



Handbook for Ecological Protection



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Foreword

The construction of an ecological civilization is a long-term plan concerning people's welfare and the nation's future in China. Confronted with increasing constraints on resources, severe environmental pollution and degradation of ecological system, we must highlight the ecological civilization concepts in order to respect nature, comply with nature and protect nature. Furthermore, priority must be given to the construction of an ecological civilization and the concept needs to be merged into all aspects and the whole process of economic construction, political construction, cultural construction and social construction. Only in this way can we build a beautiful China and realize the perpetual development of the Chinese nation.

With the economic and social development, some enterprises, organizations and individuals, for their own good, commit the crimes of illegal encroachment of agricultural land, illegal logging and denudation, and discharging waste gas and waste water disorderly and secretly. All of these crimes ruin the ecological environment including the forests, water, air and land on which people depend for living, and they bring about damage to the people's health, production and living. Ever since its founding in November of 2007, in order to preserve the ecological environment and protect people's health, the Ecological Protection Court of the People's Court of Qingzhen City has wielded the weapon of law to crack down on crimes ruining the ecological environment and resources, so as to provide Guiyang City's construction of ecological civilization with powerful judicial safeguarding.



1. Crime of Environmental Pollution

Crime of Environmental Pollution refers to behaviour that violates legal regulations on preventing environmental pollution, resulting in severe aftermath of environmental pollution, and deserves criminal penalty according to law.

1.1. Standards for Filing a Case

According to Article 60 of “*The Supreme People’s Procuratorate and The Ministry of Public Security’s Legal Regulation One on Standards for Filing a Criminal Case Under the Jurisdiction of Public Security Organs*”, if the case involves violating national regulations in order to discharge, dump or dispose of radioactive waste, waste containing infectious zymad, toxicants and other hazardous waste into the land, water and air, and resulting in serious environmental pollution accidents with one of the following situations, it shall be filed to the court:

1. Causing a loss of public or private property of 300,000 Yuan or more;
2. Causing a loss of fundamental functions of, or permanent destructions to, 5 mu or more of the basic farmland, shelter forestland, or special-purpose forestland; or 10 mu or more of other farmlands; or 20 mu or more of other lands;
3. Causing the death of 50 m³ or more of forests or other woods; or the death of 2500 or more of trees;
4. Causing the death of one person or more; the grave injury of three persons or more; the slight injury of ten persons or more; or the grave injury of one person or more together with the slight injury of five persons or more;
5. Causing severe damage to people’s health such as infectious diseases, their spreading; or the intoxication of people has reached the Level III or more serious situations of the “*Preliminary Contingency Plan for National Public Health Emergencies*”;
6. Causing other grave aftermath of the serious loss of public or private property or the death and injury of people;

1.2. Legal Punishment

Those causing severe environmental pollution shall be punished with imprisonment or criminal detention of less than three years, with a fine or a separately imposed fine; those with an especially grave aftermath shall be punished with imprisonment of over three years and less than seven years, with a fine.

1.3. Case Example - Mr. Long’s Environmental Pollution Case

The accused of this case, Mr. Long, is a director of Factory A. The accuser of this case, Mr. Cai, is an environment protection volunteer. The latter claims a patrol area of Dongmen River and its catchment under the jurisdiction of Qingzhen City and does a monthly patrol. In the evening of May 28th 2011, Mr. Long drove a rented oil tanker to his factory, took more than 30 tons of poisonous chemical waste liquid, which was confiscated by the Municipal Administration for

Industry and Commerce, drove it to a place near the municipal sewage disposal plant, and dumped it into the sewage ditch leading to the Dongmen River of Qingzhen City. When he had dumped about 8 tons of waste liquid, he was caught by the patrolman of the Bureau of Public Security and was stopped immediately. According to the provisions of “*Quality Standards for Surface Water*”, the benzene content of the waste liquid secretly dumped by Mr. Long exceeded the national environmental standard by 147682 times, the phenol standard was exceeded by 3180 times and benzopyrene standard by 2771.4 times, resulting in serious environmental pollution. Since Mr. Long’s behaviour had caused severe pollution of the local water environment, the Ecological Preservation Court of the City, in June of 2012, punished him for crimes of environmental pollution and unlawful business operation, sentencing him to two and a half years’ imprisonment and a fine of 100,000 Yuan.



2. Crime of Illegal Fishing of Aquatic Products

Crime of Illegal Fishing of Aquatic Products refers to behaviour that violates legal regulations on protecting aquatic products resources in order to fish for aquatic products in forbidden zone for fishing, or during closed seasons for fishing, or to fish for aquatic products using forbidden tools and methods, “with gravity of the circumstances”.

“With gravity of the circumstances” refers to taking the lead or gathering a crowd to fish for aquatic products; or fishing for aquatic products illegally for three times or more; or fishing for aquatic products with a devastating fishing method and causing a huge loss of water resources; or fishing illegally for precious and rare aquatic products which are under special state protection; or fishing illegally and resisting fishery management with violence etc.

2.1. Standards for Filing a Case

According to Article 63 of “*The Supreme People’s Procuratorate and The Ministry of Public Security’s Legal Regulation One on Standards for Filing a Criminal Case Under the Jurisdiction of Public Security Organs*” [Illegal Fishing Case (Art. 340 of The Criminal Law)], if the case involves violating legal regulations on protecting aquatic products resources in order to fish for aquatic products in forbidden zone for fishing, or during closed seasons for fishing, or to fish for aquatic products using forbidden tools and methods, with one of the following situations, it shall be filed to the court:

1. Fishing illegally for aquatic products in inland water for 500 kilograms or more, or for 5000 Yuan’s worth or more; or fishing illegally for aquatic products in marine water for 2000 kilograms or more or for 20,000 Yuan’s worth or more;
2. Fishing illegally for fry or breeding matrix of aquatic products that bear important economic value; or fishing illegally in inland water’s aquatic products resources preservation area with germ plasm for 50 kilograms or more or for 500 Yuan’s worth or more; or fishing illegally in marine water’s aquatic products resources preservation area with germ plasm for 200 kilograms or more or for 2000 Yuan’s worth or more;
3. Fishing for aquatic products in forbidden zone for fishing with forbidden tools or methods;
4. Fishing for aquatic products during closed seasons for fishing with forbidden tools or methods;
5. Fishing for aquatic products in open sea with forbidden fishing gear and causing a bad impact.

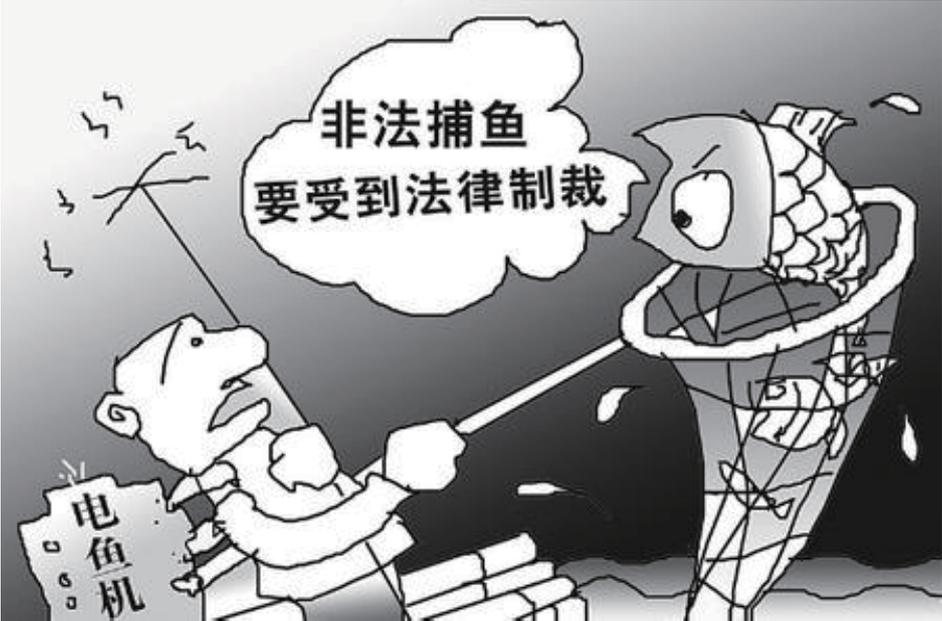
2.2. Legal Punishment

Those violating legal regulations on protecting aquatic products resources to fish in forbidden zone for fishing, or during closed seasons for fishing, or to fish for aquatic products using forbidden tools and methods with gravity of the circumstances shall be punished with

imprisonment of less than three years, criminal detention, criminal control or a fine; if the criminal offender is an organization or a company, the fine will be imposed on the organization or company ,and the chief executive together with the officers-in-charge shall also be punished according to law.

2.3. Case Example: A Certain Mr. Dai and His Accomplice's Illegal Fishing Case

On the morning of February 13th 2014, two brothers with the surname Dai from Meitan County arrived at the Meigong River's reach within Yongxing Town and fished for wild fish by using electric shock. From 1 am to around 4 am, they caught more than 25 kilograms of wild fish. They were arrested by a law enforcement officer. After the investigation and examination, their behaviour was suspected to be guilty of illegal fishing, so the public prosecution institute brought an indictment. On May 16th2014, the local court held hearings and adopted the indictment, sentencing them to eight-month imprisonment and four-month criminal detention respectively.



3. Crime of Illegal Encroachment of Agricultural Land

Crime of Illegal Encroachment of Agricultural Land refers to behaviour that violates legal regulations on land management in order to encroach upon cultivated land and puts it into other use with a severe destruction to a large amount of the land.

“A large amount of” refers to the illegal encroachment of basic farmland for 5 mu or more, or the illegal encroachment of other cultivated land besides basic farmland for 10 mu or more.

“A severe destruction to the cultivated land” refers to encroaching upon cultivated land illegally and building a kiln, a tomb or a house on it, or sand-digging, quarrying or stacking solid waste on the land, or conducting other non-agricultural construction on the land, causing serious destruction to or pollution of the planting condition of 5 mu or more of basic farmland or 10 mu or more of other cultivated land.

3.1. Standards for Filing a Case

According to Article 342 of The Criminal Law, if the case involves violating legal regulations on land management in order to encroach upon agricultural land such as cultivated land, forest land etc. and put it into other use, causing a severe destruction to a large amount of the land, with one of the following situations, it shall be filed to the court:

1. Encroaching illegally upon basic farmland of 5 mu or more or other cultivated land besides basic farmland of 10 mu or more.
2. Encroaching illegally upon the shelter forestland or other special-purpose forestland of five mu or more respectively or reaching a total of 5 mu or more;
3. Encroaching illegally upon other forestland of 10 mu or more;
4. Encroaching illegally upon 50% of the specified area of any kind of the forestland mentioned in (2) and (3) of this part, and meanwhile the sum of two kinds reaching the specified area mentioned in (2) or (3) of this part;
5. Encroaching illegally upon any other agricultural land of a large area.

3.2. Legal Punishment

Those violating legal regulations on land management to encroach upon cultivated land and put it into other use with a severe destruction to a large amount of the land shall be punished with imprisonment or criminal detention of five years or more, with a fine or a separately imposed fine.

3.3. Case Example: Mr. Qi and the Other Five Accomplices' Illegal Encroachment of Agricultural Land Case

The accused of this case, Mr. Qi, Mr. Chen, Mr. Huang, Mr. Lin, Mr. Qin and Mr. Jiang, without handling procedures of occupying forestland, mined wantonly without authorization at No. 5 Station of Qingshan Village of the Maijia Mine. The place where they mined for ores exceeded the mining area specified in the mining license and had impact on forestland. As a result, the forestland at No. 5 Station of Qingshan Village was badly damaged. A survey showed that the area of the damaged forestland reached 40.73 mu and the monetary loss of the damaged forest is as high as 179741 Yuan. Two of the accused, Mr. Qi and Mr. Chen, were the direct contractors of running the Mine. Another two of the accused, Mr. Huang and Mr. Lin, were the co-partners. The other two of the accused, Mr. Qin and Mr. Jiang, were the direct administrative staff of the Mine, paid by the previous mentioned four. These six defendants were all responsible for keeping the mining on the lawful track. The court treated this case as a “*Crime of Illegal Encroachment of Agricultural Land*” and sentenced them in the following way: Defendant Mr. Qi was sentenced to one and a half years’ imprisonment and a fine of 20,000 Yuan; Defendant Mr. Chen was sentenced to one year’s imprisonment and a fine of 20,000 Yuan; Defendant Mr. Huang was sentenced to one year’s imprisonment, suspended for one year, and a fine of 10,000 Yuan; Defendant Mr. Lin was sentenced to one year’s imprisonment, suspended for one year, and a fine of 10,000 Yuan; Defendant Mr. Qin was sentenced to six-month imprisonment, suspended for one year, and a fine of 10,000 Yuan; and Defendant Mr. Jiang was sentenced to six-month imprisonment, suspended for one year, and a fine of 10,000 Yuan. The six defendants were also sentenced to pay damages of 179741 Yuan to the affected party, Zhazuo Forestry Center of Guizhou Province, for the recovering of the damaged forests.



4. Crime of Illegal Mining

Crime of Illegal Mining refers to behaviour that violates legal regulations on mineral resources protection in order to mine wilfully without mining license, to mine in the national planned mining area, the mining area that is significant to national economy, or the mining areas of others, to mine without authorization for specific minerals that enjoy national protective mining, or to continue to mine after being officially ordered to stop mining, causing destruction to mineral resources.

4.1. Standards for Filing a Case

According to Article 68 of “*The Supreme People’s Procuratorate and The Ministry of Public Security’s Legal Regulation One on Standards for Filing a Criminal Case Under the Jurisdiction of Public Security Organs*” [Illegal Mining Case (Art. 343 of The Criminal Law)], if the case involves violating legal regulations on mineral resources protection in order to mine wilfully without mining license, to mine in the national planned mining area, the mining area that is significant to national economy, or the mining areas of others, to mine without authorization for specific minerals that enjoy national protective mining, or to continue to mine after being officially ordered to stop mining, causing 50,000 Yuan’s or more worth of destruction to mineral resources, it shall be filed to the court. If the case involves one of the following situations, it falls into the category of “to mine wilfully without mining license” specified in this article:

1. Mining without mining license;
2. Continuing to mine after the mining license has been cancelled or suspended;
3. Mining in the area that exceeds the specified area prescribed in the mining license;
4. Mining for minerals that are not in accordance with the provisions in the mining license (except for paragenetic or associated minerals);
5. Other situations of mining without mining license.

Mining without authorization when the mining license is temporarily seized is considered falling into the category of “to mine wilfully without mining license” specified in this article.

4.2. Legal Punishment

Those violating this crime gravely shall be punished with imprisonment of more than 3 years and less than 7 years, with a fine.

4.3. Case Example: Mr. Gui and the Other Two Accomplices’ Illegal Mining Case

In early April of 2013, the accused, Mr. Gui invited Mr. Wang, Mr. Zhao and Mr. Wong (handled in another case) to invest altogether more than 100,000 Yuan to mine illegally on a certain Mr. Bai’s private plots of hill located in the Eighth Valley of Duanlong Mountain belonging to Group

Seven of the central village of Jiuchang town, Xiuwen County. From April to July of 2013, the four defendants mined illegally for more than 1000 tons of coal by way of hole mining and sold it, making an illegal profit of more than 500,000 Yuan. According to an assessment, the defendants Mr. Gui, Mr. Zhao and Mr. Wang have damaged 5239.9 tons of resources while mining, which are worth 2 410354 Yuan, and the mineral resources damaged by them are 4614.72 tons, which are worth 2 122762 Yuan. The court treated this case as the “*Crime of Illegal Mining*” and sentenced them in the following way: Defendant Mr. Gui was sentenced to four years’ imprisonment and a fine of 20,000 Yuan; Defendant Mr. Zhao was sentenced to one and a half years’ imprisonment and a fine of 10,000 Yuan; and Defendant Mr. Wang was sentenced to one and a half years’ imprisonment, suspended for two years and a fine of 10,000 Yuan. The illegal profits made by the three defendants were also confiscated and turned in to the national treasury.



5. Crime of Illegal Logging

Crime of Illegal Logging refers to behaviour that violates national legal regulations on forests protection in order to log without authorization a relatively large number of trees or other woods owned by the state, the community, or other individuals, with a purpose of illegal encroachment.

5.1. Standards for Filing a Case

According to Clause 1, Article 345 of The Criminal Law, if the case involves illegal logging of a relatively large number of trees and a purpose of illegal encroachment with one of the following situations, it shall be filed to the court and tried as a crime of illegal logging:

1. Logging without authorization trees or other woods owned by the state, the community, or other individuals, or trees or other woods contracted and run by others;
2. Logging without authorization trees or other woods contracted and run by the actor's organization/company or the actor him/herself;
3. Logging trees or other woods owned by the state, the community, or other individuals, or trees or other woods contracted and run by others beyond the specified area provided in the logging license;

5.2. Legal Punishment

Those logging a relatively large number of trees or other woods illegally shall be punished with less than three years' imprisonment, criminal detention or criminal control, with a fine or a separately imposed fine; for cases involving a large number of trees or other woods, those logging illegally shall be punished with imprisonment of over three years and less than seven years, with a fine ; for cases involving an extraordinarily large number of trees or other woods, those logging illegally shall be punished with imprisonment of over seven years, with a fine.

“A relatively large number of” refers to logging illegally 2 to 5 cubic meters of trees or other woods or 100 to 250 trees in the forest region; or 1 to 2.5 cubic meters of trees or other woods or 50 to 125 trees in the non-forest region.

5.3. Case Example: Mr. Shao's Illegal Logging Case

From July of 2011 to September of 2011, the defendant Mr. Shao telephoned the other defendant Mr. Zhang to ask him to look for other helpers in logging trees secretly. At the same time, the defendant Mr. Shao fetched the defendants Mr. Zhong, Mr. Bai, Mr. Zhang, Mr. Wu, Mr. Lin and invited the defendants Mr. Deng and Mr. Xie to log trees illegally at the Xiaowan'gou Forest Region of the Sanyuan subsection of Zhazuo Forestry centre in Guizhou Province, the Da'shuiya Forest Region of the Sanyuan subsection, the Meiwan Forest Region of the Lengshuigou subsection and the Caidi Forest Region of the Lengshuigou subsection. Altogether, they logged 107 trees illegally during 14 times of illegal logging, and the bulk of the stumpage

covers 55.55 cubic meters. The court treated this case as the “*Crime of Illegal Logging*” and sentenced them in the following way: Defendant Mr. Shao was sentenced to three and a half years’ imprisonment and a fine of 6000 Yuan; Defendant Mr. Zhong was sentenced to two years’ imprisonment and a fine of 4500 Yuan; Defendant Mr. Zhang was sentenced to one and a half years’ imprisonment and a fine of 4000 Yuan; Defendant Mr. Bai was sentenced to one and a half years’ imprisonment, suspended for two years and a fine of 4000 Yuan; Defendant Mr. Xie was sentenced to one and a half years’ imprisonment, suspended for two years and a fine of 4000 Yuan; Defendant Mr. Deng was sentenced to one and a half years’ imprisonment, suspended for two years and a fine of 4000 Yuan; Defendant Mr. Zhang was sentenced to one year’s imprisonment, suspended for two years and a fine of 3500 Yuan; Defendant Mr. Lin was sentenced to ten-month imprisonment, suspended for one year and a fine of 3500 Yuan; and Defendant Mr. Wu was sentenced to six-month imprisonment, suspended for one year and a fine of 3000 Yuan. The illegal profits made by the nine defendants were also recovered according to law and returned to the party injured. Furthermore, the nine defendants were to replant trees at a place named by the court and the survival rate of the trees should be no less than 98%.



6. Crime of Illegal Denudation

Crime of Illegal Denudation refers to behaviour that violates the legal regulations on forests protection in order to log wilfully a relatively large number of trees or woods owned or run by the actor's organization/company, or located at the private plots of hill of the actor him/herself, without logging license approved and granted by the relevant government department, or against the location, quantity, species or method provided in the logging license. It is a crime act which brings destruction to national forests recourses, causing severe harm to the development of national economy and the balance of the natural ecosystem.

6.1. Standards for Filing a Case

According to Clause 2, Article 345 of The Criminal Law, if the case involves illegal logging of a relatively large number of trees against the legal regulations on forests protection with one of the following situations, it shall be filed to the court and tried as a crime of illegal denudation:

1. Logging wilfully a relatively large number of trees or woods owned by the actor's organization/company or the actor him/herself, without logging license approved and granted by the competent forestry administrative department or other departments acknowledged by law, or against the timing, quantity, species or method provided in the logging license;
2. Logging illegally the trees or woods owned by others against the specified quantity provided in the logging license.

A case, in which the party with the ownership of the woods in issue logged without authorization a relatively large number of trees or woods, before the ownership of the woods becomes clear, should be tried as a crime of illegal denudation.

6.2. Legal Punishment

Those conducting the illegal denudation of a relatively large number of trees or other woods shall be punished with less than three years' imprisonment, criminal detention or criminal control, with a fine or a separately imposed fine. For cases involving a large number of trees or other woods, those conducting the illegal denudation shall be punished with imprisonment of over three years and less than seven years, with a fine. The relevant organization/company shall be punished with a fine and the officers-in-charge and other persons directly responsible shall be punished according to the regulations of this article.

“A relatively large number of” refers to the illegal denudation of no less than 10 to 20 cubic meters of trees or other woods or 500 to 1000 trees;

“A large number of” refers to the illegal denudation of no less than 50 to 100 cubic meters of trees or other woods or 2500 to 5000 trees.

6.3. Case Example: Mr. Lu's Illegal Denudation Case

In March of 2007, the accused, Mr. Lu, bought 2500 Yuan's worth of natural masson pines on the plateau owned by Mr. Huang and the others in Dagulong Group of Xiaochong Village, Mai'ge County. With no logging procedure approved by the competent forestry administrative department of at least county's level, Mr. Lu organized the illegal denudation of 194 masson pines, with a ground diameter of 12-32 cm and a bulk of stumpage covering 54.1192 cubic meters. The accused, Mr. Lu, committed the crime of illegal denudation and was sentenced to four years' imprisonment with a fine of 5000 RMB.



7. Crime of Negligently Causing a Fire

Crime of Negligently Causing a Fire refers to behavior that causes a fire by negligence, resulting in serious aftermath and jeopardizing public safety. It is a crime jeopardizing public safety by a dangerous way of negligently causing a fire.

7.1. Standards for Filing a Case

According to Clause 2, Article 115 of The Criminal Law, if the case of negligently causing a fire involves one of the following situations, it shall be filed to the court:

1. Causing the death of one person or more or the grave injury of three persons or more;
2. Causing a direct loss of public or other individuals' property of 500,000 Yuan or more;
3. Causing the burning of more than ten households' houses and their other subsistence essentials;
4. Causing a forest fire, with more than two hectares' burned forestland or more than four hectares' burned open forestland, shrub land, immature forestland or nursery land;
5. Causing other grave aftermath.

Note: The definitions of "forestland", "open forestland", "shrub land", "immature forestland" and "nursery land" shall comply with relevant regulations of national forestry administrative departments.

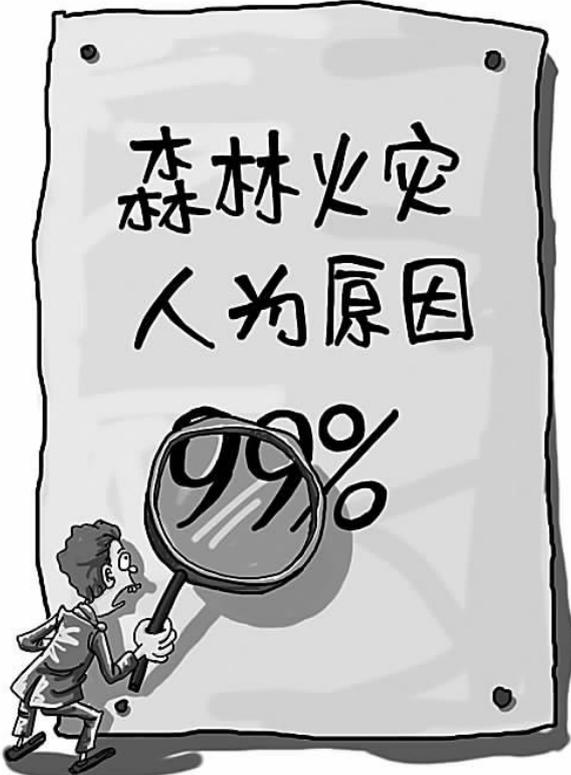
7.2. Legal Punishment

Those committing arson, dyke-breaching, blasting, putting in poisonous or radioactive substance or substance containing contagious pathogen, or those causing grave injury or death of a person, the great loss of public or private property by other means shall be punished with imprisonment of ten years or more, life imprisonment or death penalty. Those committing the preceding crime negligently shall be punished with imprisonment of more than three years and less than seven years. If the circumstances of the case are not grave, they shall be punished with imprisonment or criminal detention of less than three years.

7.3. Case Example: Ms. Yang's Case of Negligently Causing a Fire

At about 7 am February 28th 2010, the defendant Ms. Yang and her husband Mr. Lu came to work in their appointed land. Mr. Lu was responsible for trimming the branches of fruit trees and the defendant Ms. Yang was responsible for clearing weeds and burning them to collect ash manure. However, after lighting a fire, she didn't wait until the fire was gone and didn't adopt measures such as covering it with earth, but left with her husband, so that the burned heap led to a forest fire, burning up the woods of 138 households of villagers in Luobu Village, Yungui Village and Santun Village of Baihuahu County. The afterward assessment of technicians

majoring in forestry showed that the area of the burnt land was 2815 mu, among which was 1050 mu of forestland, 272 mu of shrub land and 1493 mu of barren hills. The defendant Ms. Yang committed the crime of negligently causing a fire and was sentenced to five years and a half's imprisonment.



EGP-Guizhou Project is one of the 15 partnership projects under the EU-China Environmental Governance Programme. The aim of the project is to "Improving access to environmental justice to protect people' s environmental rights in Guizhou Province". More information regarding the project please refer to the website: www.egp-guizhou.com

Contact Information:



Mr Mikael Olshammar

Tel: +46 8-598 563 08, E-mail: mikael.olshammar@ivl.se



中华环保联合会
All-China Environment Federation

Ms Gao Xiaoyi

Tel: +86 10 51230007, E-mail: xiaoyi_acef@126.com



贵州省环境保护国际合作中心
Guizhou International Cooperation Centre
for Environmental Protection

Mr Hu Jun

Tel: + 86 851 85577314, E-mail: epblixin@163.com



Mr Huang Chengde

Tel: + 86 851 85840297, E-mail: huangchengde@vip.163.com



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