



SUMMARY OF CASE LAW ON WASTE PRODUCER LIABILITY IN EUROPE

SPAIN

Name of case: Widow of Joaquín Ortega SA , ROJ 1798/2011 CLM STSJ

Country and court: Superior Court of Castilla-La Mancha, Spain.

Date of holding: June 30, 2011

Summary of facts: “Widow of Joaquín Ortega SA” was a wine maker. The local city government sought a fine of about 350,000 Euro for mishandling of hazardous wastes” by the wine-maker. The wine maker argued that the material was a byproduct and not a waste and contested the severity of the fine. The city accused the wine-maker of abandoning the waste and failing to label it properly. The Court found that the material was a “hazardous waste” and that the wine-maker was a “waste producer” with an obligation to properly manage it. The Court noted under the 1998 Spanish law “*waste always must have a responsible owner, whether it is the producer, owner, or manager thereof. The only exemption from administrative liability is to those who yield to authorized waste managers to perform the operations of waste management, and provided that the delivery thereof is made fulfilling the requirements of this Act and its implementing regulations, as well as to establish, as appropriate, additional rules of the respective region.*” [In other words, the third-party managing the waste must be fully licensed and the transaction must meet all of the legal and regulatory requirements applicable at the time.] Thus, the Court held “*the appellant corporation in its production process generates hazardous waste, and has failed to fulfill some of the obligations that the law imposes on waste producers....*”

Legal basis for holding waste generator or producer liable:

[Official Gazette, Supplement No.181, Friday 29 July 2011, Sect. I. Page 3:](#)

“ In applying the principle of "polluter pays" included an article on the costs of waste management that must fall on the waste producer or the producer of the product with the use becomes waste, in cases where there are well established rules of liability for extended producer of the product...”

“The producer or initial holder of waste must ensure the proper treatment of waste...” *Id.* page 4.

The Spanish statute provides:

Article 17(8): “The responsibility of other producers or other initial holders of waste, when not performing the treatment themselves concludes when delivered to a trader for treatment, or a company or entity authorized treatment if delivery is proven documented and meets the legally established requirements.” Law 22/2011, of July 28, waste and contaminated soil.

Scope of damages or relief ordered: The Court sustained a penalty of 336,000 Euro.

Commentary: The Spanish law changed in 2011 to transpose the Waste Framework Directive. See [Law 22/2011, of July 28, Waste and Contaminated Land](#). [preamble-*“Under the principle of “polluter pays”, ... the costs of waste management that will fall on the producer thereof... The initial producer or holder of waste must ensure the proper treatment of waste, for which various options (which treatment is carried out by itself or a third party, public or private is delivered) in any case established the operations performed must be accredited with documents.”*¹ *“As important development affecting the producer, the new definition emphasizes the producer responsibility on the residue delivery (provided it is not a through a Trader) which does not end until it is received by the company authorized treatment....“This implies the obligation to assume control by the producer that goes beyond their ability management in their own facilities”*

[Practical Implications Of The Law Of Waste](#), Ana Villuendas Adé, Red Eléctrica voice Spain- the Environment Committee, AEC environment., and Love María García Hernández, Environment Branch voice ADIF-the Environment Committee of the ACS.²

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.

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=- SPAIN -- Feedback/Dead Link/Update Required for Accessing CASE STUDY Information>

REV 1: Feb 2020

¹ “Article 11. Costs of waste management. 1. In accordance with the polluter pays principle, the costs of waste management shall be borne by the original waste producer, the current holder or former holder of waste in accordance with the provisions of Articles 42 and 45.2.”

² The Spanish law is silent on what happens if the authorized person does not handle the waste in accordance with the regulatory requirements. This could be construed as a violation of the waste producers obligations.