

Insight Article

EU – de-bunkered off-spec fuel is not waste

A recent guiding ruling from the Court of Justice of the European Union (CJEU) states that off-spec oil need not be handled as waste.

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As previously reported, there have been some uncertainties regarding the Dutch authorities' interpretation of the [EU waste legislation](#) and at what time bunker fuel not compliant with the stated specifications (off-spec fuel) is to be considered as waste. Current regulations define 'waste' as *"any substance or object which the holder discards or intends or is required to discard"* and Dutch environmental authorities have in some instances interpreted this statement to mean that if a buyer rejects a parcel of fuel oil, the oil must be considered as 'discarded' and accordingly treated as waste. This interpretation has resulted in a number of criminal investigations and cases against bunker providers for failure to follow environmental regulations when de-bunkering fuel that did not meet contract specifications but was nonetheless suitable for reconditioning and resale.

The recent CJEU ruling followed an appeal by Shell Nederland and Shell Belgium against a prior ruling by the Dutch environmental authorities. The case concerned contamination of a parcel of ultra low sulphur diesel (ULSD) with remnants of MTBE. As a result, the flashpoint became too high and the ULSD was considered off-spec by the buyer. Shell agreed to refund the purchase price and take the parcel back and transported the oil to the Netherlands with the intention of blending it and placing it back on the market. However, the Dutch authorities decided that this oil should be treated as waste and pursued Shell for criminal fines.

The CJEU found that the buyer's rejection of the cargo as off-spec under the sales contract was not decisive and held that *"a consignment of diesel accidentally mixed with another substance is not covered by the concept of 'waste', provided that the holder of that consignment does actually intend to place that consignment, mixed with another product, back on the market."*

Members and Clients are advised to take note of the recent ruling by the CJEU when considering options for de-bunkering and reconditioning of off-spec fuel in the Netherlands. For further information on this the particular Shell case, please see [CJEU Case No.C-241/12](#).