

How Do You Classify a Waste Load When Only Part Is Hazardous?



SITUATION

A company operates a facility in Ontario where waste is sorted, processed and/or bulked before being shipped to other facilities for final disposal. Although the company handles both hazardous and non-hazardous waste, the environmental law permits it to ship hazardous waste only to licensed waste disposal sites authorized to handle such waste. The company classifies a 28,000 kg load of waste as non-hazardous and ships it to a landfill site that's not permitted to accept hazardous waste or mixed waste. But representative samples taken from the load test positive for leachate of perchloroethylene ('perc'), a hazardous substance. It's ultimately found that about 80 kg of the load consists of hazardous waste. So the government charges the company with an environmental violation.

QUESTION

Did the company commit an environmental offense'

- A. No, because the law permits the intermingling of hazardous and non-hazardous waste.
- B. No, because it was the *landfill's* responsibility not to

accept hazardous waste.

C. Yes, because part of the load was hazardous waste.

D. Yes, because more than 50 kg of the load contained hazardous waste.

ANSWER

C. If part of the load consisted of hazardous waste, the whole load should've been treated as hazardous waste and shipped to an authorized facility.

EXPLANATION

This scenario is based on a case from Ontario in which the government charged a waste processing company and two of its directors with environmental violations for, among other things, shipping hazardous waste to an unauthorized facility. The company was convicted and appealed, arguing that it could only be convicted if the entire load was hazardous waste. The appeals court disagreed. It noted that the definition of 'hazardous waste' didn't refer to a load, part of a load or a percentage of a load. And if the legislators wanted to define hazardous waste as a percentage of a predetermined load in this context, they could've done so as they did in other sections of the law. In addition, if the legislators wanted to include a requirement that the entire load or a percentages of it be hazardous waste, they could've included it in with the other exceptions and limitations in the law. Lastly, there was nothing in the law or cases that required a finding of hazardous waste to be based on testing of representative samples of the *entire* load in question, said the court. In short, the court agreed with the government's position that hazardous waste doesn't become non-hazardous simply by being included in a larger load of non-hazardous waste.

WHY WRONG ANSWERS ARE WRONG

A is wrong because the environmental law in Ontario doesn't generally permit hazardous and non-hazardous waste to be mixed together. Specifically, Sec. 14.01 of Regulation 347 under the EPA says that, if hazardous waste is being handled, stored, treated or disposed of at a waste disposal site or transferred to a waste disposal site, you can't cause or permit the hazardous waste to be mixed, blended, bulked or intermingled with any other waste or material, *unless* it's in accordance with the site's certificate of approval. So in this case, the company could only mix the hazardous and non-hazardous waste if the landfill's C of A permitted such mixing, which it didn't.

B is wrong because it was the company's duty to ensure that it shipped hazardous waste only to facilities authorized to accept such waste. The landfill may have also had a duty to only accept waste that its permit allowed it to accept. And the landfill may have violated that duty by accepting a load that included hazardous waste. But the landfill's duty not to accept waste that wasn't covered by its permit doesn't eliminate or trump the company's duty to ship waste only to those facilities legally permitted to accept it.

D is wrong because the law doesn't require an entire load or a designated percentage or amount of it to be hazardous waste for the whole load to be treated as such. For example, the applicable law in Ontario doesn't state that a load is considered hazardous only if more than 50 kg of the load contains hazardous waste. So here, whether the load the company shipped to the landfill contained 80 or 8 kg of hazardous waste is irrelevant.

SHOW YOUR LAWYER

Ministry of Environment Ontario v. Lacombe Waste Services,
Ontario Court of Justice, June 10, 2013