



SUMMARY OF CASE LAW ON WASTE PRODUCER LIABILITY IN EUROPE

FRANCE

Name of case: SOCIÉTÉ MINIERE ET INDUSTRIELLE DE ROUGE (SMIR)

Country and court: Conseil d'État , France (Supreme Administrative Court)

Date of holding: July 13, 2006

Summary of facts: SMIR had sent over 200 tons of old tires to a facility that went bankrupt (SOFRED). The Nantes Administrative Court ordered SMIR to recover the tires. SMIR, the waste producer, argued that they had legally transferred the tires to the treatment facility and had paid the invoice, and that this was the scope of their duty under the law. They argued that the transfer made them no longer a “waste holder.” The Court rejected this argument, stating that “the owner or producer of waste is responsible for disposal...the mere fact that he has a contract to ensure it does not exempt him from legal responsibility.”

Legal basis for holding waste generator or producer liable:

The Court cited Article L. 5412 of the Environmental Code: "*Any person who produces or holds waste under conditions likely to produce effects harmful to the soil, flora and fauna, to degrade sites or landscapes, to pollute the air or water, to cause noise and odors and, in general, to carry health impairment of man and the environment, is obliged to ensure ... disposal according to the provisions of this chapter, under conditions to avoid those effects.*" (emphasis added). The Court's summary of the holding: "Under Articles L. 5411 and following of the Environmental Code that the owner or holder of the waste is responsible for disposal. The mere fact that he has a contract in order to ensure this by a service provider does not exempt his legal obligations ..."

LINK: [French original](#).

A follow-up governmental notice was prepared and [published](#) after the decision. The Ministry of Ecology and Sustainable Development explained that "*the Council of State ruled that the holder or producer of waste remains responsible for these until their removal is complete. The fact that he transferred by contract to a third party that mission did not discharge this responsibility.*" DEVP0650571C, September 18, 2006. This is reiterated again in very unambiguous language:

“[A] producer or holder of waste, whether or not the operator of a classified installation, is [only] released from his obligations where the waste which it is responsible have been effectively eliminated. Thus, if a waste is not treated, or is not [handled] in accordance with the law, the administration is entitled to an order requiring that producer or holder of such waste disposal, even if it would have paid the bill for their removal from the third party with whom he had contracted. ...[When] the waste has not been treated or has not been in accordance with the legislation that puts into question the responsibility of the holder or producer.” Id.

Scope of damages or relief ordered:

Defendant SMIR was ordered to remove their wastes.

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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