

Introduction to Waste

John Georgakopoulos

Willms & Shier Environmental Lawyers LLP

www.willmsshier.com

**AWMA Spring 2014 Conference
April 10, 2014**



Outline

- **What is waste?**
- **How is waste regulated?**
- **What should you know?**

WHAT IS WASTE?

Legal Definition of Waste

- ***Environmental Protection Act, Part V***
 - “waste” includes ashes, garbage, refuse, domestic waste, industrial waste, or municipal refuse and such other materials as are designated in the regulations
- **R.R.O. 1990 Regulation 347**
 - Designated Waste
 - Exemptions

Examples of Designated Waste

- **Dust suppressant**
- **Inert fill**
- **Processed organic waste**
- **Rock fill or mill tailings from a mine**
- **Waste-derived fuel**
- **Hazardous waste**
- **Hauled liquid industrial waste**
- **Used tires**
- **Wood waste**
- **Construction waste**
- **Municipal waste**
- **Hauled sewage**
- **Used lubricating oil**

Hazardous Waste, Liquid Industrial Waste, and Municipal Waste

- **Hazardous waste – includes hazardous industrial waste, severely toxic waste, ignitable waste, PCB waste**
- **Liquid industrial waste – is waste that is both liquid waste (slump test) and industrial waste**
- **Municipal Waste – any waste, whether or not it is controlled or managed by a municipality**

Examples of Exempted Waste

- **Agricultural Wastes**
- **Inedible material defined in O.Reg. 31/05 (Meat) under the *Food Safety and Quality Act* (“FSQA”), 2001**
- **Material that is condemned or derived from a carcass at a registered establishment within the meaning of the Meat Inspection Act (Canada)**
- **Dead farm animals within the meaning of O. Reg. 106/09 (*Disposal of Dead Farm Animals*) under the NMA, 2002 or regulated dead animals within the meaning of O. Reg. 105/09 (*Disposal of Deadstock*) made under the FSQA, 2001**
- **Inert fill**
- **Rock fill or mill tailings from a mine**

Examples of Exempted Waste

- **Recyclable material exemption**
- **Municipal waste, ...transferred by a generator for direct transportation to a site**
 - wholly used at the site in an ongoing agricultural, commercial, manufacturing or industrial process or operation used principally for functions other than waste management if the process or operation does not involve combustion or land application of the waste
 - offered for or promptly packaged for retail sale to meet a realistic market demand

Court Definition

- **The useless by-products of any industrial process; material or manufactured articles so damaged as to be useless or unsaleable; materials eliminated or thrown aside as worthless after the completion of a process.**

Re Canadian Pacific Limited and Director of the Ministry of Environment

Legitimate Business Purpose for Materials

- **“It does seem to me that if there is a legitimate and appropriate business purpose in the mind of the possessor of the materials then, vis-a-vis that person, those materials are not waste.”**

Justice Ground in *Kermecho Co. v. Ontario (Minister of the Environment)*:

Economic Value, Use, and Meeting the MOE's Goals

Philips Enterprises v. MOE

- **MOE ordered Philips to obtain a certificate of approval for its “chop line residue”**
- **Philips brought an application to ask the Court to decide if chop line residue was a waste**

Economic Value, Use, and Meeting the MOE's Goals

- **It was usable at the end of the process**
- **The chop line residue was not “waste” to Philips because it had purchased it and intended to make use of it**
- **The use of the chop line residue was in line with the MOE's goal of maximizing resources and minimizing unusable substances that go to landfill**

MOE Regulatory Response to Phillips

- MOE added to definition of Waste

Residue from an industrial, manufacturing or commercial process or operation, if the residue leaves the site where the process or operation is carried on.

- and exempted

Residue remaining after metal is recovered from wire and cable and transferred by a generator for direct transportation to a site at which it will be processed for recovery of metal and plastic using a process that does not involve combustion of the residue or any part of the residue.

Domtar v. MOE

- **Site inspection done by the MOE at the Moran Pit (North Stormont Township)**
- **Provincial Officer's Order issued to stop waste management activities and to conduct surface and ground water monitoring**
- **Domtar appealed order and eventually settled with MOE**
- **Parties agreed that Domtar Lime and sawdust were not “waste” because they were processed into a product to adjust the pH of soil in order to optimize soil fertility and crop production**
- **Green bark, black bark, wood chips and wood grindings were “waste” but exempted because they were being used for groundcover and were transferred by a generator to a site to be offered for retail sale to meet a realistic market demand**

HOW IS WASTE REGULATED?

Regulation of Waste

- ***Environmental Protection Act***
- ***R.R.O. 1990, Reg. 347 - General-Waste Management***
- ***O.Reg. 232/98 - Landfilling Site***
- ***R.R.O. 1990, Reg. 352 - Mobile PCB Destruction Facilities***
- ***O.Reg. 101/94 - Recycling and Composting of Municipal Waste***

Regulation of Waste

- **O.Reg. 351/12 - Registrations under Part II.2 of the Act – Waste Management Systems**
- **O.Reg. 102/94 - Waste Audits and Waste Reduction Work Plans**
- **O.Reg. 206/97 - Waste Disposal Sites, Waste Management Systems and Sewage Works Subject to Approval Under or Exempt From the Environmental Assessment Act**
- **R.R.O. 1990, Reg. 362 - Waste Management – PCB's**

Regulatory Framework

- **Approvals**

- Environmental Compliance Approval required to “use, operate, establish, alter, enlarge or extend a waste management system or a waste disposal site”

- **Prohibitions**

- Cannot deposit waste at unlicensed waste disposal site or use an unlicensed waste management system

- **Operational Requirements**

- Generator registration, manifest, standards for waste disposal sites

Enforcement

- **Orders**

- Power to require preventive or remedial action be taken or removal of waste
- Issued against broad scope of parties
- i.e. owner/previous owner of the waste, person(s) who has or had charge and control of land, building, or waste, occupant/previous occupant of land or building

- **Prosecutions**

- Offences can include breach of ECA, operating without an ECA, non-compliance with an Order, illegal deposits
- Fines and/or imprisonment

Example

- **Company A manufactures a widget and produces waste at its facility. Company A hires Company B to collect the waste from its facility to deposit the waste at a landfill. Company B collects the waste but deposits the waste at a gravel pit owned by Company C.**
- **Who can the Ministry of the Environment order and/or charge?**
 - Company A? Company B? Company C?
 - Manager at Company A? Company B? Company C?
 - Directors/officers of Company A? Company B? Company C?

WHAT SHOULD YOU KNOW?

You Should Know ...

- **Waste is legally defined by statute, regulations, and common law**
 - Are you dealing with “waste”?
 - Properly characterize the material
- **Waste is regulated**
 - Are you operating a waste disposal site or waste management system?
 - Are you a generator or hauler?
 - Obtain the necessary approvals and have the proper manifests

You Should Know ...

- **Liability for clean up and removal of waste is broad**
 - Do your contractors/subcontractors have the necessary approvals?
 - Is the waste being deposited at a site approved to accept the waste?
 - Know who you are dealing with and where the waste is going
 - Know what you are transporting and/or accepting

Contact Information

John Georgakopoulos

(416) 862-4826

jgeorgakopoulos@willmsshier.com



Willms & Shier Environmental Lawyers LLP

www.willmsshier.com

