J. Y. Interpretation No.714 （November 15, 2013）*

【Liability for Pollution produced prior to the entry into force of the Soil and Underground Water Pollution Control Act】

ISSUE: Is Article 48 of the Soil and Underground Water Pollution Control Act which holds a polluter liable for pollution produced prior to the entry into force of the law and which has continued thereafter unconstitutional ?

RELEVANT LAWS:

Articles 15, 23 of the Consititution （憲法第十五條、第二十三條）；Article 1, Section 12 of Article 2, Article 48 of the Soil and Groundwater Pollution Remediation Act , promulgated on February 2, 2000（土壤及地下水污染整治法第一條、第二條第十二款、第四十八條(中華民國八十九年二月二日制定公布））；Article 13 of the Waste Disposal Act, promulgated on July 26, 1974（廢棄物清理法第十三條（六十三年七月二十六日制定公布））；Article 18, Article 26 of the Waste Management Act Taiwan Implemention Rules, promulgated on May 21, 1975 and repealed on February 1, 2002（廢棄物清理法臺灣省施行細則第十八條、第二十條（六十四年五月二十一日訂定發布、九十一年二月一日廢止））.

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KEYWORDS:

Soil and Groundwater Pollution Remediation Act（土壤及地下水污染整治法）, the polluter pays for his own pollution（污染者付費）, right to property （財產權）, right to work （工作權）, freedom to carry on business （營業自由）, principle of prohibition against retroactive laws （法律不溯及既往原則）, principle of protection of reliability（信賴保護原則）, principle of proportionality （比例原則）.**

HOLDING: Article 48 of the Soil and Underground Water Pollution Control Act, promulgated on February 2, 2000, provides: "The provisions of Articles 7, 12, 13, 16 through 18, 32, 36, 38, and 41 are applicable to acts which pollute the soil and underground water occurring before the entry into force of this Act. The relevant part at issue "the provisions are applicable to acts which pollute the soil and underground water occurring before the entry into force of this Act" is a regulation aimed at contamination which persisted after enactment of the said Act. It does not violate the principle of prohibition against retroactive law, or the principle of proportionality stated in Article 23 of the Constitution, nor does it violate

解釋文：中華民國八十九年二月二日制定公布之土壤及地下水污染整治法第四十八條規定：「第七條、第十二條、第十三條、第十六條至第十八條、第三十二條、第三十六條、第三十八條及第四十一條之規定，於本法施行前已發生土壤或地下水污染之污染行為人適用之。」其中有關「於本法施行前已發生土壤或地下水污染之污染行為人適用之」部分，係對該法施行後，其污染狀況仍繼續存在之情形而為規範，尚未牴觸法律不溯及既往原則及憲法第二十三條之比例原則，與憲法第十五條保障人民工作權及財產權之意旨均無違背。

the intent of Article 15 of the Constitution guaranteeing people's right to work and right to property.

REASONING: Article 48 of the Soil and Underground Water Pollution Control Act (hereinafter called the Soil Pollution Act), promulgated on February 2, 2000, provides: "The provisions of Articles 7, 12, 13, 16 through 18, 32, 36, 38, and 41 are applicable to acts which pollute the soil and underground water occurring before the entry into force of this Act." (hereafter called the provisions at issue). The provisions imposed a duty on the polluter to avoid spreading pollution and to clean up any contamination which persisted after the entry into force of the Soil Pollution Act, and prescribed penalties and enforcement measures for violating the abovementioned duty. The provisions at issue were applicable to polluters whose acts of pollution of soil or underground water occurred prior to the entry into force of the Act (hereafter called a pre-Act polluter). Such polluters are deemed liable for post-Act contamination. The intent of these provisions was to pre-

解釋理由書：八十九年二月二日制定公布之土壤及地下水污染整治法（下稱土污法）第四十八條規定：「第七條、第十二條、第十三條、第十六條至第十八條、第三十二條、第三十六條、第三十八條及第四十一條之規定，於本法施行前已發生土壤或地下水污染之污染行為人適用之。」（下稱系爭規定）所列規定係課污染行為人就土污法施行後仍繼續存在之污染狀況，有避免污染擴大及除去之整治等相關義務，以防止或減輕該污染對國民健康及環境之危害，並對違反土污法所定前述義務之處罰及強制執行。系爭規定將所列規定適用於本法施行前已發生土壤或地下水污染之污染行為人（下稱施行前之污染行為人），使其就土污法施行後之污染狀況負整治義務等。其意旨僅在揭示前述整治義務以仍繼續存在之污染狀況為規範客體，不因污染之行為發生於土污法施行前或施行後而有所不同；反之，施行前終了之污染行為，如於施行後已無污染狀況，系爭規定則無適用之餘地，是尚難謂牴觸法律不溯及既往原

scribe, as the regulatory object, a duty to clean up continuing contamination. They did not intend to distinguish pollution which occurred before, from that which occurred after, implementation of the Soil Pollution Act. Indeed, if the pollution ended before the Act was implemented, and no more pollution occurred after the Act came into force, then the provisions at issue do not apply. Therefore, they cannot be said to have violated the principle of prohibition against retroactive law. Also, Article 2, Section 12 of the Soil Pollution Act provides: " A polluter means a person who has caused soil or underground water contamination by acts described below: (1) unlawful discharge, leaks, pumping, or disposal of a contaminant; (2) acting as a conduit for or tolerating an unlawful discharge, leak, pumping, or disposal of a contaminant; (3) failure to clean up contamination as required by law. When the alleged contamination is attributable to unlawful acts undertaken by the polluter (for example, Article 13 of Waste Management Act promulgated on July 26, 1974, Article 18 and Article 26 of Taiwan Implemention Rules for the same Act

則。且依土污法第二條第十二款規定：「污染行為人：指因有下列行為之一而造成土壤或地下水污染之人：（一）非法排放、洩漏、灌注或棄置污染物。（二）仲介或容許非法排放、洩漏、灌注或棄置污染物。（三）未依法令規定清理污染物。」該污染係由施行前之污染行為人之非法行為（例如六十三年七月二十六日制定公布之廢棄物清理法第十三條；六十四年五月二十一日訂定發布、九十一年二月一日廢止之同法臺灣省施行細則第十八條、第二十條規定）造成，亦無值得保護之信賴而須制定過渡條款或為其他合理補救措施之問題。

promulgated on May 21, 1975, repealed on February 1, 2002), there is no need to make transitional regulations or take other reasonable remedial measures to protect legal reliability.

Most acts of soil and underground water pollution were caused by agricultural, industrial, or business operations. The provisions at issue imposed a duty on the pre-Act polluter to clean up, to pay for the clean-up, and to shut down operations, because contamination persisted after enactment of the Soil Pollution Act. This is a restriction on people's right to work and right to property guaranteed by Article 15 of the Constitution, and a restriction on freedom to carry on business implicit in that Article. Therefore, the Act must be made to accord with the principle of proportionality set out in Article 23.

土壤及地下水之污染多肇因於農、工、商之執業或營業行為，系爭規定課土污法施行前之污染行為人就施行後仍繼續存在之污染狀況負整治、支付費用及停業、停工等義務，即屬對憲法第十五條所保障之人民工作權、財產權及其內涵之營業自由所為限制，自應符合憲法第二十三條之比例原則。

The purpose of the enactment of the Soil Pollution Act was to clean up soil and underground water contamination, to ensure the continued use of soil and underground water, to improve the living environment, and to protect public health

查土污法之制定，係為整治土壤及地下水污染，確保土地及地下水資源永續利用，改善生活環境，維護國民健康（土污法第一條參照）。系爭規定為妥善有效處理前述土壤或地下水污染問題，使土污法施行前發生而施行後仍繼

(refer to Article 1 of the Soil Pollution Act). The provisions at issue are aimed at properly disposing of the abovementioned soil and underground water contamination, eliminating any contamination which existed before, and persisted after, the Act, carrying out a complete clean-up, whilst avoiding any spreading of the contamination. The Act has a proper purpose, and the means employed are helpful to achieving the end.

續存在之污染問題可併予解決，俾能全面進行整治工作，避免污染繼續擴大，目的洵屬正當，且所採手段亦有助於上開目的之達成。

If we do not make a pre-Act polluter responsible for existing pollution, the damage will be born by others or by the nation. This offends social justice and affects national finances. Therefore, the provisions at issue make a pre-Act polluter responsible for the clean-up in order to properly resolve the issue of soil and underground water contamination. There being no other less restrictive means to attain the same effect, the provisions at issue shall be regarded as a necessary means to achieve the legislative purpose.

對施行前之污染行為人若不命其就現存污染狀況負整治責任，該污染狀況之危害，勢必由其他人或國家負擔，有違社會正義，並衝擊國家財政。是系爭規定明定施行前之污染行為人負整治責任，始足以妥善有效處理土壤及地下水污染問題，而又無其他侵害較小之手段可產生相同效果，自應認系爭規定係達成前述立法目的之必要手段。

Pre-Act contamination persisting after the Act will jeopardize public health

土污法施行前發生之污染狀況於土污法施行後仍繼續存在者，將對國民

and the environment. Effective resolution of the issue of contamination is both necessary and in the public interest. The contamination caused by the pre-Act polluter was illegal. By law, the polluter was responsible to a certain degree for eliminating the contamination. The provisions at issue imposed a duty to clean-up, and placed certain restrictions on a polluter's right to property. In comparison with the public interest protected, this is not evidently excessive. Overall, it does not violate the principle of proportionality stated in Article 23 of the Constitution, nor does it violate the intent of Article 15 of the Constitution guaranteeing people's right to work and right to property.

健康及環境造成危害，須予以整治，方能妥善有效解決污染問題，以維公共利益。況施行前之污染行為人之污染行為原屬非法，在法律上本應負一定除去污染狀況之責任，系爭規定課予相關整治責任，而對其財產權等所為之限制，與所保護之公共利益間，並非顯失均衡。綜上，系爭規定尚未牴觸憲法第二十三條之比例原則，與憲法保障人民工作權、財產權及其內涵之營業自由之意旨均無違背。

According to Article 2, Section 12 of the Soil Pollution Act, a polluter is any person who commits acts listed in the law. Therefore, the provisions at issue take a person committing the abovementioned acts as the regulatory object. Whether an assignee of the polluter should assume the clean-up duty is not a question within the regulatory scheme of the provisions at issue. Therefore, there is no question as to

依土污法第二條第十二款規定，污染行為人指為該款所列各目行為之人。是系爭規定係以為上開污染行為之行為人為規範對象。至污染行為人之概括繼受人是否承受其整治義務，非屬系爭規定之規範範疇，自亦不生系爭規定未區分污染行為人與概括繼受人之整治義務是否違反平等原則之問題，併此指明。

whether the provisions at issue violate the principle of equality by failing to distinguish if the duty to clean-up falls on the polluter or an assignee.

Justice Yeong-Chin Su filed concurring opinion.

Justice Si-Yao Lin filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Chun-Sheng Chen filed concurring opinion.

Justice Chang-Fa Lo filed concurring opinion.

Justice Beyue Su Chen filed concurring opinion in part and dissenting opinion in part.

Justice Shin-Min Chen filed dissenting opinion.

本號解釋蘇大法官永欽提出協同意見書；林大法官錫堯提出協同意見書；黃大法官茂榮提出協同意見書；陳大法官春生提出協同意見書；羅大法官昌發提出協同意見書；陳大法官碧玉提出部分協同部分不同意見書；陳大法官新民提出不同意見書。

EDITOR'S NOTE:

Summary of facts: Article 48 of the Soil and Underground Water Pollution Control Act, promulgated on February 2, 2000, provides that the said Act's pollution control measures and related penalties (8 articles in total) are applicable to

編者註：

事實摘要：89 年 2 月 2 日制定公布之土壤及地下水污染整治法第 48 條規定，該法所定污染防治等措施及相關罰則 (計 8 條)，於該法施行前已發生土壤或地下水污染之污染行為人適用之 (下稱系爭規定)。

polluters for soil and underground water pollution occurring prior to the said Act's entry into force.

Petitioner A Industrial Development Corporation merged with Taiwan Alkali Industry Corporation (hereafter called B Co., a now defunct corporation) in 1983 under the direction of the Ministry of Economic Affairs. In 2004, the Tainan City Government determined that the dioxin and mercury pollution of C Factory and other facilities originally belonging to the B Corporation, were attributable to its processing of Pentachlorophenol and the exposure of residual piles penetrating the soil during the period 1965–1978, and that the company was the polluter. It was held responsible for liability under the Soil Pollution Act. Since the petitioner had merged with and absorbed its legal personality, all general liability was to be assumed by the petitioner. Tainan City ordered the petitioner to pay NT$652,221 as a clean-up fee, and to provide land to store the pollutants. The petitioner did not comply. The cost was doubled, with a penalty and late fee, in accordance with

聲請人A化學工業開發公司於72年間奉經濟部令合併B公司(下稱B公司，該公司因而消滅)。93年間臺南市政府認原屬B公司C廠等場址之戴奧辛及汞污染情形，係該公司54年至67年間，生產五氯酚等產製過程及剩餘產品露天堆放滲入土壤所造成，該公司為污染行為人，應依系爭規定負土污法所定整治責任，聲請人既合併吸收其法人人格，自應概括承受其責任，乃命聲請人繳納652,221元整治費用，另命提供土地以供設置汙染物安置區等。聲請人均未遵行，又被依相關規定加計2倍費用，並課處罰鍰及怠金，總計2,858,881元。聲請人不服，提起行政爭訟，並認經濟部未妥善監督且命二公司合併係違法行使公權力行為，提起國家賠償訴訟，惟均遭駁回確定，爰主張系爭規定有違法律不溯及既往等原則疑義，聲請解釋。

relevant rules, totaling NT$2,858,881. The petitioner instituted an administrative litigation to contest the order. It contended that the Ministry of Economic Affairs had failed to supervise the two corporations properly, and that the Ministry's ordering the merger of the two corporations was an illegal exercise of public power. The petitioner sued for national compensation. However, it was affirmed that all claims were to be denied. Thereafter, a petition for a constitutional interpretation on the ground that the relevant law is suspected of violating the principle of prohibition of retroactive laws was lodged.