

BVerwG 7 C 7/06 - Urteil vom 26. April 2007

Classification of hazardous waste as waste for disposal in case Einstufung von Sonderabfall als Abfall zur Beseitigung bei fehlender Hauptverwendung zur Energieerzeugung

The plaintiff operates a pre-treatment plant for hazardous waste and would like to dispose of a specific waste mixture as waste for energy recovery in the hazardous waste incinerator operated by the Beigeladene [affected third party]. In the disputed official notification issued by the respondent authority, the waste is classified as waste for disposal and is to be disposed of in a hazardous waste incinerator in Hamburg. The action is unsuccessful in all instances.

In conformity with the judgements of the European Court of Justice, the Federal Administrative Court bases its grounding for classification of hazardous waste as waste for energy recovery on its being principally used as a substitute for other primary energy sources in power generation. In a hazardous waste incinerator, primary energy is replaced when waste is used as a substitute fuel in the auxiliary firing process. There is no requirement for waste and primary energy to be completely exchangeable for the process to be defined as waste for energy recovery, in the sense that the plant would continue to operate even if there was no waste available. The use of thermal energy-rich waste in the auxiliary firing process in a hazardous waste incinerator is as a rule an energy recovery process when utilized specifically to regulate the incineration process. In contrast, the use of a suitable waste mix mainly to ensure the independent incineration of all waste is primarily an environmentally-friendly method of disposal and thus not a method of energy recovery.