



## SUMMARY OF CASE LAW ON WASTE PRODUCER LIABILITY IN EUROPE

### BELGIUM

**Name of case:** [Decision No. 15/2014](#) of January 29, 2014

**Country and court:** Constitutional Court of Belgium

**Date of holding:** January 29, 2014

#### **Summary of facts:**

This is a landowner case which presented the question of whether a landowner that was not the waste producer and had not engaged in any active disposal is responsible for an 8.5 million Euro cleanup and criminal sanctions for noncompliance with an administrative remediation order.

It is only relevant to the “waste producer” liability issue because the Court acknowledged under Belgian law there would have been no question that the producer of the waste would have been responsible.<sup>1</sup> The court found that in this case the landowner knew of the contamination before the acquisition of the land and therefore, it did not run contrary to the Belgian Constitution to impose liability in this case. Testimony was that the value of the land was zero and that a pre-sale inspection showed “enormous dumping of illegal waste.” The availability of recourse to recovery costs from the waste producer was considered in the factors that underlay the decision.

#### **Legal basis for holding defendant liable:**

The basis for the landowner’s liability was Article 12 of the Decree on Waste (Decree of the Flemish Council of 2 July 1981 on the prevention and management of waste, as subsequently amended). This covers wastes “disposed of or abandoned.” Belgian law on the responsibility of waste producers is firmly established for hazardous wastes. [The Law of July 22, 1974](#) the Toxic Waste Act, Article 7:

---

<sup>1</sup> “The Flemish Government further argues that, under the principle of “polluter pays” as formulated in Article 15 of that Directive, the cost of disposing of waste must be borne by the holder who has waste to a collector or a company referred to in Article 9 and / or by the holders past or the producer of the waste generator. The Court of Justice of the European Union, Directive does not exclude that the cost of disposal should be supported, in certain cases, by one or several people who are neither the producers nor the holders of waste.”

*“Where industrial, commercial, agricultural, craft or scientific results in produce toxic waste, the person responsible for it is required to provide at its expense, the destruction, neutralization or disposal of this toxic waste. This person remains responsible for the destruction costs, neutralization or elimination of these toxic wastes regardless of the responsibility of those in charge of it these operations. In addition, this person is responsible for any damage whatsoever that may be caused by toxic waste, especially during the duration of transportation at their destruction, neutralization or disposal, even if it does not itself carry these operations.*

The national provisions are also reinforced by regional laws that have transposed the EU Revised Waste Framework Directive.<sup>2</sup>

**Scope of damages or relief ordered:**

This was an 8.5 million Euro cleanup.

**Note:** Nothing in the waste law transposed into national law supersedes, replaces or negates potential liability under the Environmental Liability Directive or the Industrial Emissions Directive (IPPC). Both of which have been applied to waste producers.

**CONTACT INFORMATION:**

**Randy Mott JD, Director for Europe, the Middle East and Africa, CHWMEG, +48-607339012, [europa@chwmeq.org](mailto:europa@chwmeq.org).**

**To report dead links in the above, provide feedback, or to notify CHWMEG that updates to this information are necessary**, click the link below to send an email to Randy Mott (type a brief note with your feedback before sending your email): <mailto:europa@chwmeq.org?subject=- BELGIUM -- Feedback/Dead Link/Update Required for Accessing CASE STUDY Information>

REV 0: Mar 2015

---

<sup>2</sup> Brussels region: Article 10 of the Order of 7 March 1991 provides: 'Anyone producing or holding waste shall be required to dispose of it or have it disposed of in accordance with the provisions of this Order, under conditions which restrict harmful effects on soil, flora, fauna, air and water and, in general, without adversely affecting the environment or human health. The Executive [of the Brussels-Capital Region] shall ensure that the cost of disposing of waste is borne by the holder who has waste handled by a disposal undertaking or, failing that, by the previous holders or the producer of the product from which the waste came'.

Flemish Region: "[Art. 10](#) . According to the principle 'the polluter pays', the costs of waste management are the responsibility of the first waste producer, the holders of current or previous waste of the producer from which the waste or distributors or importers of such a product.