



**SUMMARY OF CASE LAW ON
WASTE PRODUCER LIABILITY IN EUROPE
IRELAND**

Name of case: Wickow County Council v. Fenton

Country and court: High Court Ireland (trial court)

Date of holding: July 31 2002

Summary of facts: The hauler – Dublin Waste – illegally dumped medical wastes on Mr. Fenton’s rural land. The county government authorized under the Irish law to enforce such matters sought an injunction directing that the owner and other responsible parties undertake a remedial investigation and cease to dispose of waste at the location. Hazardous medical waste was illegally mixed in with normal trash and ended up at the illegal dump site. The cleanup estimate was between 4-5 million Euro.

Legal basis for holding waste generator or producer liable:

The Waste Management Act of 1996, sec. 31 (added by the 2011 regulations) adopted the “polluter pays” principle covering the waste producer. The Court noted that *“this principle means that culpable parties or responsible parties should pay for the remediation or mitigation of the entire effects of any environmental pollution rather than the community and that Irish legislation should be interpreted so as to achieve that objective.”*

At least one reported Irish case took the view that the transfer could not terminate waste producer obligations. *“There was no control over ... [the hauler’s] destination and once again it was foreseeable that such lack of control and failure to ensure that he delivered to an authorised dump could result in the waste material being delivered to an unauthorised dump.”* [Wicklow County Council v. Fenton](#) [2002] IEHC 102 (31 July 2002). The hospitals that originated the medical waste, however, were exonerated and not held liable because their actions were not the “cause” of the pollution in the opinion of the Court. Finding active malfeasance in the haulers and at least negligence in the landowner, the Court did not make the waste producers legally responsible on these facts.

However, this was an early case in Ireland at the trial court level. The subsequent transposition of the Revised Framework Directive. The Irish Waste Law of 2011 added Article 32(2)(A) which provides: *“When the waste is transferred from the original waste producer or waste holder to an appropriate person for preliminary treatment, the responsibility for carrying out a complete recovery or disposal operation shall not be*

discharged as a general rule.” So the Wickow result would be problematic for the waste producers under the new law.

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.

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