
ILLEGAL TRANSPORTS OF WASTE: TRICKS OF THE TRADE

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SUMMARY

This article has three aims:

- to provide some understanding of the illegal practices that may occur during shipments of waste;
- to describe the administrative and physical checks conducted to counter these practices; and
- to illustrate the use made of the national and international enforcement network.

1 THE WASTE ROUTE

1.1 Regulation

Western Europe is a highly industrialized area. Apart from the good things that the industrial revolution brought in its wake, it became clear in the mid-60s that there was also a down side: waste.

This was a different type of waste from the domestic waste and small amounts of industrial waste that had been accustomed to hitherto. However, it was not really treated any differently. Chemical and other industrial waste was dumped in landfills which had not been specifically set up for that purpose.

A number of scandals, such as having to demolish new residential areas built on contaminated land and the poisoning of nature reserves caused the population at large and those with political responsibility to start thinking of counter-action.

Things became worse when it became known that a number of companies had decided to ship their chemical waste - so difficult to process - to countries that are often referred to as third-world countries. At that time they were unable to understand the impact of accepting such dangerous wastes. Dealers seeking a quick turn severely abused the often poor economic situation of these countries.

In the years that followed, stringent national and international regulations came into force in the Netherlands and other countries or nations.

The regulations were designed to make the producer responsible for processing his waste in a responsible manner in terms of environmental protection.

Policy was designed to enable this waste to be processed as far as possible in the country of production and to limit exports of waste as far as possible. International regulations are set forth in a EC regulation of the European Community which directly affects all member states. Where transfrontier waste shipments do still occur, for example because the processing capacity in the country of production is inadequate, the producer has to abide by strict rules.

A number of pieces of environmental legislation dedicated to individual sectors such as the Nuisance Act, the Waste Substances Act, the Air Pollution Act, the Noise Abatement Act and the Chemical Waste Act were replaced in 1993 by the integrated Environmental Management Act. Hitherto, it was not possible to deal adequately with certain matters as a result of a lack of coherence in the legislation, but the new integrated approach has significantly enhanced the effectiveness of environmental legislation. In the European context, a previous 1994 Directive was replaced by Regulation 259/93 from the Council concerning the supervision and control of shipment of wastes within, into and out of the European Community. The advantage of this Regulation is that legislation in the countries of Europe on transfrontier waste shipments is now harmonized. The concept of "wastes" was also made somewhat clearer as a result of European Community Regulation 75/442, but differences in interpretation in the various countries of the European Community remain possible.

A producer of wastes has to notify the proposed shipments to the exporting and recipient countries and in many cases explicit consent from the relevant governments is required. Transit countries also have to be informed about the proposed transfrontier shipment.

It is prohibited to ship waste to countries with an inadequate processing capacity, or none at all, or where it is not desirable that they should receive the wastes.

As proof of consent, licenses are granted and certain forms have to be carried with the vehicle during shipment.

The success of any regulation can be measured by compliance behavior. Checks are necessary to measure this. If the check shows that compliance is insufficient, the Government will have to act to take corrective and/or penal measures. This process of control followed by corrective action is termed "enforcement."

1.2 The actors

A number of players are involved in the route covered by waste. Some of these are as follows:

1.2.1 The producer

The producer is the individual whose activities produce the waste. A producer who surrenders waste is responsible for its disposal. For a variety of reasons, producers will in some cases (lack of awareness of the regulations, efficiency, lack of market awareness etc.) will opt not to dispose of the waste themselves but to leave it to:

1.2.2 The agent/dealer

The agent/dealer is an intermediary who performs certain services and/or actions against payment. The activities that he carries out may be quite diverse. Often he has the commercial contacts with the handlers or processors and cannot be avoided. In some cases he is contracted in because the producer does not grasp the regulations and applies for the necessary license on the client's behalf. He may also assumed responsibility for the producer's waste and handle the entire route from producer to re-user or to the party that finally disposes of it. Once it has been decided what is to be done with the waste, contact is established with:

1.2.3 The hauler

In many cases direct contact is not established with the hauler, but with a forwarding agent. The forwarding agent is a sort of agent in shipments and is often called in if several types of transport are required for the shipment (from car to train to ocean-going vessel etc.). He is fully

familiar with the world of transport and is often able to negotiate favorable rates. In cases of shipments where only one means of transport is used, for example a lorry, there will be direct contact with the hauler. In cases of shipments involving ocean-going vessels, other intermediaries may enter the scene such as the loading agent or the ship broker and the agent or representative of the shipping company involved. In some cases haulers act as waste agents or make their premises available for temporary storage or simple processing of wastes. The hauler then carries the wastes to:

1.2.4 The processor

In many cases wastes are not surrendered directly by the producer to the final processor, and interim processing steps occur. These may comprise mixing up certain substances to comply with a certain specification, or to separate their components (e.g. stripping of used electricity cables) or sorting by type (old metals) or particle size. These actions may be bona fide, but illegal waste operations do occur in this part of the disposal chain. After processing, a hauler is usually contracted to ship the waste to:

1.2.5 The re-user

The re-user may use the wastes to render them useful again. Examples are the re-smelting of metals, the crushing of construction and demolition waste and distillation to return certain chemicals to a particular specification. In many cases, only a proportion of the wastes submitted can actually be used. What remains is then only suitable for:

1.2.6 Final disposal

Final disposal is defined as landfills where wastes are introduced onto or into the soil or subject to certain types of incineration, under the right conditions or otherwise. It is on this latter form of final disposal that there is still divergence between the various countries.

2 METHOD OF TRANSPORT

Wastes may be shipped in various ways. First of all, depending upon their nature and composition, the wastes will be packaged or carried as bulk freight.

2.1 Packaged transport

The following packagings are commonly used to carry wastes:

- steel drums (closed or with a removable head);
- plastic containers (closed or with a removable head);
- board or fibre containers;
- bags (textiles or plastic);
- jerry cans (steel or plastic);
- composite packagings (e.g. glass bottles packed in boxes or crates); and
- IBCs (intermediate bulk containers) such as 'big bags' or octabins.

In many cases the packagings used to carry wastes already have a life behind them. This means that the quality often ranges from moderate to poor. Strangely enough, the Dutch and European regulations do not impose any requirements regarding the quality and type of packaging. The packaging only has to comply with United Nations requirements if the particular

waste is also a hazardous substance within the meaning of the transport of Dangerous Substances Act (which incorporates the international IMDG code, ADR, ADN and IATA Restricted Articles Provisions).

The packagings are then stored in sea containers in most cases (certainly in the case of international shipment). The sea containers (closed or open-top) are then shipped multi-modally (lorry, train, inland vessel, ocean-going vessel). Waste is not yet often transported by airplane.

2.2 Bulk transport

For economic reasons, larger volumes of waste will be transported as bulk consignments. Bulk transport obviates the costs of packaging and a proportion of the handling costs.

A distinction can be made in bulk transport between very large consignments which are loaded directly as loose cargo in an ocean-going or inland vessel, and consignments which are stored as bulk cargo in an sea container or lorry. Waste chemicals are transported as bulk cargo in tankers and tank containers. There are also cases of transport by rail tankers for greater distances over land.

3 THE “TRICKS”

3.1 General

One widely used ‘trick’ is to artificially upgrade the financial value of a consignment of waste. If a waste consignment has no value or even a negative value, it may be claimed that the material has a positive value of \$200 per ton for example. No one will then think that final disposal is the ultimate objective, reuse is the more obvious thought. In this manner, the expense of a disposal method in a western country can be saved and the waste can be disposed of more cheaply in a different country. This is highly lucrative, particularly with very large consignments of a few thousand tons in weight.

A consignment of zinc waste was once found in the Netherlands in this manner, allegedly having a value of 350 German Marks per ton and allegedly to be reused in the Ukraine. After checking and analysis (the materials were found to contain only 11% zinc) the final conclusion was that the consignment was not recyclable and had a negative value of around 800 German Marks per ton.

3.2 Administration

If a producer of waste applies for consent/license from the relevant competent authority, he must provide a number of details. For example, the authority will be interested in such aspects as the nature and composition (physical and chemical) of the particular waste. One frequently used ‘trick’, particularly by collectors and those who bulk waste up, is to describe the waste in terms as wide and nonspecific as possible. They will then be in a position to categorize a large number of wastes under a particular heading and thus bypass the relevant regulations in a legal manner.

As previously indicated, hazardous waste must in principle be processed in the home country. It is therefore important for a country to have sufficient processing capacity. This can only be achieved if there is adequate supply for the processors at a price that covers the cost. One must then avoid waste being shipped abroad where much lower processing prices often apply. The ‘trick’ that waste producers can use is to declare to the licensing authority that a consignment for processing is much larger than the capacity of the processor in the home country. It is also

possible to declare certain parameters in the waste to be higher than they are in reality. The emission requirements that apply to the home-country processor would thus be exceeded, making it apparently legitimate to allow export (and thus have lower processing costs).

It is often cause for surprise to learn that in many countries, including the Netherlands, it is possible to apply for a license to ship wastes, nationally as well as internationally, without some independent body checking the nature and composition of the wastes.

The licensing authorities do ask to see an average analysis of the consignment, but no comment is made if such an analysis is provided on some unclear type of notepaper. It is also acceptable if the commercial players involved supply the analysis information on their own writing paper.

If one were to switch to requiring an analysis by an accredited and independent checking agency when license applications are submitted, there would still be adequate opportunity for fraud. At present (and how easy it is) faxes are used. It is then a simple matter to incorporate the required analysis results under the letterhead of an accredited agency.

It is also surprising to learn that an average analysis is only required once for a consignment of waste of several thousand tons which is then allowed to be shipped over a period of one year using several hundred lorries or dozens of vessels.

It is also worrying to discover that the accompanying transport documents, which by law must accompany the shipment of waste, often consist simply of a copy and thus a copied approval stamp; and this with the consent of the competent authority. Partly because it is simply thought to be too much work to stamp all the copies of the accompanying documents as original.

3.3 Physical tricks

The waste hauler with spurious intentions will make every effort to avoid being caught. He will ensure that the licenses required appear to be in order. More so than in the past, attention is paid to avoiding words that have some affinity with waste transport on transport documents. Examples are such words as 'waste'; 'dechets'; 'Sondermüll'; 'Rückstände'; 'Abfälle'. These words are replaced by synonyms that have a greater affinity with raw materials.

In the past, you could often see from the outside that a particular lorry was being used to transport wastes, but nowadays every effort is made not to stand out.

Increasing consideration should therefore be given, outside the targeted physical checks on the long-established target group, to switching to a nonselective check with every transport unit being subjected to a physical check. In terms of its logistic possibilities, a closed sea container is a wonderful means of transport. But for the enforcement officer, checking it often leads to problems.

One common trick is to bulk load the container by first using a lifting crane and positioning some support, diagonally or vertically. The container is then bulk loaded via the doors, after which the doors are closed and the container is placed on the vehicle in its normal horizontal position. The doors cannot be opened during checking as the load would then fall out of the container onto the road or the quay.

In many cases, the accompanying documents will show the contents to be metal waste. The inspector will then be disinclined to make much effort to subject the load to any check. But appearances can be deceptive.

Where checking is required, the best approach is to track such containers to the point of loading or transshipment where there is sufficient handling equipment to perform a check.

If a container is used for standard (208 litre) steel drums, one common trick is to load the first two or three rows behind the container doors with a waste load which is covered by the accompanying documents, with the illegal, environmentally harmful load further back. It is therefore advisable to check such waste shipments regularly (at a suitable site and using forklift trucks to empty the container).

To transport old metals and contaminated soil, what are termed 'open-top containers' are often used. Such containers are simple to load via the open top. Such containers will not create any additional problems for checking purposes. One drawback is that they are often closed during transport by a covering tarpaulin and thus are not easily accessible for inspection.

It regularly occurs on open lorries as well as open-top containers that wastes such as packaged waste chemicals and old batteries are 'concealed' under a load of car wrecks which have been rolled flat. A quick visual check often fails to reveal these illegal loads.

One interesting target group comprises haulers who traditionally came back from abroad without a return load. On the Dutch market these are haulers who transport cut flowers and plants. In many cases an enforcement officer will not think of them as the lorries are often expensive, thermally insulated or refrigerated. Refrigerated containers have already been found containing hazardous wastes.

4 ENFORCEMENT

4.1 Nationally

In the Netherlands, it is the provincial authorities that are responsible for licensing and checking domestic waste shipments that pass provincial boundaries. Central Government (the Ministry of Housing, Spatial Planning and the Environment) (VROM) is the competent authority for transfrontier shipments.

4.1.1 Company checks

The staff of the Inspectorate for the Environment at the Ministry perform regular, non-institution-specific checks on producers and processors of wastes. Checks are based on the bookkeeping, the invoices, probably weigh-bills shipment orders, internal company records and notifications to the competent authority.

These are checks to ascertain whether the data held at the Ministry's International Waste Notification Bureau tally with the actual data or received shipments of waste. The International Waste Notification Bureau is an office operating as a database for transport data, and where applications are checked as to content. There are also regular checks on whether no wastes other than those known to the Government originate from a particular corporate process. If this is the case, the producer must indicate where the waste remains.

4.1.2 Shipment checks

In order to achieve an effective density in the checking network, and thus to increase the chances of catching fraudsters, a large number of enforcement officers are required.

The Ministry of Housing, Spatial Planning and the Environment has elected to assign responsibility for this work to a small team of specialist enforcement officers within the Inspectorate for the Environment, and to involve the regular enforcement network in the checks. This network comprises the Police, Customs and the National Transport Inspectorate.

A strategy has been developed whereby a number of enforcement officers from this network are trained by the Inspectorate for the Environment to become a reference point. These enforcement officers undergo a program comprising an eight-day course followed by an eight-day program of in-service training. They also act as instructors for the base-line staff in their department. They have to be able to identify relatively simple matters and deal with and process them themselves, and to recognize relatively difficult matters and pass them on to the Inspectorate for the Environment.

Seminars are regularly organized, at which the environmental inspectors and enforcement officers from the network compare notes on the tricks.

4.2 Internationally

A European enforcement network has been active in Europe for a few years now in the form of IMPEL. IMPEL stands for the European Union network for the Implementation and Enforcement of Environmental Law. In particular Working Group IV and Ad Hoc Working Group IIIa have proved to be active in setting up a development network. Ad Hoc Working Group 3 has two what are termed 'TFS' projects. TFS stands for Transfrontier Shipment of Hazardous Waste. Within these projects, enforcement officers from various European countries have collaborated to study and compare the various methods of enforcement.

On the basis of administrative and physical checks on a number of pre-selected waste flows, the projects also examined whether shipments between these companies were known and whether the load matched the given description.

The countries involved in these international forms of cooperation are enthusiastic about the results to date. In future, efforts will be made to create a more permanent form of cooperation.

* Acronyms

IMDG-code	=	The International Maritime Dangerous Goods Code
ADR	=	European Agreement Concerning Transport of Hazardous Substances by Road
ADNR	=	European Agreement Concerning Transport of Hazardous Substances by Inland Waterways
IATA	=	International Air Transport Association