

PRESS RELEASE

24 February 2010

Luther obtains landmark decision before the Federal Administrative Court

Cologne, 24 February 2010 - Luther Rechtsanwaltsgesellschaft mbH has achieved a landmark decision (7 C 10.09) before the Federal Administrative Court on behalf of the operators of approximately 1,700 German plants that are subject to emission trading. According to this decision, the state authorities are obliged to examine and, as the case may be, fully approve the monitoring concepts of the plant operators. So far, the authorities approved only deviations and facilitations, but not the concepts as a whole.

The operators of approximately 1,700 German plants that are subject to emission trading have a legal obligation to determine their annual carbon dioxide emissions and report these emissions to the German Emission Trading Authority (*Deutsche Emissionshandelsstelle* – “DEHSt”). For each reported metric ton of carbon dioxide emissions, an emission certificate must then be filed with the DEHSt.

The manner in which plant operators have to determine their carbon dioxide emissions is stipulated in detail in the so-called Monitoring Guidelines issued by the European Commission. These Guidelines provide, inter alia, that each operator must describe the manner in which it determines its emissions in a monitoring concept which relates specifically to such operator’s plant; during the trading period, this concept must be submitted to the competent authority for approval each year anew. This approval is a prerequisite for the examination of the emission reports by the competent authority. The approval may additionally save a plant

operator from sanctions by the DEHSt if the situation arises. During the trading period from 2008 to 2012, these sanctions amount to EUR 100 for any allowance the operator fails to submit.

The company which was represented by Luther is one of the largest German manufacturers of ceramics products and was provided with an approval covering merely its deviations from the Monitoring Guidelines, rather than with a full approval for its monitoring concept, as applied for. This endangered not only the verifiability of its emission report for the year 2008, but also the protection offered by the approval in the event of possible sanction procedures of the DEHSt.

The Federal Administrative Court dismissed the leap-frog appeal of the sued state authority by decision dated 18 February 2010. As a result, the first-instance judgment passed by the Administrative Court of Koblenz on 6 April 2009 (**1 K 1305/08.KO**) has become final and non-appealable.

After several years, this decision now brings clarity about a key issue concerning the emission trading system. Since the introduction of emission trading in 2005, the state authorities (with the exception of North Rhine-Westphalia) have always refused to fully approve the plant operators' monitoring concepts. This administrative practice, which was detrimental to plant operators, has now been terminated by the Federal Administrative Court.

On behalf of the claimant:

Luther Rechtsanwalts-gesellschaft mbH: Dr. Stefan Kobes (Partner),
Dr. Gernot-Rüdiger Engel, Dr. Denise Renger (all Public Law).

On behalf of the State of Rhineland-Palatinate:

Ministry for the Environment, Forestry and Consumer Protection: Dr.
Hofmann

Structural and Approval Directorate South: Thomas Gottschling

On behalf of the representative of the federal interests before the Federal Administrative Court:

Dr. Stephan Breitkopf, Dr. Siegfried Waskow, Dr. Uwe Neuser

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Brief Profile of Luther Rechtsanwaltsgesellschaft mbH

Luther is one of the leading German commercial law firms providing comprehensive services in all the relevant fields of legal and tax consulting. The full-service law firm employs more than 320 lawyers and tax advisors and is represented at 12 German economic centres and at important investment locations and centres of finance in Europe and Asia with its international offices in Brussels, Budapest, Luxembourg, Istanbul, Shanghai and Singapore. Our clients include medium-sized enterprises and large corporations, as well as the public sector. Luther is also part of the PMLG international group of law firms and is the German member of Taxand, a worldwide network of independent tax firms.

Luther is a law firm with an entrepreneurial approach: our innovative awareness aspires us to provide our clients with customised legal advice that addresses individual needs and delivers the greatest possible economic benefit. Our lawyers and tax advisors have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks.

Further information is available at: www.luther-lawfirm.com

Press contact

Luther Rechtsanwaltsgesellschaft mbH

Annette von Frankenberg

Anna-Schneider-Steig 22

50678 Cologne

Phone: 0221 9937 18013

E-mail: annette.von.frankenberg@luther-lawfirm.com