



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

### POLAND

**Name of case:** Judgment by Administrative Court of Gdańsk of 24 September 2014, Ref. Act II SA / Gd 193/14

**Country and court:** Poland, Administrative Court, Gdansk

**Date of holding:** September 24, 2014

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

The local mayor in administrative proceedings ordered the owners of the plot of land to the removal of waste from their property. The mayor found that the owner of the land, containing the contaminated soil, was also the holder of the waste. As a result, the authorities argued that the owners were obliged to remove the contaminated material.

Property owners then filed a complaint to the administrative court. They challenged the assumption that they are the liable holders of the waste on their premises. They explained that the accumulated evidence refuted this presumption. Indeed the proceedings before the mayor clearly indicate another person as the producer of the waste.

The Administrative Court agreed with the owners of the property. The court pointed out that the legal presumption that owners are responsible for the waste-contaminated soil surface may be rebutted in cases where it is possible to determine the entity responsible for the disposal of waste.

Presumption of fact was made by the legislature in order to avoid a situation where there is no entity responsible for the placement of waste on the property.

This means that the ownership of the land surface may be exempt from liability for waste where the evidence clearly points to another holder of the waste, such as the producer. The court noted that the legislature introduced a legal presumption making owners responsible for the waste management of contaminated soil surface, but also created a duty to inquire who was the actual producer of the waste.

According to the court, local authorities cannot ignore evidence pointing to another person where it is presented in the proceedings.

**Legal basis for holding waste generator or producer liable:** Polish Waste Law, as amended in 2012: "*Costs of waste management are borne by the original waste producer or by a current or former holder of the waste.*" Article 22. Thus, if the licensed and approved vendor does not

handle the waste properly and does not subsequently have the resources to remedy any problems, the waste producer would remain responsible under Article 22.

The ultimate responsibility seems to go back to the first holder (producer) if there are problems. Article 33 states: “*First holder of the waste is required to handle waste in a manner consistent with the principles of waste management, as referred to in art. 16-31, including conducting the processing of waste in such a way that these processes and those arising as a result of their waste do not endanger life or human health and the environment ....*”

The legislative history of 2012 Waste Amendments in Poland made this point clearly. The [Undersecretary of State in the Ministry of Environment Piotr Wozniak](#) responded directly to a question over whether the producer would remain liable if he transfer the waste to a licensed party:

*“The transfer to the next party in the chain of handling the waste, which of course is not excluded, for example to the carrier... does not exempt the generator from this obligation. You can push, you cannot pass. This system, which is designed here, ..the generator... is only able to put off responsibility at the moment when he gets absolute confirmation that the waste has been finally disposed of.”*

**Scope of damages or relief ordered:** Cost of waste removal (unknown).

**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:**

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