgement, an appellate petition may be submitted to this Court with copies as per the number of people of the other party or its representatives within 15 days as of the date when this Judgement is delivered to appeal to the High People's Court of Shandong Province.

Presiding judge: LIU Libing  
Acting Judge: ZHANG Xiaoxue  
Acting Judge: GAO Xiaomin

July 18, 2016

Clerk: WANG Jie

Note: The two parties in this case did not appeal. The judgement of the first instance is now effective.