

E-Scrap Contract: Tennessee Appellate Court Addresses State Agency/Contractor Dispute

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The Tennessee Court of Appeals (“Court”) in a May 18, 2016 opinion affirmed a \$382,606.98 judgment in favor of a private waste disposal contractor against the Tennessee Department of Environment and Conservation (“TDEC”). See *Clean Harbors Environmental Services, Inc. v. State*, 2016 WL 3027940.

The opinion interprets provisions in a household hazardous waste disposal contract (including e-waste) addressing the required disposition of the material.

The TDEC in 2005 contracted with Clean Harbors Environmental Services, Inc. (“Clean Harbors”) for the collection and disposal of household hazardous waste. Electronic scrap material or e-scrap was included.

A key issue was a provision in the contract requiring that the disposal facility chosen by Clean Harbors be approved in writing by the TDEC. Further, no waste collected by Clean Harbors was to leave the United States. The contract included a provision stating:

...shall treat and/or dispose of all Household Hazardous Waste and school chemicals (if not recycled by [Clean Harbors]) at an appropriate facility approved in writing by the State. No wastes accepted by [Clean Harbors] may be disposed in a Subtitle D landfill without express written approval from the State and no such wastes may leave the United States of America without prior written approval from the State.

The contract also obligated Clean Harbors to recycle, reuse or regularly dispose of the waste within 30 days of waste acceptance.

The TDEC on September 9, 2005 approved Clean Harbors proposed disposal site for e-scrap materials: Supreme Asset Management Recovery (“SAMR”), located in New Jersey. However, the agreement entered into between Clean Harbors and SAMR did not prohibit SAMR from exporting the e-scrap materials it received from Clean Harbors outside of the country. An audit conducted by Clean Harbors prior to its entering an agreement with SAMR showed that SAMR did export e-scrap materials out of the United States.

In 2008, the TDEC began investigating the entire recycle chain of e-scrap materials being taken out of Tennessee by Clean Harbors. The agency determined that SAMR shipped e-scrap materials out of the country. However, it was unable to prove that the e-scrap being exported originated in Tennessee.

The TDEC in November 2008 informed Clean Harbors that unless it could provide documentation showing that Tennessee e-scrap was not being exported outside of the country by SAMR, it was going to recoup from future payments the total amount paid to Clean Harbor from Spring 2006 through Fall 2008. The agency then calculated the recoupment amount based on all of the e-scrap that Clean Harbors collected from Tennessee, even though SAMR was only capable of exporting very specific kinds of e-scrap. TDEC put forth this calculation even though the agency was never able to verify that SAMR was exporting Tennessee e-scrap.

The Court ruled that the contract only specified that Clean Harbors could not export materials outside of the United States, and said nothing in regards to a third-party waste facility. Clean Harbors knowledge that SAMR exported e-scrap out of the country was deemed immaterial in the Court's determination of Clean Harbor's contractual duties to the TDEC. Therefore, the Court determined Clean Harbors was not in breach of the contract.

[A copy of the opinion can be downloaded here.](#)