

Rubber Resources
t.a.v de heer R. Rousch
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INC...
5 JAN 2010

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Datum	Contactpersoon	Kenmerk	Bijlage(n)
28 DEC 2009	Mr.ing. J.A. Koreman	DUA0921136	

Onderwerp
Subject: Rubber reclaim: waste material or non-waste material

Dear Mr Rousch,

You indicated in your letter of 1 November 2009 that Rubber Resources collects from two waste sources worldwide, namely inner tubes and the tread from truck tyres. These waste sources are processed separately but do in fact undergo the same process steps, such as granulation, removal of metals, thermal regeneration and extrusion. A reclaim is thus obtained which will be reapplied in the rubber industry, where it serves as a replacement for new rubber polymer. To neutralise the influence of the reclaim on the physical properties of the new manufactured product, in practice a maximum of 5% of the new rubber polymer is substituted by the reclaim. Your company sells the reclaim mainly to the tyre industry. In a telephone conversation with my colleague, Mr Koreman, you indicated that new products could also be manufactured entirely from the reclaim. The reason this does not occur in the tyre industry, is that supplementary materials are added to the rubber and that the reclaim therefore contains a portion of these additives. In this way in the tyre industry, because of the quality and safety requirements imposed on the products, a maximum of 5% of the new rubber polymer is thus substituted with the reclaim. Your request is to indicate whether the reclaim is a waste material or a non-waste material.

In response to your request you need to be aware that the Minister of Ministry for Housing, Regional Development and the Environment has commissioned SenterNovem to deal with issues concerning waste materials or non-waste materials and that the response is issued on behalf of the Minister. With regard to assessing queries concerning the topic of waste materials or non-waste materials, the definition of waste materials is considered, as stated in Directive 2006/12/EC and in the Environmental Management Act, the jurisprudence of the EU Court of Justice and pronouncements by the Council of State on this issue. The stipulations in paragraph 4.4 of the National Waste Management Plan (hereafter NWMP) are regarded as a guideline.

Prudential Consideration 91 from case C-444/0 (Mayer Parry Recycling), dated 19-06-2003, states among other things:

“...once packaging waste has been recycled within the meaning of Directive 94/62, it is no longer to be regarded as packaging waste for the purposes of that directive or, therefore, of Directive 75/442. Accordingly, ingots, sheets or coils of steel manufactured from Grade 3B material which derives from metal packaging waste that has been recycled is no longer “packaging waste” for the purposes of Directives 94/62 and 75/442.”

In case C-457/02 (Antonio Niselli), dated 11-11-2004, consideration 52 states:

“...According to Mr Niselli’s evidence, the contentious materials were then sorted, and sometimes treated, and they constitute a secondary raw material to be used in steelmaking. In such a context, they must however continue to be classified as ‘waste’ until they have actually been recycled into steel products, that is to say, until the constitution of the finished products derived from the reprocessing for which they are intended. In the earlier phases, they cannot yet be regarded as recycled, since the reprocessing has not been concluded.”

In cases C-195/05, C0194/05 and C-263/05 (Commission vs. Italy) of 18-12-2007 the EC Court of Justice again recapitulates the jurisprudence up to that time on the issue of waste material or not. The considerations 35 up to and including 41 and 46 are relevant in this context. Consideration 46 states:

46. *“Furthermore, in view of the obligation, recalled in paragraph 35 of this judgment, to give the concept of waste a broad meaning and in the light of the requirements of the case-law set out in paragraphs 36 to 41 of this judgment, reasoning along the lines of the arguments put forward by the Italian government, relating to by-products which the holder does not wish to discard, must be confined to situations where re-use of goods, materials or raw materials (including, as the case may be, in order to meet the needs of economic operators other than the producer) is not merely a possibility, but a certainty, and where such re-use does not require any prior processing and forms an integral part of the process of production or use.”*

Based on these considerations and on the conclusion of this judgment, it may be stated that if after a waste material has been processed it produces a material which complies with the required technical specifications to be usable as a raw material in a production process, there is in principle no reason to qualify the processed material as still being waste material. Mindful of the production process to arrive at the reclaim and the fact that this material forms a finished product for the various production processes in which it can be deployed, it can be stated that the issue is one of a completed manufacturing process. The reclaim is therefore also considered to be a product, a non-waste material.

I would also note that the Dutch position, as established in this letter, does not bind foreign authorities. Competent foreign authorities will or may adopt their own (divergent or affirmative) position. In transferring materials for which the question of waste material or non-waste material has been posed, you will need to take this into account, and you will also need to obtain a positive viewpoint from the competent foreign authority before being able to export the material as non-waste material to that country.



Finally I must notify you that SenterNovem intends to place this response on the site 'www.uitvoeringafvalbeheer.nl' within two weeks after despatch. Should you have any objection to this I would request that you notify me in writing within two weeks. Placement will then be waived.

Trusting that the above has provided you with sufficient information, I remain,

Yours faithfully,

Mrs (drs.) C. H. Yang,
Manager EVOA and Resolutions