



SUMMARY OF CASE LAW ON WASTE PRODUCER LIABILITY IN EUROPE

AUSTRIA

Name of case: VwGH 2011/07/0095

Country and court: Administrative Court

Date of holding: September 26, 2013

Summary of facts:

A company retained a construction firm which sent construction debris to location to be used as land-filling at the site of a future riding school. The local government objected to the use of the material and considered it waste. The site had no authorization to accept wastes. Approximately 80,000 cubic meters of contaminated soil and debris resulted. The contractor and the official customer from the demolition were ordered to remove the material.

Legal basis for holding waste generator or producer liable:

The Court found that the location was not authorized to accept wastes. It further found that the demolition customer was a waste producer and that the contractual relationship with the construction firm that actually selected the location and did the disposal did not relieve the waste producer of its obligations to assure authorized and proper disposal of the waste. The Court cited negligent behavior of the waste producer (the demolition customer) in not assuring that the end disposal was authorized. The decision was under the old 2002 law, which required the waste producer to assure authorized disposal and treatment.

However, the Austria law has been amended and now creates a broader responsibility than the demolition debris case imposed. The Austrian Waste Law now provides certain responsibilities for the waste producer, including:

Sec.15 (5a): *"The waste holder is responsible for ensuring that (a) the waste is transferred to a destination in relation to the collection and treatment by authorized waste collector or waste processors and b) the environmentally sound recovery and disposal of these wastes is explicitly mandated."*

[§ 15 AWG Allgemeine Behandlungspflichten für Abfallbesitzer](#)

This creates both pre-transfer obligations and, in effect, a post-transfer obligation. The obligation certainly applies to assuring licensed third-parties are involved. See this debris case, [Administrative Court Decision, 2001/07/0095, September 26, 2013](#) [joint and several liability imposed on waste producer of construction debris and all downstream handlers where final site was not licensed to accept the material]. This rule can also now apply, however, if the final disposition is not “environmentally sound,” even if permitted. Note also that the liability is joint and several, so the waste producer could end up paying everything if the third-parties lack assets.

Scope of damages or relief ordered:

The Court sustained the order to remove all of the debris and the resultant contaminated soil.

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, +48-607-339012, Europe@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=-- AUSTRIA -- Feedback/Dead Link/Update Required for Accessing CASE STUDY Information>