



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

### LUXEMBOURG

**Name of case:** [Company X SA vs. Minister of Environment](#), Number 225 5 8/2007

**Country and court:** Administrative Tribunal of the Grand Duchy of Luxembourg

**Date of holding:** February 16, 2007

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

The site of successive dry cleaning operations was being excavated for office building and contamination complaints started. The Minister of the Environment ordered the owner of the land to conduct “*an analytical program for detection and quantification of possible pollution of soil, subsoil, groundwater and buildings...*” The owner objected on the grounds that it was not the producer of the wastes, which was historically disposed of on the property. The issue revolved around who was a “waste holder” and should be responsible for the remedial investigation.

The Court observed “under Article 3. a) of the 1994 Act, a contaminated building would be considered as waste and that according to Article 3. n) of the 1994 Act ... the holder of waste’ is the waste producer or the natural or legal person who is in possession of the waste.” The court noted that under the Waste Law, the owner of the property “*would be obliged to recover or eliminate waste, especially the Minister of means of action would be limited and that it is urgent, against the background of the case and in particular the analyzes performed on the website, to know in detail and in a timely manner the state of the contaminated site and proposed measures for its consolidation.*”

The Court is enforcing the order against the current owner – citing the need for access to the land and other considerations- noted that the owner who was not engaged in dry cleaning operations could make a claim against the prior operators of the property as waste producers or holders.

#### **Legal basis for holding waste generator or producer liable:**

While holding the owner responsible for the immediate actions ordered by the Environmental Ministry, citing the 1994 Act, the Court observed that “*in the event that Company X should proceed with the recovery and disposal of waste at issue, it would be justified on the basis of Article 15 of the 1994 Act [to pursue] the cost of waste*

*disposal against the previous holders or the producer of the waste...*" The Court considered the contaminated groundwater to be a waste and followed the European Court decision in Van der Walle on the issue of what was a waste.<sup>1</sup> We should note that the Court affirmed the propriety of adjoining the previous operator as a party to the proceedings, based on the fact that they could eventually face cost recovery actions.

### **Scope of damages or relief ordered:**

The decision only affected the immediate order for the remedial investigation, but was written to cover the eventual disposal of the contaminated soil and groundwater.

The [full opinion of the court](#) is available online in French.

Note: The case was decided on the basis of the 1994 law. On December 3, 2014, the Luxembourg Government enacted a new waste law to meet the Revised Waste Framework Directive. It is very explicit on the responsibility of a waste producer:

#### ***"Article 18 Responsibility of the producer and the waste holder***

*(1) Without prejudice to the provisions of Article 13, all original waste producer or other holder Waste must conduct himself or treatment must do by a dealer, broker, an institution or enterprise engaged in waste treatment operations or by a private or public waste collector, in accordance with Articles 9 and 10. When conducting himself in waste treatment, it must ensure that treatment is in accordance with the provisions of this Act or, where applicable, the regulations adopted in implementation and does not correspond to the transactions referred to in Article 42.*

*(2) If the waste is transferred, for the purpose of preliminary treatment, the original producer or holder to one of the natural or legal persons referred to in paragraph (1) of this Article, the responsibility for carrying a complete recovery or disposal is not discharged as a general rule. Without prejudice to Regulation (EC) No 1013/2006, the original producer retains responsibility for all the processing chain." [Link to law in French.](#)*

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<sup>1</sup> "Article 3 of the Act of September 1994 defines the waste holder as " the waste producer or the natural or legal person who has waste in its possession." In this case, it is indisputable, from the expert report of the Institute HUT of 6 September 1988 and the report of the consulting firm EUROFINs of 24 September 2004 that the land located in Luxembourg, .., is contaminated and must be regarded as waste within the meaning of Article 3. a) of the 1994 Act. In this context, it's correct [to apply] ... the judgment of 7 September 2004 by the Court of Justice of the European Communities (Case C1/03) that a qualified waste within the meaning of Directive 91/156 / EEC of 18 March 1991 amending Directive 75/442 / EEC on waste, soil contaminated by an accidental spill hydrocarbons."

**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).**

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