Note: Waste shipments into mines – Recovery or Disposal?

Some Member States interpret the European Court of Justice (ECJ) ruling C-147/15 (Bari) from 28th July 2016[1] in a way that they classify hazardous waste shipped to German aboveground or underground mines as disposal operation, with the consequence that the competent authorities can object to these shipments according to Article 11 of the Waste Shipment Regulation.
The German Federal Ministry for Environment and some German authorities, as well as CEWEP, do not share this point of view regarding underground mines.
The ECJ ruling C-147/15 concerns quarries *above*ground, not *under*ground mines. It is not transferable to underground stowage as the environmental requirements for stowage in underground mines are different. They are regulated in German legislation, inter alia the Stowage Ordinance (Versatzverordnung) in order to ensure on a long-term basis that no negative environmental impact results from this activity.
Filling can be a measure of recovery if the wastes suit the determined purpose in a structural and functional manner and the recovery is harmless for the environment. This would be the case when filling underground cavities with suitable waste in disused mines (i.e. underground stowage).
The hazardous or non-hazardous nature of the waste is, of itself, not a relevant criterion for assessing whether a waste treatment operation must be classified as 'recovery'. This is stated by a former, still valid, ECJ judgment (C-6/00 (ASA), No 68)[2] regarding underground stowage in disused underground mines (Versatz).

The newly introduced definition of 'backfilling' in the 2018 Waste Framework Directive takes the ECJ ruling C-147/15 into account and refers to non-hazardous waste used for aboveground purposes such as reclamation in excavated areas or for engineering purposes in land scaping. This definition does not apply to stowage in underground mines; for the latter the ECJ C-6/00 is still valid.

The use of waste, no matter if it is of hazardous or non- hazardous nature, in underground mines can be a recovery operation if
- the mine operator is legally obliged to re-fill the disused mine and would have used other materials if the waste was not available,
- the environmental impact assessment is proven on a long-term basis and
- the waste used for the filling is suitable for this purpose (this is the case for e.g. fly ashes from waste incineration).

Please find attached a legal analysis of the subject by Dr. Olaf Kropp. The author is Managing Director of the German authority responsible for hazardous waste management and waste shipment notifications in Rheinland-Pfalz (SAM) and Head of the Consortium of Hazardous Waste Disposal Companies of the Federal States in Germany (AGS).

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015CJ0147
[2] http://curia.europa.eu/juris/liste.jsf?language=en&num=c-6/00

Avenue de Tervueren 113
B-1040 Brussels
Tel. : +32 (0)2 770 63 11
Fax : +32 (0)2 770 68 14
info@cewep.eu
www.cewep.eu

The article is available in German, English and French. The original German article will be published in the Law Magazine AbfR, edition 3/2018 (May/June 2018).

Brussels, 15th March 2018
Contact: ella.stengler@cewep.eu

CEWEP (Confederation of European Waste-to-Energy Plants) is the umbrella association of the operators of Waste-to-Energy plants across Europe. CEWEP's members are committed to ensuring high environmental standards, achieving low emissions and maintaining state of the art energy production from remaining waste that cannot be recycled in a sustainable way.

CEWEP - Confederation of European Waste-to- Energy Plants

Avenue de Tervueren 113
B-1040 Brussels

Tel. : +32 (0)2 770 63 11
Fax : +32 (0)2 770 68 14

info@cewep.eu
www.cewep.eu