

# Legal Thinking and Suggestions on 3.15 "Earth Pit Pickled Cabbage" Incident from the Perspective of Food Safety Law

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**Abstract:** *The event of "earthen pit" exposed at the "315" party of CCTV this year has caused considerable controversy in the society, and the relevant reports are shocking; After the incident was exposed, brands such as Kangshifu and Wugu Fish Meal issued statements announcing the cancellation of their cooperation with the company, the removal of related products, and an apology. The exposure of this incident should not only reflect on the omissions in the production and sales processes from relevant supervision and management departments to quality inspection and sales departments, but also reflect on the implementation level and application guarantee of China's Food Safety Law and relevant food safety regulations in judicial practice. From the perspective of the Food Safety Law, this article will analyze a series of legal considerations and legal suggestions on food safety issues in China triggered by the "soil pit pickled Chinese cabbage" incident.*

**Keywords:** *Earthen Pickles, Food Safety Law, Supervision*

## 1. Introduction

CCTV reported on the March 15 evening party that the products of "Laotan pickled Chinese cabbage" produced by Hunan Flag inserted Vegetable Industry are actually "earthen pickled Chinese cabbage" purchased and processed. The sanitary conditions of this "soil pit pickled Chinese cabbage" are not guaranteed at all. When fermenting, it is in the roadside soil pit, and workers trample on pickled Chinese cabbage with bare feet at will, and they can also see various impurities and "cigarette butts" mixed in. Furthermore, without undergoing a "secondary fermentation" process, the fermentation environment is extremely chaotic. During the fermentation process, lactic acid bacteria do not form a dominant microbial community, and there are more miscellaneous bacteria (even many harmful bacteria), resulting in very poor hygiene conditions. However, the flag planting vegetable industry received these "earthen pickled Chinese cabbage" and directly processed them without any food safety testing, and packaged them into various "pickled Chinese cabbage ingredients". These soil pit pickled Chinese cabbage have become thoroughly contaminated food, and there are various safety risks: physical pollution: cigarette butts, dust and other impurities, bacterial pollution of contaminated food raw materials: insufficient pickling leads to insufficient lactic acid bacteria, and harmful bacteria (such as coliform bacteria) exceed the standard so much so that "it will decay and rot in one or two months". Chemical pollution: The pickling time is short, and the concentration of nitrite has definitely not decreased to a safe range. In order to extend the shelf life, enterprises add excessive amounts of preservatives - such as sodium sulfite, sodium pyrophosphate, and sulfur dioxide - to maintain food quality. (According to the person in charge, it is basically 2-4 times the standard, although it is likely to be harmless, it is also illegal). Moreover, the flag planting vegetable industry is playing the "double standard" naked He has the ability to make reliable pickled Chinese cabbage, but reliable jars and secondary fermented pickled Chinese cabbage are only for export, while the food for Chinese people is purchased, and there is no food safety guarantee for "earthen pickled Chinese cabbage" [1].

## 2. Explanation of Illegal Points

(1) Analysis of the illegality of the involved enterprises itself

The raw material cultivation, acquisition, pickling of "soil pit pickled Chinese cabbage" and the research, development, processing and sales of pickled Chinese cabbage products by Hunan Chaqi Vegetable Industry Co., Ltd. is actually the third-party suppliers who supply the raw materials of

"pickled Chinese cabbage products" to other fast food brands such as Master Kang instant noodles, grains and fish meal. Therefore, for Hunan Chaqi Vegetable Industry Co., Ltd, Its behavior and subject shall comply with Article 50 of the Food Safety Law, which states that "food producers purchase food raw materials and related products". Therefore, the company's failure to carry out legal and compliant health indicator testing on "earthen pickled Chinese cabbage" violates the provision that "the producer shall inspect the food, additives and related products produced in accordance with the food safety standards, and can only leave the factory or sell after passing the inspection". According to Article 124 of the Food Safety Law, Hunan Chaqi Vegetable Industry Co., Ltd. is also suspected of violating the first paragraph of this article, which states that "the production and operation of pathogenic microorganisms, pesticide residues, biological toxins, heavy metals and other polluting substances, as well as other substances harmful to human health, exceed the limit of food safety standards" and the fourth paragraph Production and operation of food and food additives that are corrupt, rancid, moldy, infested, contaminated, mixed with foreign objects, adulterated, or have abnormal sensory properties.

At the same time, the company's insistence on selling food even though it knows that the hygiene conditions of the food do not meet the standards, in order to seek illegal profits, is suspected of violating the relevant provisions of Article 12 and Article 23 of the "Food Recall Management Measures" issued by the State Food and Drug Administration. Food producers are aware that the food they produce and operate belongs to unsafe food through self-inspection, public complaints and reports, and notification from operators and regulatory departments, Should actively recall; Actively take remedial, standard compliant, and destruction measures for unsafe food withdrawn from the market; Producers and operators shall immediately destroy unsafe food that has been illegally added with substances such as non-edible, spoiled, or diseased livestock and poultry, which can seriously endanger human health and life safety [2].

In addition, in addition to the violation of the Food Safety Law and other specific laws and regulations in the field of food safety, the company's production of earthen pickled Chinese cabbage is related to the physical and mental health and safety of the people, and also involves problems at the level of China's criminal law. According to the relevant provisions of Article 144 of the Criminal Law, the food produced and sold by the company is mixed with toxic and harmful non-food raw materials, or knowingly mixed with toxic Harmful non-ood raw materials of food shall be sentenced to fixed-term imprisonment ranging from less than five years to life imprisonment based on the varying degrees of physical damage suffered by the victim.

(2) Analysis on the illegality of relevant enterprises using "soil pit pickled Chinese cabbage" as raw material

Kangshifu and other enterprises, as food producers and sellers, should also strictly follow the relevant provisions of Article 52 of the Food Safety Law when purchasing raw materials, and strictly follow the food safety standards formulated by the state to inspect the products produced. Only after passing the inspection can they enter the sales market. Therefore, Master Kang and other enterprises who use substandard food safety raw materials such as "earthen pickled Chinese cabbage" should also bear the desired civil and administrative responsibilities. Meanwhile, from a commercial perspective, as a listed company, Kangshifu is likely to face civil and commercial legal issues such as being sued by its investors.

(3) Analysis of violations by relevant administrative departments and public officials

After the incident was exposed, the State Administration for Market Regulation immediately established a supervision team to rush to Hunan. According to subsequent reports, several officials of the local municipal supervision bureau involved have been suspended or dismissed due to lax supervision and ineffective performance of their duties. According to the responsibilities of the Township Food and Drug Administration Office, local food and drug supervision bureaus should regularly conduct assessments and analyses of the food and drug safety situation within their jurisdiction, and formulate and take corresponding regulatory measures<sup>1</sup> in response to existing problems and links; At the same time, basic information registration files of food and drug related units in the jurisdiction should be established and synchronized in real-time, and real-time dynamic monitoring of the food and drug market in the jurisdiction should be carried out. The occurrence of the soil pit pickled Chinese cabbage incident reflects the inadequacy of the work and duties of the relevant quality supervision departments of local governments at present.

<sup>1</sup> Article 3 and 4 of the Responsibilities of the Township Food and Drug Administration Office

### 3. Analysis of Illegal Reasons

#### (1) Pickled Chinese cabbage Producer

a) Lack of respect and awe towards consumers. The illegal production and sale of food that does not meet the hygiene standards or may even endanger consumers' lives and health for profit, knowing that the food infringes on consumers' rights, still refuses to produce and sell it for a long time, reflecting the company's disregard for the legitimate rights and interests of consumers.

b) Lack of respect for the working environment and the traditional skill of pickled Chinese cabbage pickling. The exposed pictures of workers' barefoot trampling, smoking, spitting, throwing cigarette butts and other behaviors all show that the workers of the enterprise are careless and contemptuous of the production process of pickled Chinese cabbage; Not rectifying the dirty work environment and allowing it to exist reflects the company's slackness in production work, lack of emphasis on the work environment, and disrespect for traditional skills.

c) Lack of respect for the law. The relevant departments of the country have always had strict regulations and legal guarantees for food safety. This is not only for consumers to ensure food safety when purchasing food, but also for the protection of people's lives and health by law. Violating food safety means violating the bottom line of national laws.

#### (2) Regulatory authorities

From this case, it can be seen that the daily supervisory departments such as the Geological Supervision Bureau and the Food and Drug Administration have had lax supervision and ineffective performance of their duties, and have not strictly inspected and supervised major small and medium-sized food processing factories and workshops in the local area in accordance with documents such as the "Measures for Daily Supervision, Inspection and Management of Food Production and Operation" (hereinafter referred to as the "Measures")<sup>2</sup> issued and implemented by government departments, Local food and drug administrations need to implement their daily supervision and inspection responsibilities, conduct random inspections from time to time, and publish the inspection and supervision results to the public. It is obvious that the "earthen pickled Chinese cabbage" event will only occur when the geological supervision department and the Food and Drug Administration fail to seriously implement the provisions of the Measures [3].

### 4. Measures that Relevant Departments Can Take and Accountability of Other Entities Towards the Company

#### (1) Administrative department

According to relevant laws and regulations, the food safety supervision and management departments of local governments at or above the county level have the authority to confiscate illegal gains, illegally produced food, tools, equipment, and raw materials for illegal production and operation in cases where the behavior of the enterprise involved in such incidents has not yet been classified as a criminal act; For serious cases, administrative penalties such as revoking licenses may also be imposed based on the actual situation. At the same time, local health departments should quickly establish a specialized accident emergency committee to provide technical advice and decision-making consultation for food safety accident emergency management, provide professional and accurate suggestions for the assessment, adjustment, and termination of accident levels and emergency response levels, and provide professional technical guidance for the relevant clinical treatment, epidemic investigation, product testing and analysis involved in accidents. According to the Implementation Rules of the Food Safety Law, Chapter 6 on Food Safety Accident Handling, Chapter 7 on Supervision and Management, and Chapter 8 on Legal Responsibility, the enterprises involved should actively cooperate with relevant departments for inspection and punishment. The enterprises may face a series of administrative penalties such as suspension of business for rectification, fines, and revocation of business licenses.<sup>3</sup> In addition, if food that does not meet the standards causes damage to consumers, the involved enterprises also need to bear civil liability for consumer compensation [4].

#### (2) Consumers

From the perspective of consumers, they can actively enhance their legal awareness of protecting

<sup>2</sup> Management Measures for Daily Supervision and Inspection of Food Production and Operation

<sup>3</sup> Emergency Plan for Food Safety Accidents of the Ministry of Health (Trial)

their own rights and interests. If consumers confirm that they have purchased the problematic food produced by the manufacturer, they can actively go to the quality inspection agency for testing. If the test results confirm that the product is not qualified, according to the provisions of the Food Safety Law, consumers can claim a refund of one and a compensation of ten. If consumers cause health damage after consuming problematic food, they can also demand punitive compensation of three times the actual amount of damage from the affected enterprise.

## 5. The Preliminary Preparation Work That the Procuratorial Organs Can Take Around it

The early intervention of procuratorial organs in the investigation of complex cases is a major advantage in the socialist legal system with Chinese characteristics, which helps to improve the efficiency of procuratorial police cooperation and investigation supervision, improve the quality of cases, and improve the efficiency of criminal proceedings. In this case, the procuratorial organs can analyze and combine the causes of various problems based on the facts and attributes of the case, and on the basis of existing materials, develop targeted and efficient preparatory work strategies for preliminary visits, investigations, and evidence collection [5].

(1). Procuratorial police should check whether the products provided by the brand supplied by the enterprise are removed from the shelf or sealed according to the exposure in relevant regions. Focus on checking whether there are still Laotan pickled Chinese cabbage beef noodles, pickled pickled Chinese cabbage and other suspected fake and inferior products on the shelves, and contact the relevant departments to cooperate with the legal supervision and rectification.

(2). Relying on the procuratorial function of public interest litigation, we will continue to work together with relevant market supervision departments to conduct on-site inspections, seal up, retain samples, take photos, and collect evidence of the involved items in relevant factories, in order to provide evidence materials for judicial institutions to pursue responsibility in the later stage; Inspection department should timely issue the procuratorial proposal to the local natural resources bureau, market supervision administration and other relevant departments, require the relevant departments to further organize the investigation, focus on strengthening the safety supervision and management of other production and operation sites such as small workshops and food vendors of the same type, strengthen the supervision and management within the administrative region, and investigate and deal with the suspected violations of land management laws and regulations due to the production of illegal pickled Chinese cabbage in accordance with the law [6].

(3). Regulators will make an appeal to society, actively encourage the people to report and expose similar illegal enterprises and behaviors, fully learn from this case, fulfill the public interest litigation function, and from the perspective of supervision and management, further supervise and urge all competent units to do a timely job in supervision, ensure the safety of the people's tongue, and let the people eat safe and trustworthy food.

## 6. Legal Suggestions for Improving China's Current Food Safety Issues

The protection and governance of food safety is a relatively comprehensive strategic system for the country. Due to the involvement of multiple departments and fields, effective coordination and cooperation from all sectors of society are required in the implementation of specific work to establish a relatively complete food safety strategic system. Food safety issues are not only related to the physical and mental health and quality of life of people, but also of great significance for participating in agricultural and even international food product trade competition with countries in the international community. At present, China has basically formed a food hygiene legal system led by the Food Hygiene Law, consisting of comprehensive food hygiene regulations, <sup>4</sup>food technical standards and norms, and other relevant legal norms, and has accumulated practical experience and experience for a certain period of time. However, in daily judicial practice, the practical application and regulatory efficiency of relevant laws and regulations by relevant departments still need to be improved. Overall, improving the current situation of food safety issues in China should be considered from the legislative and law enforcement perspectives.

(1) Legislative aspect

<sup>4</sup> Implementation Rules for the Food Safety Law of the State Council Food Safety Commission

Currently, the country has introduced relevant laws and regulations such as the Food Safety Law, the Agricultural Product Quality and Safety Law, the Implementation Regulations of the Food Safety Law, the Food Safety Operating Regulations for Catering Services, the Measures for the Supervision and Management of Food Safety in Catering Services, and the Product Quality Law to address food safety related issues. However, it can still be found from the pickled Chinese cabbage incident that a large number of small and medium-sized enterprises in local markets still ignore laws and regulations and "act against the wind". From the perspective of national legislation, in order to prevent or reduce the occurrence of such incidents, it is necessary to introduce and improve the Food Hygiene Law with higher level effectiveness and strong binding force, increase the punishment and accountability for related illegal behaviors, make clearer and more operational modifications in terms of punishment amount and qualitative issues, and attempt to abandon some of the incomplete implementation provisions in current food laws [7].

## (2) Law enforcement aspect

For relevant regulatory authorities, pipeline authority should be further clarified. From the perspective of national macroeconomic regulation, the responsibilities of relevant government departments specifically responsible for food safety should be further strengthened, and unified certification, management, standards, and grading of food safety inspection work should be implemented nationwide; At the same time, in terms of policies, we will strengthen support for the development of the safe food industry, further improve laws and regulations related to food safety and the market price system, strengthen macro control at the national and government levels, and guide consumers to consume healthily.

## 7. Conclusion

The "soil pit pickled Chinese cabbage" incident exposed the weakness of pickled Chinese cabbage industry's management of raw material safety in some regions of China. To change the negative impact of "earthen pickled Chinese cabbage" on the whole industry, enterprises and relevant departments should increase investment, promote the processing mode of "earthen pickled Chinese cabbage" to a safer and more environmentally friendly intensive processing mode as soon as possible, and take this event as an important opportunity to improve the safety management of pickled Chinese cabbage raw materials in China.

Establishing a relatively scientific and comprehensive national food safety system requires mutual cooperation and coordination among organizations at all levels of the country and society, which cannot be separated from the organic cooperation and linkage of management departments, technical monitoring, production departments, sales departments, and various social groups. Therefore, taking the time of "soil pit pickled Chinese cabbage" as a lesson, the next step related departments should continue to strengthen publicity and education, and improve the green consumption awareness and consumption concept of the masses of society; continuously strengthen the research, application, and promotion of food safety assurance technologies. At the same time, it should be recognized that the development of food safety is a highly systematic work, involving a wide range of applications and disciplines. Therefore, in relevant scientific research fields, it is necessary to strengthen communication and cooperation among various related disciplines, and continuously contribute to the common improvement and establishment of China's scientific safety food strategic system.

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