

EUROPEAN LAW OF REFUSE
National case law

French reply to the questionnaire

SECTION A

Use of clinker from incineration plant for filling

A group of communes is operating an household refuse incineration plant. Incineration ash and residue (clinker) are used as filling materials for the construction of a road. The Court of Appeal holds that the deposit of these materials amounts to storage of refuse requiring a licence, on grounds based on the intention of the plant operator:

"it is clear from the statements of X. that the intention of the inter-communal association of the Urban District of Chambéry (the operator) was to store refuse from the incineration plant and not to supply filling materials to the commune of Y; the filling operation was only secondary, and the commune was not required to pay for the waste"

(Grenoble Court of Appeal, Criminal Investigation Division, 17 September 1993, Germain (*Cour de Cassation*, Criminal Division, 17 January 1995, n° 93-84, 699).

Wreck of a vessel

Abandonment must be deliberate for a wreck to be defined as waste. Fuel oil that escapes from a wrecked vessel is not waste. This decision may not be in concordance with the case law of the CJEC (07/09/2004 C-1/03).

(Rennes Court of Appeal, 13 February 2002, Commune of Mesquer v. Total Raffinage Distribution SA, application N° 00/08026).

Importation of sludge from water purification plant to be spread over agricultural land

A German company gave the competent French authority notice of two transfers of sludge from a water purification plant to be spread over agricultural land. The French government lodged an objection on the grounds that the area of farmland was insufficient for the volume of sludge transferred. The German company applied to an administrative-law judge for the decision to object to the transfer to be set aside.

According to the administrative-law judge, it is clear from the list drawn up by the European Commission decision of 20 December 1993, pursuant to Article 1 of Directive 75/442/EEC of 15 July 1975, as amended by Directive 91/156/EEC of 18 March 1992, that sludge from urban waste-water treatment plants is waste (item of 19.08.05).

Directive 75/442 must, however, be reconciled with Directive 86/278/EEC of 12 June 1986 relating to the protection of the environment, and more particularly soil,

when using sludge from water treatment plants in agriculture. By its decision of 28 March 1990 (cases c6 206-88 and C-207/88), the CJEC gave a final ruling that "the concept of waste should not be interpreted as excluding substances or objects capable of economic reuse". From the interpretation of Community laws such as the combined provisions of Directive 86/278 and Directive 75/442 as amended by Directive 91/156 it is apparent that "while water treatment plant sludge used in agriculture is not normally subject to the provisions of the Directive of 15 July 1975, inasmuch as it is used as fertiliser and spread over agricultural land, they nevertheless come within the definition of waste given by this Directive, which automatically means that, particularly as regards transfers from one Member State of the European Community to another, they are subject to the provisions of the Regulation of 1 February 1993".

This Regulation itself provides that transfers of waste as mentioned in Article 2.1 b) of Directive 75/442 are excluded from its field of application where they are already covered by another relevant law. The Directive of 12 June 1986, the purpose of which is to regulate the use of water treatment plant sludge in agriculture in order to prevent harmful effects on soil, vegetation, animals and human beings, while encouraging their correct use, is not a relevant law for the purposes of Article 1.2 of the Regulation of 1 February 1993, which governs the supervision and control of transfers of waste, even where they are intended for profitable use.

The fact that the waste conforms to NFU Standard 44-041, the application of which is obligatory under the Order of 29 August 1998 transposing the Directive of 12 June 1986 into French domestic law, therefore has no bearing on the application of the provisions of the Regulation of 1 February 1993.

(Council of State, 3 March 2000, Minister of Planning and the Environment, n° 188328).

SECTION B

Article 1 (a)

1. Meaning of the term "abandonment"

Problem posed by involuntary abandonment (wreck of a vessel and loss of cargo, cf. section A)

By-products and residues

Storage of impoverished uranium oxide - future reuse uncertain

Impoverished uranium oxide, where it results from isotopic separation from natural uranium for the production of enriched uranium oxide, which, owing to its increased concentration of fissile material, is used as fuel for pressurised water reactors, is still capable of being enriched in its turn by a process of the same type and for the same use. The fact that the use of impoverished uranium oxide may be deferred for *inter alia* economic considerations does not mean that this substance should be regarded as waste.

(Council of State, 23 May 2001, Association for the Defence of the Environment of the Pays Arézien and Limousin, n° 201938).

4. Total recovery

The use of clinker from an incineration plant as a filling material does not amount to total recovery causing such substances to cease to be classified as waste
cf *supra*, Grenoble Court of Appeal, Inquiry Division, 17 September 1993, Germain

5. Purpose of waste and recycling

Storage of scrap metal - reuse in a new production process

The storage of a tank, sheet metal, metal vats and tubes and broken-up vehicles is storage of waste, even if the metal parts are used to make greenhouses and boilers.

(*Cour de Cassation*, Criminal Investigation Division, 1 February 1995, Faure, n° 94-80, 908).

7. Role of academic lawyers

The definition of waste in French law is as follows:

Article L. 541-1 of the Environment Code (taken from a law of 15 July 1975)

"II - For the purposes of this chapter 'waste' means any residue from a process of production, transformation or use, any substance, material, product or more generally any movable asset which is abandoned or intended to be abandoned by its owner".

It is for the Courts to decide whether the substances in question are waste in the light of this text when interpreted in accordance with the definition given by Directive 75/442.

Article 2 (1) (b) - Other legislation

A combination of the Regulation of 1 February 1993 on the control of transfers of waste and the Directive of 12 June 1986 on the protection of the environment when using water purification sludge in agriculture (cf. section A : Council of State, 3 March 2000, Minister of Planning and the Environment).

Article 4 - General purpose of the directive

The State is rendered liable to waterside residents for any failure by local government authorities to enforce the legislation on classified installations (licence requirements, involving technical operating conditions imposed on polluting activities, particularly for waste storage centres) relating to industrial discharges suspended for 10 years and left unsupervised by its operator (Lyons Administrative-Law Court, 19 October 1993, Commune of Dardilly, application n° 89-430-47).

The transposition into French law of the legislation on the elimination of used oil has given rise to a great deal of litigation in the criminal Courts. The original wording of the Decree of 21 November 1979 made the collection and elimination of used oil subject to approval by the authorities. Article 3 provided that anyone having waste of that type in

his possession must deliver it to approved collectors, or transport it himself to the premises of an approved eliminator, or deal with the elimination thereof himself subject to official approval. To satisfy the requirements of the CJEC (7 February 1985, Commission v. Republic of France, case C-173/83), which held that the fact that the resale of used oil to collectors and eliminators officially approved in another State was not expressly prohibited - even supposing that the French Government's argument that what is not prohibited is lawful were admissible - was not sufficient to dispel all uncertainty as to the legal position, which might have a deterrent effect on export flows. The Decree of 21 November 1979 has been amended by a number of decrees, namely those of 29 March 1985 and 24 March and 31 August 1989, which expressly added to the options open to those possessing used oil that of transporting it themselves to the premises of an officially approved eliminator or collector in another Member State. The Criminal Division of the *Cour de Cassation* held that these new French laws did not adversely affect the free circulation of merchandise (28 November 1991, Renaudier, n° 90-84, 174).

Article 7 - Management plans and licences

The Government cannot authorise the operation of a household refuse incinerator if the departmental elimination plan provides that every unit must have a treatment capacity corresponding to a specific geographical area (in this case 50,000 tonnes per annum) and the disputed plan related to an incinerator with a capacity of 120,000 tonnes per annum. (Montpellier Administrative-Law Court, 20 May 1998, Les Verts Languedoc-Roussillon and others v. Prefect of Hérault (BDEI 2/1999.25))