



SUMMARY OF CASE LAW ON WASTE PRODUCER LIABILITY IN EUROPE

SWITZERLAND

Name of case: Muttenz Landfill, Basel, Switzerland

Country and court: Administrative proceeding, Basel, Switzerland 2014

Date of holding: not applicable (administrative determinations over several years). See FOEN press release, January 13, 2003.

Summary of facts: A municipally-owned landfill site had reported groundwater problems beginning in 2002, including a wide range of chlorinated organic compounds. Contaminated wells were reported as early as 1957. The landfill was located in an industrial area surrounded by commercial buildings. It received industrial and domestic waste for many years.

Meetings between the various stakeholders, including waste producers, were conducted in 2008 to arrive at an agreement on site investigation and remediation. This resulted in the local government (Canton) assuming some part of the investigative costs, the Federal Government covering 40% of the remediation, and private parties apparently handling the balance. The case was widely publicized and also features a dedicated Facebook page about its remediation.

Legal basis for holding waste generator or producer liable: The law in Switzerland has been clear since 1995. The Environmental Protection Act has several provisions that relate to waste producers.

Art. 32 Principles: 1. The holder of the waste bears the cost of its disposal, except for waste for which the Federal Council regulates the bearing of the cost in some other way. 2. If the holder cannot be identified or if he cannot fulfil his obligation under paragraph 1 because he is unable to pay, the cantons bear the cost of disposal.¹

¹ See also "Art. 26 Self-regulation:

1. The putting into circulation of substances for uses where, when handled incorrectly, they, their derivatives or waste may present a danger to the environment or indirectly endanger people is prohibited.

2. To this end, the manufacturer or importer is responsible for their own self-regulation."

The liability for remediation is directly addressed in Article 32a of the statute:

“1. The polluter pays for necessary measures for the investigation, monitoring and remediation of contaminated sites.

2. If more than one polluter is involved, they shall bear the costs according to their shares of the causation. Primary liability is on whoever caused the action by his behavior. Parties involved only as the owner of the site carry no cost if they acted with due diligence and had no knowledge of the pollution.

3. The public authority concerned bears the cost share of the polluter pays, which cannot be computed or where parties are insolvent.

4. The Authority shall issue an order on the cost distribution when a polluter so requires

Under these provisions, the Federal Office for the Environment has traditionally considered waste producers as legally responsible for the remediation of their waste given to third-parties. See FOEN, Contaminated Sites Released, January 13, 2003 (this is strict liability regardless of the waste producer's state of knowledge, but more costs should be allocated to more dangerous wastes). In terms of polluter pays, Swiss law has long recognized that acts of omission by waste producers can be the basis for pollution liability, including as to remediation obligations. See R. Zweidler, "[Financing Redevelopment of Contamination Sites](#)."

Scope of damages or relief ordered: This involved a 140 million Swiss franc cleanup with a majority paid by private parties based on strict but proportional liability.

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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