

Discussion on the scientific issues of identifying “Toxic Substances” in the field of environmental justice

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Abstract: This article discusses the scientific controversy of the identification of “toxic substances” involved in the Crime Against Polluting Environment in local judicial practice through normative analysis, legal interpretation methods, and case empirical analysis. The research conclusions believe that the identification of “toxic substances” should be grasped from a scientific point of view. If the Crime Against Polluting Environment involves “toxic substances”, that the detected content of the corresponding toxic substances exceeds the legal national standard is generally regarded as the identification standard. The value of this kind of identification standard lies in clarifying the boundary between environmental law enforcement and environmental justice, and the boundary between crime and non-crime, and accurately cracking down on crime according to law, building a legal barrier for the construction of ecological civilization.

Key words: Crime Against Polluting Environment, toxic substances, statutory crime, environmental jurisdiction, ecological civilization rule of law

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复函

鼎湖区委、区人民政府：

根据（肇）环境监测（G）字（2018）第07010044-JD号检测报告样品显示，该样品含有镍、铜、锌等重金属，但均不属于具有锌、铜、总铬、镍、铅、镉浸出毒性特征的危险废物，经研究，该非法倾倒的部分填埋物属于《最高人民法院最高人民检察院关于办理环境污染刑事案件适用法律若干问题的解释》第十五条第（三）款规定“含重金属污染物”。

肇庆市环境保护局
（盖公章）
2018年7月4日



Source: Evidence materials for the case 13, first instance, criminal case, (2019), Guangdong Province
1203

关于暗管等逃避监管问题的回复

2020-09-28 字号: [大] [中] [小] [打印]

来信:

执法中,对通过暗管等逃避监管的方式排放含重金属污染物的工业废水(没有报批环评手续,且该区域不允许排放工业废水),但未超标的环境违法行为,是否可以界定为涉嫌犯罪论处。“含重金属的污染物”纳入“有毒物质”的范畴,应限于浓度超过相应标准的含重金属的污染物,还是只要污染物中含有重金属即可,这类案件争议比较突出,请部领导予以指导,明确方向,以便基层执法人员依法依规开展执法和移送公安机关。

回复:

根据《最高人民法院 最高人民检察院关于办理环境污染刑事案件适用法律若干问题的解释》(法释〔2016〕29号,以下简称《解释》)第十五条规定,“含重金属的污染物”应当认定为“有毒物质”。根据《解释》第一条第(五)项规定,通过暗管等逃避监管的方式排放有毒物质,应当认定为“严重污染环境”。因此,通过暗管等逃避监管的方式排放含重金属的污染物,不论重金属浓度是否超过相应标准,应当认定为“严重污染环境”,依法追究刑事责任。

Source: The website of Ministry of Ecology and Environment of the People’s Republic of China

2017年版第十五条	2013年版第十条	重要区别
<p>下列物质应当认定为刑法第三百三十八条规定的“有毒物质”:</p> <p>(一)危险废物,是指列入国家危险废物名录,或者根据国家规定的危险废物鉴别标准和鉴别方法认定的,具有危险特性的废物;</p> <p>(二)《关于持久性有机污染物的斯德哥尔摩公约》附件所列物质;</p> <p>(三)含重金属的污染物;</p> <p>(四)其他具有毒性,可能污染环境的物质。</p>	<p>下列物质应当认定为“有毒物质”:</p> <p>(一)危险废物,包括列入国家危险废物名录的废物,以及根据国家规定的危险废物鉴别标准和鉴别方法认定的具有危险特性的废物;</p> <p>(二)剧毒化学品、列入重点环境管理危险化学品名录的化学品,以及含有上述化学品的物质;</p> <p>(三)含有铅、汞、镉、铬等重金属的物质;</p> <p>(四)《关于持久性有机污染物的斯德哥尔摩公约》附件所列物质;</p> <p>(五)其他具有毒性,可能污染环境的物质。</p>	<ol style="list-style-type: none"> 删除了旧解释第二项涉及化学品的规定; 重金属范围扩大; 在表述上将“物质”改为“污染物”,更为精确。

A comparison between the new 2017 Environmental Interpretation and 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 (Fashi [2013] No. 15, hereinafter referred to as the 2013 Interpretation).



证 明

我局环境保护监测站出具的普环监（测）字 2018 第（06）005 号监测报告中
有 8 个分析项目，对照《危险化学品目录》（2015 年），其中检出项“苯胺
类”属有毒、有害污染物质。

普宁市环境保护局

2018 年 6 月 9 日

Source: Evidence materials for the case 1203, first instance, criminal case, (2018), Guangdong Province

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