SWEDEN

The Nårab case

This case involved both the differences between waste disposal and recovery operations under the Swedish Waste Ordinance, which implements the Waste Framework Directive 75/442 and the question whether the treatment process at issue was landfill of waste under the Swedish Landfill Ordinance, which implements the Landfill Directive 96/31. The case was decided on the basis of the jurisprudence of the European Court of Justice (ECJ) and the Swedish prohibition on disposal of organic waste by landfill.

A waste service company (Nårab) used a special method where they placed biodegradable waste in a bio cell reactor. The Regional Administrative Board in Skåne (southern Sweden) classified this method as landfill of waste. Thus, it was prohibited under the Swedish Landfill Ordinance. The Company argued that the method at issue was a recovery operation.

The Environmental Court found that the method in question was not landfill of waste. The Environmental Court held that there were considerable differences between the method used by the Company and more traditional forms of landfill of waste.

The Environmental Court of Appeal (M 3579-04, 14 September 2005) found that the operation in fact was disposal of waste. The Court referred to ECJ cases C-6/00 (*Abfall case*), C-307-311/00 and C-458/00 where a deposit constitutes a recovery if its principal objective is that the waste serves a useful purpose in replacing other materials which would have had to be used for that purpose. The Environmental Court of Appeal held that this was not the primary objective of the bio cell method. Thus, it was not a recovery operation. Regarding the second question, whether this was a case of landfill of waste, the Court concluded that the bio cell method was better than traditional landfill methods, but the handling of the waste did not in a conclusive way differ from traditional methods. The Environmental Court of Appeal found that waste that was placed in the bio cell reactor was to be classified as landfill of waste. Accordingly the Court approved the prohibition established by the Regional Administrative Board.

The Kuusakoski case

This case concerned the differences between waste and hazardous waste. Kuusakoski Sweden AB is an international recycling services company, which handles and recycles used computers. About 5 percent of the computers contain batteries with cadmium and nickel. These batteries are classified as hazardous waste according to the Swedish Waste Ordinance.

The Company applied to the Regional Administrative Board for an exemption from the rules on hazardous waste. According to the Swedish Waste Ordinance an exemption can be given if there are special reasons and the holder of the waste can prove that the waste in question does not have the hazardous properties described in an annex to the Waste Ordinance.

The Regional Administrative Board denied the application.

The Company appealed to the Environmental Court. The Company argued that the waste should not be classified as hazardous since the potentially hazardous substance was very

limited (10 kg cadmium a year). In addition, separation of the hazardous batteries from the used computers would involve a yearly cost of € 140,000 and an investment of € 11,000.

The Environmental Court determined that even though only a small part of the used computers contained hazardous batteries, the entire section of waste should be classified as hazardous waste. The Court held that separation of the batteries is Best Available Technique (BAT). According to the Court, the Company had not shown that the waste did not have the hazardous properties stated in the Annex to the Swedish Waste Ordinance. Thus, the Company was not given an exemption.

The Environmental Court of Appeal (M 4532-04) – pending a decision.