

DISRUPTION OF WASTE DISPOSAL WITH LEAD CONTENT BY ERRONEOUS ACTION OF SOME STATE BODIES

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Summary: Lead has been known since antiquity and is used in various fields, especially in highly developed countries, which use between 20-150 kg per capita.

Obtaining lead is difficult because the ores contain less than 10% lead, so recycling operations are profitable, making more than half of the annual requirement. World annual production is over 8 million tons, almost half of which is produced in China.

It is estimated that lead ores will be depleted in about 30 years, leading to increased recycling operations.

After 1989, political and administrative decisions, legislative errors and the unpredictability of judicial solutions led to the disappearance of well-established companies in the field, focused on recycling lead-containing waste.

In some cases, the political decisions were uninspired, the administrative provisions were abusive, and some judicial bodies gave unpredictable or late solutions, disrupting some industrial or commercial areas.

A conclusive example is the administrative and judicial decisions that interrupted the final recycling of waste from batteries and accumulators. The absurd actions culminated in a ban on the export of lead concentrates to China and Albania on the grounds that they were waste. Although the export was carried out by a Swiss company, it was decided to sue the administrator of a Romanian company, which was insignificantly involved in this operation. When establishing the guilt, the evidence and the legal provisions regarding the recycling and definition of waste were disregarded. This action also affected Romania's interests, due to the burial of these by-products in landfills, with significant costs and risks.

***Keywords:** lead; lead concentrates; waste; recycle; abusive decisions; judicial errors.*

1. Bankruptcy of NEFERAL and MSG

The company NEFERAL was focused on the production of lead, zinc and tin, and in 1991 it was transformed into a joint stock company in the

field of metallurgy, with the object of activity focused on the processing and recycling of non-ferrous materials. In 2007 it obtained the *Integrated Environmental Permit*¹, which also provided for the operation of recycling waste, including those from slag resulting from the primary processing of batteries and accumulators. Lead slag was mentioned under the heading Reusable waste, being provided as a raw material for the plant for the production of by-product called *Lead Oxide Concentrate*.²

In 2008, the company had 194 employees, and 68% of the shares were owned by SC METANEF SA, the rest of the shares being freely traded on the stock exchange by other shareholders.

Several minority shareholders have acted abusively, relying on the imperfections of the relevant legislation and the shortcomings of the judiciary, which generate many contradictory decisions and insufficiently substantiated or late.³ Due to protracted lawsuits and harassment from other state bodies, SC Neferal operated for 10 years without profit and constantly reduced the number of employees, from 195 to only 4 employees.⁴

In 2017, the company was declared insolvent⁵, and the assets will be sold for only 2,200,000 euros, although they consist of land with a total area of 140,389 square meters in the town of Pantelimon, industry-specific halls, special facilities and movable property.⁶

In parallel with the activity of SC Neferal SA, an attempt was made to revalue the existing materials in some dumps related to the mining units focused on the extraction of non-ferrous ores.

In order to process the ore from several mining units and to capitalize on the tailings from the landfills located in Hunedoara County, in 1977 the MSG Mintia processing plant was built, with modern facilities for separating lead, gold, zinc and copper. Before the Revolution it had a special regime due to technological experiments and the fact that it recovered precious materials. In parallel with the activities initially planned, the plant started to process lead-containing slag from SC Neferal SA, as this company had reduced its secondary recovery activity.

¹ Bucharest Regional Environment Agency, Integrated Environmental Permit no. 27 of 20 XII 2007.

² Integrated environmental permit no. 27/2007, point 1.1.2. Table 9.

³ Florian Goldstein, Bursa Newspaper # Capital Market / January 21, 2008 www.bursa.ro/dan-paul-neferal-un-abuz-al-minoritarului-4239127.

⁴ www.expose.ro/opencomp/neferal-sa-477841.

⁵ Ilfov Tribunal, Conclusion no. 596 of 19.10.2017, pronounced in the file no. 1046/93/2012 / a15.

⁶ BDO, Business Restructuring S.P.R.L., Publication for the sale of assets of SC NEFERAL S.A. Pantelimon.

After the Revolution, the operation of closing the mining units started, in parallel with the reduction of the activity of SC Neferal SA.

Due to the non-existence of the raw material and the disinterest shown by the authorities, the MSG Mintia plant ceased operations in 2006 and entered the conservation procedure. After a while, all the equipment was sold at a ridiculous price, including steel mills of Swedish origin.

2. Establishment and operation of SC MINPROD 2005 SRL

In parallel with the decline of SC Neferal SA and MSG Mintia, solutions were sought for the recycling of used batteries and accumulators collected by SC Rombat SA Bistrița. In 2006 SC Rombat Bistrița established the subsidiary of SC Rebat Copșa Mică SRL, designed for the recovery of lead from used batteries and accumulators. The slag resulting from the *primary processing* also contained significant amounts of lead, so it had to be further recycled by other processes.

In this conjuncture, in 2005, three specialists in the mining field founded the company Minprod 2005 SRL with headquarters in Șoimuș commune, Hunedoara county, which would solve the recycling of lead slag.⁷

Offices, analysis laboratory, locker rooms, workspace, storage platforms, crushing equipment, conveyor and sorting belts, loaders, large scales for means of transport, laboratory scales, oven for drying samples were purchased, chemicals etc.

The integrated environmental permit was issued in 2008 by the Timișoara Area Agency for Environmental Protection.⁸ The components of the processing plant, the technological process and the fact that the lead oxide slags were processed only by mechanical processes were established. It was expected that the finished products, called Lead Concentrates, would be sent to the port of Constanța, from where they would be exported.

The activity took place without incident, with an average of 20 employees, and by 2014 the amount of over 30,000 tons of lead concentrate was obtained, which could no longer be processed in Romania due to the abolition of the industry. The resulting product was exported to China,

⁷ Daniel A. and Marius C. were general manager and technical director respectively at Minvest SA Deva, under whose subordination the Vețel Mining Branch and the MSG plant had functioned, and Victor S. had been a director at SC Phoenix Baia Mare, who had been in charge of the final processing of some mining materials.

⁸ Integrated Environmental Permit no. 23/18 February 2008.

almost entirely through the Swiss company Werco Trade, which held supreme supremacy in transactions in powder materials.

The environmental permit was revised in 2013 by the Hunedoara Environmental Protection Agency, in order to diversify the activity by recycling a waste from thermal copper metallurgy. It was to be brought from the largest mining field in Poland⁹, focused mainly on copper, from the processing of which results in a waste with a very high lead content. By combining it with the waste brought from SC Rebat Copșa Mică, lead concentrates with a sufficiently high content would have been obtained to be able to be exported even if the operation to improve the lead extraction at SC Rebat Copșa Mică was completed.

The sample sample was brought from Poland, which is referred to in a SEVESO inspection report.¹⁰ It was stated that the finished product obtained from the Rebat Copșa Mică slag has a concentration of 18% and that obtained from the Polish product. has a concentration of 48% lead.¹¹

This phase was not completed, as the Roman authorities set more restrictive conditions for transport than those in Hungary and Slovakia, which were transit countries.

Due to the large quantities of recycled waste, Minprod 2005 SRL was one of the important companies, receiving over 20 diplomas and cups.

3. Bankruptcy of the company Minprod SRL Șoimuș

The company Minprod 2005 SRL Șoimuș has been controlled many times by various bodies, including the commissioners of the Environmental Guard from Bucharest and other counties, without contesting the technological process or the quality and name of the material obtained. Thus, in the period 2010-2017, the National Environmental Guard carried out a number of 18 inspections, of which 11 planned inspections and 7 unplanned inspections, in which commissioners from other counties or from the General Commissariat also participated.¹²

In 2014, the company was taken over by three investors from Bucharest, who intended to purchase new equipment and transfer the productive activity to the industrial area of Deva, in order to have more storage space for the resulting material. In the same year, the company tried

⁹ KGHM Polska Miedz S.A.

¹⁰ SEVESO Inspection Report No. 46 of 11 June 2014.

¹¹ SEVESO Report nr. 46 /2014, pg. 6.

¹² GNM address, General Commissariat no.nr.2712/11.09.2020, to the Babadag Court. a

to export the lead concentrate without intermediaries, but was harassed in various ways, including fines for bagging and exceeding the maximum quantity on the platform.

On January 19, 2015, the National Environmental Guard established that there was a quantity of 1500 tons of lead concentrate inside SC Minprod, so it forbade the purchase of oxide slag, due to exceeding the maximum amount of 190 tons allowed on the platform.¹³

The ban was complied with, as in March 2015 the company was inspected by six commissioners, two of whom were from the General Commissariat and the Prahova County Commissariat respectively.¹⁴

Productive activity ceased, some staff were fired, and profits dwindled due to numerous fines.

In April 2015, SC Minprod was included in the insolvency proceedings, which were challenged without success.¹⁵

The fines were also imposed after the cessation of the activity. Thus, on January 20, 2015, the Environmental Guard imposed a fine of 70,000 lei because there was a quantity of 1,500 concentrated tons of lead on the premises.¹⁶ On July 30, 2015, the National Environmental Guard imposed a fine of 20,000 lei for not a safety report has been prepared for the oxide slag processing plant, although it is no longer operating.¹⁷

Inspections were also carried out during the insolvency period, including by GNM Commissioners, being reported only the fact that the authorized amount of lead concentrate was exceeded and that the security of the platform on which it was stored was not ensured, the last aspect being notified to the criminal investigation bodies. Following the investigation, it was established that the security could not be provided by SC Minprod due to insolvency, and the material was not likely to endanger life or human, animal or plant health.¹⁸

The elimination of SC Minprod 2005 Şoimuş was finalized by canceling the Integrated Environmental Permit by the Hunedoara Environmental Protection Agency in August 2015.¹⁹ The insolvency company unsuccessfully challenged this measure and the last sanction applied.²⁰

¹³ National Environmental Guard, Hunedoara County Commissariat, minutes no.13/17.01.2015

¹⁴ National Environmental Guard, Bucharest General Commissariat, Minutes no. 56/18.03.2015

¹⁵ Hunedoara Tribunal, civil sentence 352/F/16 IV 2015 of the back 6099/97/2014

¹⁶ Environmental Guard, Hunedoara County Commissariat, minutes no. 10.139.

¹⁷ National Environmental Guard, Hunedoara County Commissariat, minutes no. 04157 / 30.07.2015.

¹⁸ To the Prosecutor's Office attached to the Deva Court, Classification Ordinance of 22 VI 2018.

¹⁹ Decision no. 6767 / 13.08.2015.

²⁰ East Liquidators IPURL, Application in the preliminary procedure of 11.082015.

As a result, the recycling of oxide slag has ceased, which is buried at the Vivani Salubritate Slobozia.

4. Sanctioning an attempt to export the latest lead concentrates to China

During the operation of SC Minprod SRL, the quantity of over 30,000 tons of lead concentrate was exported to China, through the Swiss company Werco Trade AG, specialized in such transactions.

When the activity of SC Minprod SRL ceased, the quantity of 1500 tons of lead concentrate remained in the premises, and other quantities remained in the localities of Mintia and Hunedoara, belonging to other companies.

The last liquidation company, led by a lawyer, did not have any information about the possibility of capitalization, so he and other bodies appealed to the former administrator of SC Minprod. In view of the previous relations with Werco Trade AG and Werco Logistic, it also requested that the concentrates from the three locations be exported. Werco Trade AG stated that it has the option to purchase them for export only if there is a lead concentration of more than 15% in the analysis it will order.

As a result, in October 2017 he requested the analysis of concentrates by the English laboratory Alfred H Knight. The concentration of over 15%, required by Werco Trade AG, was found only for the existing materials in Şoimuş and Hunedoara. As a result, it was agreed to buy only the existing lead concentrate at these locations, starting with the one in Şoimuş.

The purchase was made through SC Stock Resource SRL, managed by Alina C., who did not specialize in such transactions. The sale was made with the Ex Works trade clause, but it was mentioned that it will appear in some customs documents, because the Swiss company did not have an EORI code in Romania. This detail was not given importance due to the small amount of material and commercial usages of this nature.

At the same time, the transaction and the export intention were communicated to the competent institutions of the state, respectively to the Environmental Agency, Environmental Guard and Hunedoara Prefecture, including the liquidating company.²¹ In this information it was mentioned that a sale-purchase contract was signed for quantity of the material located on the Şoimuş site, which must be packed and transported to the port of Constanţa for delivery to China.

²¹ APM Hunedoara, address registered with no. 10274/14.11.2017; GNM Hunedoara, the address registered with no. 3107/14.11.2017; Voicu&Voicu Liquidators IPURL, address no. 5088/20.11.2017.

In the period 28.11- 08.12.2017, at the request of Werco Trade, the AHK laboratory took samples from all shipments made to the port by Werco Logistic, sending three sets of samples to the laboratory in England. It set a concentration of 19.74%, 18.17% and 19.72% Pb, but communicated the results only in January 2018.

In the first phase, the formalities for export went normally, on November 29, 2017 the documents were approved for the 'clearance' of a batch of 20 containers, but the goods were not shipped immediately, being scheduled for loading on the ship on December 12 2017, together with batch 2 of material. It arrived in port on December 5, 2017, being the second customs declaration prepared by the commissioner Elvada Company, for the quantity of 342,823 kg. lead concentrate, packed in 255 bags, placed in 14 containers.

The last shipment did not receive export approval, as a commissioner from the National Environmental Guard became aware of the transaction. He decided from the first day that the material was Waste, not Lead Concentrate, invoking the fact that on the documents for the sale of the product from SC Minprod 2005 SRL, the liquidator made the mention "material with lead content / lead concentrate". The clarifications made immediately by the judicial liquidator and the Environmental Protection Agency were not taken into account, in the sense that "Regardless of the lead content in the lead concentrate, if there is a market or demand and the product meets the technical requirements it can no longer be considered waste.

Although the detailed analysis of the material by the AHK laboratory was certain, the National Environmental Guard ordered the analysis by the Wessling Targu Mureş laboratory, which took samples on December 14, 2017. Due to the erroneous sampling and analysis, a concentration was established. reduced lead by only 4.77% and 4.38%.

The results established by the Wessling Laboratory were contested by all parties, including the AHK Laboratory, so it was ordered that the Wessling Laboratory take other complete samples from both the material stored in the port and the one returned with three trucks on the platform in Şoimuş.

The second analysis performed by the Wessling laboratory, when it took the samples correctly and used the legal method of analysis, established a concentration of 19.80% Pb for the material in the port.

The criminal investigation body sent to the Polytechnic University of Bucharest some of the samples collected by the representatives of the Wessling laboratory in February 2018, where a concentration of 29.84%

was established for the sample from the port and 30.79% for the sample collected from the material returned on the platform from Şoimuş.²²

Contrary to these analyzes and other evidence, it was ordered to prosecute the defendant Crăciun Alina Simona and SC Stock Resource SRL for the crimes of qualified smuggling, the use of unreal acts at customs and illegal export of waste.²³

The case was moved from Constanța Court to Babadag Court²⁴ numerous pieces of evidence were administered, which confirmed the non-existence of the offenses.

After almost three years, the court ordered the acquittal for all the crimes.²⁵

Although there is no evidence of guilt, the prosecutor's office declared the appeal, which is not resolved, even though four years have passed since the alleged acts were committed.

The appeal is questionable in all respects and demonstrates the attempt to obtain a conviction, which would lead to a serious miscarriage of justice and would harm Romania's interests in the field of recycling and waste disposal.

AUTHOR'S NOTE

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- Environmental Protection Course: "First International Training Course on Environmental Protection and Law Enforcement" - Nucleo ecologico carabinieri, Rome, 1997.
- Diploma 'Judicial Merit Class I'.
- The honorary plaque 'Pro scientia, for contributing to the development of forensics', awarded by the Romanian Society of Forensics and Criminology.
- Included in the Dictionary of Hunedoara personalities in the field of art, science and technology, Emia Publishing House, 2000 edition, pg. 307 and Edit. Emia, 2004, pg. 332, based on published works and documentaries made.
- Included in the Encyclopedia of Romanian personalities, 2011 edition, pp. 1,100-1,101.

²² Analysis bulletin no. 737/DECPB/20 IV 2018.

²³ The prosecutor's office attached to the Constanța Court of Appeal, indictment no. 525 / P / 2017 from 06.07.2018.

²⁴ Babadag Court, file no. 18547/212/2018.

²⁵ Babadag District Court, sentence no. 82 of April 14, 2021.

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