

**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
STATES OF AMERICA AND THE GOVERNMENT OF MALAYSIA
CONCERNING THE TRANSBOUNDARY MOVEMENT OF
HAZARDOUS WASTES FROM MALAYSIA TO
THE UNITED STATES**

The Government of the United States of America (the United States) and the Government of Malaysia (Malaysia), hereinafter referred to as 'the Parties,'

Recalling the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the 'Basel Convention');

Recalling Article 4(5) of the Basel Convention, which provides that a party shall not permit hazardous wastes to be exported to a non-party;

Recalling also Article 11(1) of the Basel Convention, which provides that, notwithstanding Article 4(5), a party may enter into an agreement with a non-party provided that such agreement does not derogate from the environmentally sound management of hazardous wastes as required by the Convention and that such agreement stipulates provisions not less environmentally sound than those provided for by the Convention;

Have agreed as follows;

**ARTICLE 1
DEFINITIONS**

For purposes of this Agreement:

- (a) 'competent authority' means, in the case of the United States, the U.S. Environmental Protection Agency and in the case of Malaysia, the Malaysian Department of Environment of the Ministry of Science, Technology and the Environment.

- (b) 'hazardous wastes' means those materials that are defined as hazardous wastes under either U.S. or Malaysian law.
- (c) 'management' means the collection, transport and disposal (including recycling and recovery) of hazardous wastes, including after-care of disposal sites.
- (d) 'environmentally sound management of hazardous wastes' means taking all practicable steps to ensure that hazardous wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.
- (e) 'contract' means the contract between the exporter and the intended facility of the United States for environmentally sound management of hazardous wastes.
- (f) 'exporter' means any person under the jurisdiction of Malaysia who arranges for hazardous wastes to be exported.
- (g) 'importer' means any person under the jurisdiction of the United States who arranges for hazardous wastes to be imported.

ARTICLE 2 PURPOSE

The purpose of this Agreement is to provide a framework for the transboundary movement of hazardous wastes that are shipped from Malaysia to the United States for management.

ARTICLE 3 GENERAL OBLIGATION

The Parties hereby undertake to comply with the terms and conditions applicable to them under this Agreement, in particular with regard to transboundary movements of hazardous wastes undertaken pursuant to this Agreement, and acknowledge that with regard to such movements Malaysia shall be bound by the relevant provisions of the Basel Convention.

ARTICLE 4 NOTICE AND CONSENT

1. The competent authority of Malaysia shall notify in writing the competent authority of the United States of proposed transboundary shipments of hazardous wastes to be carried out under this Agreement.

2. The notice referred to in paragraph 1 above may cover an individual shipment or a series of shipments extending over a twelve month or lesser period where the hazardous wastes in question have the same physical and chemical characteristics and are shipped regularly to the same facility via the same customs office of exit in Malaysia and the same customs office of entry in the United States. If any information in the notice changes, then a new notice shall be provided.

3. The notice referred to in paragraph 1 above shall contain the declarations and information, written in the English language, specified in Annex V A of the Basel Convention.

4. With respect to materials that are defined as hazardous wastes under U.S. law:

- (a) the competent authority of the United States shall, in accordance with applicable U.S. law, respond to the competent authority of Malaysia in writing, consenting to the shipment with or without conditions, denying permission for the shipment, or requesting additional information. The competent authority of the United States shall make best efforts to respond within 30 days of receipt of the notice.
- (b) the consent of the competent authority of the United States, including a conditional consent may be withdrawn or modified for good cause; in such case, the United States shall notify Malaysia as soon as possible. 'Good cause' means the introduction of new facts or developments that render incomplete the prior basis for consent or conditional consent.

5. With respect to materials that are defined as hazardous wastes under Malaysian law, but not under U.S. law:

- (a) the United States shall not object to the import of materials that are not hazardous wastes under U.S. law. This provision shall serve as the U.S. written confirmation for imports of materials that are not hazardous wastes under U.S. law. This provision shall not apply to wastes which are contaminated by other materials to the extent that they are regulated as hazardous wastes under U.S. law or to materials that are prohibited from import under U.S. law.
- (b) where information provided in a notice under paragraph 1 above is based on fraudulent or inaccurate information, Article 7 of this Agreement may apply. Further, the United States reserves the right to rescind non-objection to these imports.
- (c) nothing in this paragraph precludes the United States from taking enforcement action against appropriate persons or vessels (liability in rem) for violation of U.S. law.

6. Malaysia shall not allow a transboundary shipment to commence until:

- (a) its competent authority has received confirmation from the exporter of the existence of a contract between the exporter and the intended facility in the United States specifying:
 - (1) the environmentally sound management of the hazardous wastes in question (which would be satisfied by specifying that the hazardous wastes will be managed in accordance with applicable U.S. law); and
 - (2) alternative arrangements, including which party to the contract is to pay for alternative arrangements for the proper management in an environmentally sound manner of the hazardous wastes in question in the United States or Malaysia in the case where the intended facility cannot or will not accept the hazardous wastes; and

- (b) in the case of materials that are defined as hazardous wastes under U.S. law, its competent authority has received from the competent authority of the United States written consent to the shipment.

7. Malaysia shall not allow a transboundary shipment if it has reason to believe that the hazardous wastes in question will not be managed in an environmentally sound manner.

8. The management of hazardous wastes, once subject to the jurisdiction of the United States pursuant to this Agreement, shall be subject to applicable U.S. law.

ARTICLE 5 COOPERATIVE EFFORTS

1. The Parties shall cooperate to ensure, to the extent possible, that all transboundary movement of hazardous wastes pursuant to this Agreement comply with applicable tracking document and manifest requirements.

2. The Parties shall cooperate to ensure, to the extent possible, that transboundary movements of hazardous wastes pursuant to this Agreement conform to the requirements of applicable law of both Parties and of this Agreement.

ARTICLE 6 DUTY TO RE-IMPORT

In the event a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract and provided that the alternative arrangements specified in the contract for the proper management in an environmentally sound manner of the hazardous wastes in question cannot be made (irrespective of whether the United States has given its consent), Malaysia shall, by itself or through the exporter, ensure that the wastes in question are taken back into Malaysia within 90 days from the time that the competent authority of the United States has so informed the competent authority of Malaysia.

ARTICLE 7 ILLEGAL TRAFFIC

1. In the case of a transboundary movement of hazardous wastes not in accordance with this Agreement as a result of conduct on the part of the exporter, Malaysia shall ensure that the hazardous wastes in question are taken back by the exporter, or, if necessary, by itself, to Malaysia, or, if impracticable, are managed pursuant to the provisions of the Basel Convention, within thirty days from the time that Malaysia receives notice about the illegal traffic or such other period of time as the parties may agree. To this end, the Parties shall not oppose, hinder, or prevent the return of those hazardous wastes to Malaysia.

2. In the case of a transboundary movement of hazardous wastes not in accordance with this Agreement as a result of conduct on the part of the importer, the United States shall take appropriate enforcement measures to require the importer to manage the hazardous wastes in question in an environmentally sound manner as soon as feasible from the time the illegal traffic has come to the attention of the United States. To this end, the Parties shall cooperate, as necessary, in the management of the hazardous wastes by the importer in an environmentally sound manner.

3. In the case where responsibility for the illegal traffic cannot be assigned either to the exporter or to the importer, the Parties shall cooperate to ensure that the hazardous wastes in question are managed as soon as possible in an environmentally sound manner in the state of export, the state of import, or elsewhere as appropriate.

ARTICLE 8 INSURANCE

The United States may require, as a condition of entry, that any import of hazardous wastes be covered by insurance or other financial guarantee in respect of damage caused during any part of the entire movement of hazardous wastes, including loading and unloading, and in case an alternative arrangement for its management in an environmentally sound manner or its return to Malaysia is necessary.

**ARTICLE 9
AMENDMENT**

This Agreement may be amended by written consent of the Parties.

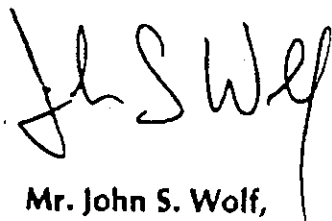
**ARTICLE 10
ENTRY INTO FORCE**

This Agreement shall enter into force upon signature and shall remain in force until the date upon which the United States becomes a party to the Basel Convention. Either Party may terminate this Agreement upon written notification, such termination to take effect six months following the date of notification.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at *Kuala Lumpur* in duplicate, this *10th* day of
March, 1995.

For the Government of the
United States of America:



Mr. John S. Wolf,
Ambassador of the United States
of America to Malaysia

For the Government
of Malaysia:



Dato' Dr Abu Bakar Jaafar,
Director General,
Department of Environment,
Malaysia