



Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996

Statutory Rules No. 283, 1996

made under the

Hazardous Waste (Regulation of Exports and Imports) Act 1989

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About this compilation

This compilation

This is a compilation of the *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996* that shows the text of the law as amended and in force on 1 July 2017 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name of regulations

These regulations are the *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996*.

3 Object

The object of these Regulations is to make regulations for section 13C of the Act giving effect to the OECD Decision.

Note: Regulations made for the purposes of section 13C of the Act are known as a set of Article 11 regulations: see ss. 13C (3) of the Act.

4 Interpretation

- (1) In these Regulations, unless the contrary intention appears:

Act means the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

amber control procedure means the procedure described in Section D of Chapter II of the OECD Decision.

appropriate insurance has the meaning given by regulation 5.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999*.

exporting country, for a special import permit, means the OECD country from which the hazardous waste proposed to be imported under the permit originated.

green control procedure means the procedure described in Section C of Chapter II of the OECD Decision.

hazardous waste has the meaning given by Section A of Chapter II of the OECD Decision.

importing country, for a special export permit, means the OECD country to which hazardous waste that is proposed to be exported under the permit is finally destined.

OECD country means a country that is a member of the Organisation for Economic Cooperation and Development under the Convention on the Organisation for Economic Cooperation and Development done at Paris on 14 December 1960.

OECD Decision means OECD Decision C(2001)107, being Revision of Decision C(92)39/FINAL on the control of transboundary movements of wastes destined for recovery operations, made on 14 June 2001 by the Council of the Organisation

Regulation 5

for Economic Cooperation and Development, a copy of the English text of which is set out in Schedule 1.

pre-consented recovery facility means:

- (a) for Australia—a recovery facility approved under regulation 42; or
- (b) for an OECD country other than Australia—a recovery facility in that country to which Chapter II Section D (2) Case 2 of the OECD Decision applies.

recovery facility means a facility that carries out recovery operations on hazardous waste.

recovery operation means an operation mentioned in Appendix 5.B to the OECD decision.

transboundary movement, in relation to wastes, means movement of wastes from an area under the national jurisdiction of an OECD country to an area under the national jurisdiction of another OECD country.

transit country, for particular hazardous waste, means a country through which the waste is proposed to be transported on the way to its final destination.

waste has the meaning given by Section A of Chapter II of the OECD decision.

working day means a day, other than a Saturday, Sunday or public holiday, in the Australian Capital Territory.

Note: Words and phrases used in these Regulations that are defined in the Act have the same meaning in these Regulations as they do in the Act: see *Acts Interpretation Act 1901*, s 46. For example, section 4 of the Act includes definitions of *Basel Convention*, *competent authority*, *environmentally sound management*, *export proposal*, *hazardous waste*, *holder*, *import proposal*, *special export permit*, *special import permit*, *special permit*, *special transit permit* and *transit proposal*.

- (2) A reference in these Regulations to an acknowledgment, consent, notification or objection made or given by the competent authority of an OECD country is a reference to an acknowledgment, consent, notification or objection made or given in accordance with the OECD Decision.

5 Meaning of *appropriate insurance*

For these Regulations, an applicant for a special permit has **appropriate insurance** if, were the permit to be granted, the applicant would be:

- (a) reasonably insured against risks that might arise in relation to the hazardous waste to which the permit relates; or
- (b) whether because of arrangements made by the applicant or otherwise—able to discharge his or her liability that might arise in relation to the waste.

6 Wastes destined for recovery operations that require control procedures to allow transboundary movement

- (1) The wastes listed in Appendix 3 to the OECD decision are subject to the green control procedure.
- (2) The wastes listed in Appendix 4 to the OECD decision are subject to the amber control procedure.

Note: The OECD decision on the control of transboundary movements of wastes destined for recovery operations sets out a two-tier system to delineate controls to be applied to movements of such wastes. The two procedures are the *green control procedure* and the *amber control procedure*.

7 Other wastes including wastes not listed in Appendix 3 or Appendix 4 of the OECD decision

- (1) Wastes not listed in Appendix 3 or Appendix 4 of the OECD decision that exhibit a hazardous characteristic listed in Appendix 2 of the OECD decision are subject to the amber control procedure.
- (2) However, all wastes (including those listed in Appendix 3 that are not otherwise subject to the amber control procedure) that are contaminated by other materials are subject to the amber control procedure if:
 - (a) the risks associated with the wastes are increased sufficiently by the contamination to render them appropriate for submission to the amber control procedure, when taking into account the criteria in Appendix 6 of the OECD decision; or
 - (b) the contamination prevents recovery of the wastes in an environmentally sound manner.

8 Mixtures of wastes

- (1) A mixture of wastes, being a mixture for which there is no individual entry in Appendix 3 or Appendix 4 of the OECD decision, is subject to the control procedures set out in this regulation.
- (2) A mixture of wastes, each subject to the green control procedure, is subject to the green control procedure if the composition of the mixture does not impair its environmentally sound recovery.
- (3) A mixture of a waste or wastes subject to the green control procedure and more than a trivial amount of a waste subject to the amber control procedure is subject to the amber control procedure if the composition of the mixture does not impair its environmentally sound recovery.
- (4) A mixture of wastes, each subject to the amber control procedure, is subject to the amber control procedure if the composition of the mixture does not impair its environmentally sound recovery.

Regulation 8A

8A Transboundary movement of wastes for laboratory analysis

Despite regulations 6, 7 and 8, wastes are not subject to the amber control procedure if:

- (a) the wastes are to be sent for laboratory analysis:
 - (i) to assess physical or chemical characteristics; or
 - (ii) to determine suitability for recovery operations; and
- (b) the amount of waste does not exceed 25 kg and is the minimum reasonably needed to perform the analysis; and
- (c) notice of the proposed transboundary movement is given to the Minister, in a form approved by the Minister, at least 30 days before the proposed movement; and
- (d) within 30 days of receiving notice of the proposed movement, the Minister confirms in writing that the particular wastes are not subject to the amber control procedure.

Part 2—Applications for special permits

9 Application for special permit

- (1) A person may apply under these Regulations for a special permit in relation to a particular substance that:
 - (a) is subject to the amber control procedure; or
 - (b) under subsection 4F (2) of the Act, is taken, for a particular OECD country, to be hazardous waste for the purposes set out in subsection 4F (1) of the Act.
- (2) Application for a special export permit under these Regulations may be made only for hazardous waste that is proposed to be exported to an OECD country to undergo a recovery operation in that country.
- (3) Application for a special import permit under these Regulations may be made only for hazardous waste that is proposed to be imported from an OECD country to undergo a recovery operation in Australia.
- (4) Application for a special transit permit under these Regulations may be made only for hazardous waste that is:
 - (a) produced in an OECD country (other than Australia); and
 - (b) proposed to undergo a recovery operation in another OECD country (other than Australia).

10 Variation of applications

- (1) At any time before the Minister grants or refuses a special permit, the applicant may give the Minister a notice stating that the application is varied as set out in the notice.
- (2) The notice must:
 - (a) be in the form approved by the Minister; and
 - (b) set out, or be accompanied by, the information about the variation as requested in the form.
- (3) If the Minister receives a notice from the applicant:
 - (a) the application is taken to be varied in accordance with the notice; and
 - (b) the application, as varied, is taken to have been received by the Minister on the day on which the Minister receives the notice.

11 Minister may request more information

- (1) If the Minister needs more information to deal with an application for a special permit, the Minister may ask the applicant to provide the information in writing.

Regulation 12

- (2) The request must be in writing and must be given to the applicant:
 - (a) for a special export permit—within 40 days after the Minister receives the application; or
 - (b) for a special import permit or special transit permit—within 30 days after the Minister receives the application.

12 Acknowledgment and notification

- (1) Within 3 working days after receiving an application for a special permit, the Minister must give the applicant written acknowledgment of the receipt.
- (2) Within 3 working days after receiving notification from the competent authority of an OECD country of an import proposal, the Minister must give the competent authority written acknowledgment of the receipt.
- (3) If notification is not received from the competent authority of an OECD country about a particular import proposal, the Minister must give the competent authority written notice of the receipt of an application for the special import permit to which the proposal relates, within 3 working days after receiving the application.
- (4) Within 5 working days after receiving an application for a special export permit, the Minister must give the competent authority of the importing country a written notice that sets out the following information:
 - (a) the fact that the application has been received;
 - (b) the waste to which the application relates;
 - (c) full details (including name, business address, telephone number and facsimile number) of:
 - (i) the applicant; and
 - (ii) the proposed recipient of the waste; and
 - (iii) if the proposed recipient is not a recovery facility—the recovery facility at which the waste is proposed to undergo a recovery operation;
 - (d) the transit countries in relation to the waste;
 - (e) the time when, or period during which, the export is proposed to occur.

Part 3—Grant of special permits

Division 1—Special export permits

13 Interpretation

In this Division:

decision period means the period mentioned in subregulation 14 (1), together with an extension (if any) of that period under subregulation 15 (1), (3), (5), (5A) or (6).

14 Decision on permit application

- (1) Subject to regulation 15, within 40 days after receiving an application for a special export permit, the Minister must grant or refuse the permit.
- (2) As soon as practicable after granting or refusing the permit, the Minister must give the competent authority of the importing country written notice of the decision, and:
 - (a) if the decision is to grant the permit—give the permit to the applicant; or
 - (b) if the decision is a refusal—give the applicant written notice of the decision, and the reasons for it.
- (3) Contravention of subregulation (2) does not affect the validity of the decision.
- (4) Before deciding to grant, or refuse to grant, an application for a special export permit, the Minister:
 - (a) must allow the applicant access to, or give a copy to the applicant of, any material held by the Minister that suggests that the application should be refused; and
 - (b) if the Minister considers that the applicant needs to know the name of the person or body from whom the material was obtained to enable the applicant to consider the material properly—may tell the applicant in writing the name of the person or body; and
 - (c) must invite the applicant in writing to give written comments on the material to the Minister.
- (5) Before making the decision, the Minister must consider any written comments made by the applicant on the material.

15 Circumstances affecting decision period

- (1) If, within 35 days of receiving an application for a special export permit:
 - (a) the competent authority of the importing country has neither consented nor objected to the grant of the permit; or
 - (b) if the applicant for the permit proposes to transport the hazardous waste to which the permit applies through a foreign country—the competent

Regulation 16

authority of that country has not decided whether transport of the waste through the country should be allowed;

the decision period is extended until the end of 5 working days after the Ministerial receipt day.

- (2) In subregulation (1), *Ministerial receipt day* means:
- (a) if there is only 1 consent or objection—the day when the Minister receives the consent or objection; or
 - (b) if there are 2 or more consents or objections and the Minister receives them on the same day—that day; or
 - (c) if there are 2 or more consents or objections and the Minister receives them on different days—the last of those days.
- (3) If the Minister thinks that a decision cannot be made within the decision period, the Minister may extend the period by not more than 60 days.
- (4) As soon as practicable after extending the decision period under subregulation (3), the Minister must give written notice of that decision to:
- (a) the applicant; and
 - (b) the competent authority of the importing country.
- (5) If the Minister has invited the applicant to comment under paragraph 14 (4) (c), the decision period is extended until the end of 15 working days after receipt by the Minister of any written comments made by the applicant.
- (5A) If, within the decision period, action is begun under the EPBC Act in relation to the export proposal that is the subject of the application, the decision period is extended until the end of 5 working days after completion of the procedures required by that Act because of the action.
- Note: See section 6 of the Act as to when action is begun under the EPBC Act in relation to a proposal, and when procedures under that Act are completed.
- (6) If the decision period is extended by subregulation (5) or (5A), then, before the end of the period as so extended, the Minister may agree with the applicant, in writing, to extend the period further.
- (7) If the Minister has not granted or refused the permit by the end of the day by which the Minister is required by regulation 14 or this regulation to have done so, the Minister is taken to have refused the permit.

16 Grant of special export permit

- (1) The Minister must not grant a special export permit authorising the export of hazardous waste unless the Minister is satisfied that:
- (a) the application for the permit is permitted by regulation 9 to be made; and
 - (b) dealing with the hazardous waste concerned in accordance with the export proposal would be consistent with the environmentally sound management of the waste; and

- (c) the competent authority of the importing country has given written consent to the movement of the waste; and
 - (d) the waste will undergo a recovery operation in the importing country at a recovery facility that is authorised to carry out recovery operations on waste of that type; and
 - (e) having regard to the OECD decision, Chapter II, Section D (1) (a) (concerning written contracts covering the movement of waste), it is appropriate to grant the permit; and
 - (f) the waste will be allowed to be transported through any foreign country through which the waste is proposed to be transported; and
 - (g) the waste will be transported in a way that is consistent with the environmentally sound management of the waste; and
 - (h) the applicant:
 - (i) is a suitable person to be granted the permit; and
 - (ii) has appropriate insurance.
- (2) The Minister may refuse to grant the permit if the Minister considers that it is in the public interest to do so.
- (3) The Minister may refuse to grant the permit if the Minister is satisfied that:
- (a) there is another way in which the hazardous waste could appropriately be dealt with; and
 - (b) dealing with the waste in that way would not pose significant risk of injury or harm to people or the environment; and
 - (c) having regard to Australia's international obligations, the waste should be dealt with in that way rather than according to the export proposal.
- (4) The Minister may refuse to grant the permit if the Minister is satisfied that:
- (a) the hazardous waste could be disposed of safely and efficiently by using a facility in Australia; and
 - (b) such a disposal would be consistent with the environmentally sound management of the waste; and
 - (c) having regard to the desirability of using facilities in Australia for the disposal of hazardous waste, the waste should be disposed of by using that facility rather than according to the export proposal.
- (5) For paragraph (1) (c), if the waste proposed to be exported is waste subject to the amber control procedure, the competent authority of the importing country is taken to have given written consent to the grant of the permit if:
- (a) the country has acknowledged receipt of the notice mentioned in subregulation 12 (4); and
 - (b) for waste that is proposed to be sent:
 - (i) to a pre-consented recovery facility—no objection is received within 7 days of that acknowledgement; or
 - (ii) in any other case—no objection is received within 30 days of that acknowledgement.

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- (5A) For paragraph (5) (b), ***no objection is received*** means that no written objection to the export proposal from the importing country or a transit country is received by the exporting country or, if an objection of that type has been received, it has been withdrawn within the time allowed.
- (6) A consent that, under subregulation (5), is taken to have been given to the grant of a permit has effect for the export proposal commencing on the day after the date of the acknowledgement mentioned in paragraph (5) (a) and ending:
- (a) for export to a pre-consented facility—3 years and 7 days later; or
 - (b) in any other case—1 year and 30 days later.
- (7) For subparagraph (1) (h) (i), the Minister must consider:
- (a) the applicant's financial viability; and
 - (b) the applicant's previous record on environmental matters; and
 - (c) other relevant matters.

17 Commencement and duration of special export permits

- (1) A special export permit commences on:
- (a) the day on which the permit is granted; or
 - (b) if a later day of commencement is stated in the permit—the later day.
- (2) A special export permit has effect for the period stated in the permit, being a period not longer than:
- (a) if the wastes to be exported under the permit are to be sent to a pre-consented recovery facility—3 years; or
 - (b) in any other case—1 year.

18 Matters to be specified in permit

- (1) A special export permit must set out the following details:
- (a) in relation to the permit holder:
 - (i) if the person is a company—the name and Australian Company Number of the company; and
 - (ii) if the person is another type of organisation—the name of the organisation; and
 - (iii) in any other case—the full name of the person; and
 - (iv) the business address, telephone number and facsimile number of the person;
 - (b) in relation to the hazardous waste to be exported under the permit:
 - (i) the name, business address, telephone number and facsimile number of the proposed recipient of the waste; and
 - (ii) the type of the waste; and
 - (iii) the maximum quantity of the waste that may be exported; and
 - (iv) how the waste is to be contained during export; and
 - (v) how the waste is to be transported during export; and

- (vi) the time at which, or period during which, the waste is to be exported;
and
 - (viii) the port of the importing country to which the waste is to be exported;
and
 - (ix) the transit countries; and
 - (x) the facility at which the waste is to undergo a recovery operation; and
 - (xi) the type of recovery operation the waste is to undergo.
- (2) The permit must also set out:
- (a) the condition mentioned in regulation 32; and
 - (b) conditions specified by the Minister under regulation 33; and
 - (c) other information the Minister considers appropriate.

Division 2—Special import permits

19 Definition for Division 2

In this Division:

decision period means the period mentioned in subregulation 20 (1), together with any extension of that period under subregulation 21 (1), (2), (3) or (4) or 22 (3), (4) or (5).

20 Decision on permit application

- (1) Subject to regulations 21 and 22, within 30 days after giving the competent authority of an exporting country notice under subregulation 12 (2) or (3), the Minister must grant or refuse the special import permit to which the notice relates.
- (2) As soon as practicable after granting or refusing the permit, the Minister must give the competent authority of the exporting country written notice of the decision, and:
 - (a) if the decision is to grant the permit—give the permit to the applicant; or
 - (b) if the decision is a refusal—give the applicant written notice of the decision, and the reasons for it.
- (3) Contravention of subregulation (2) does not affect the validity of the decision.
- (4) Before deciding to grant, or refuse to grant, an application for a special import permit, the Minister:
 - (a) must allow the applicant access to, or give a copy to the applicant of, any material held by the Minister that suggests that the application should be refused; and
 - (b) if the Minister considers that the applicant needs to know the name of the person or body from whom the material was obtained to enable the applicant to consider the material properly—may tell the applicant in writing the name of the person or body; and
 - (c) must invite the applicant in writing to give written comments on the material to the Minister.
- (5) Before making the decision, the Minister must consider any written comments made by the applicant on the material.

21 Circumstances affecting decision period—general

- (1) If the Minister thinks that a decision cannot be made within the decision period, the Minister may extend the period by not more than 60 days.
- (2) If the Minister has invited the applicant to comment under paragraph 20 (4) (c), the decision period is extended until the end of 15 working days after receipt by the Minister of any written comments made by the applicant.

- (3) If, within the decision period, action is begun under the EPBC Act in relation to the import proposal that is the subject of the application, the decision period is extended until the end of 5 working days after completion of the procedures required by that Act because of the action.

Note: See section 6 of the Act as to when action is begun under the EPBC Act in relation to a proposal, and when procedures under that Act are completed.

- (4) If the decision period is extended by subregulation (2) or (3), then, before the end of the period as so extended, the Minister may agree with the applicant, in writing, to extend the period further.
- (4A) As soon as practicable after extending the period under subregulation (4), the Minister must give written notice of the extension to:
- (a) the applicant; and
 - (b) the competent authority of the exporting country.
- (5) If the Minister has not granted or refused the permit by the end of the day by which the Minister is required by regulation 20 or this regulation to have done so, the Minister is taken to have granted the permit.

22 Circumstances affecting decision period—amber list hazardous waste intended for approved recovery facility

- (1) If the Minister:
- (a) receives an application for a special import permit authorising the import of waste subject to the amber control procedure that is proposed to undergo a recovery operation at a pre-consented recovery facility in Australia; and
 - (b) has not granted or refused the permit within 7 days after giving the competent authority of the exporting country notice under subregulation 12 (2) or (3);

the Minister is taken to have granted the permit at the end of that time.

- (2) Subregulation (1) does not apply if, before the end of that time, action is begun under the EPBC Act in relation to the import proposal that is the subject of the application.
- (3) If subregulation (2) applies, the decision period is extended until the end of 5 working days after completion of the procedures required by the EPBC Act because of the action mentioned in that subregulation.

Note: See section 6 of the Act as to when action is begun under the EPBC Act in relation to a proposal, and when procedures under that Act are completed.

- (4) Also, if the Minister has invited the applicant to comment under paragraph 20 (4) (c), the decision period is extended until the end of 15 working days after receipt by the Minister of any written comments made by the applicant.
- (5) If the decision period is extended by subregulation (3) or (4), then, before the end of the period as so extended, the Minister may agree with the applicant, in writing, to extend the period further.

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- (6) As soon as practicable after extending the period under subregulation (5), the Minister must give written notice of the extension to:
 - (a) the applicant; and
 - (b) the competent authority of the exporting country.
- (7) If the Minister has not granted or refused the permit by the end of the decision period, the Minister is taken to have granted the permit.

23 Grant of special import permit

- (1) Before granting or refusing a special import permit, the Minister must consider whether the waste to which the relevant import proposal relates should be dealt with in a way other than the way set out in the proposal.
- (2) In considering whether the waste should be dealt with in another way, the Minister must have regard to Australia's international obligations in relation to the international movement of hazardous waste (for example, obligations under the Basel Convention and the OECD Decision).
- (3) The Minister must not grant the permit, unless the Minister is satisfied that:
 - (a) the application for the permit is permitted by regulation 9 to be made; and
 - (b) dealing with the hazardous waste concerned in accordance with the import proposal would be consistent with the environmentally sound management of the waste; and
 - (c) the waste will undergo a recovery operation in Australia at a recovery facility that is permitted under Australian law to carry out recovery operations on waste of that type; and
 - (d) having regard to Chapter II, Section D (1) (a) of the OECD Decision, (concerning written contracts covering the movement of wastes), it is appropriate to grant the permit; and
 - (e) the waste will be transported in a way that is consistent with the environmentally sound management of the waste; and
 - (f) the applicant:
 - (i) is a suitable person to be granted the permit; and
 - (ii) has appropriate insurance.
- (4) The Minister may refuse to grant the permit if the Minister considers that it is in the public interest to do so.
- (5) For subparagraph (3) (f) (i), the Minister must consider:
 - (a) the applicant's financial viability; and
 - (b) the applicant's previous record on environmental matters; and
 - (c) other relevant matters.

24 Commencement and duration of special import permits

- (1) A special import permit commences on:
-

- (a) the day on which the permit is granted; or
 - (b) if a later day of commencement is stated in the permit—the later day.
- (2) A special import permit has effect for the period stated in the permit, being a period not longer than:
- (a) if the wastes to be imported under the permit are to be sent to a pre-consented recovery facility—3 years; or
 - (b) in any other case—1 year.

25 Matters to be specified in permit

- (1) A special import permit must set out the following details:
- (a) in relation to the permit holder:
 - (i) if the person is a company—the name and Australian Company Number of the company; and
 - (ii) if the person is another type of organisation—the name of the organisation; and
 - (iii) in any other case—the full name of the person; and
 - (iv) the business address, telephone number and facsimile number of the person;
 - (b) in relation to the hazardous waste to be imported under the permit:
 - (i) the name, business address, telephone number and facsimile number of the proposed exporter; and
 - (ii) the type of the waste; and
 - (iii) the maximum quantity of the waste that may be imported; and
 - (iv) how the waste is to be contained during import; and
 - (v) how the waste is to be transported during import; and
 - (vi) the time when, or period during which, the waste is to be imported; and
 - (vii) the port through which the waste is to be imported; and
 - (viii) the transit countries; and
 - (ix) the facility at which the waste is to undergo a recovery operation; and
 - (x) the time when, or period during which, the waste is to undergo the recovery operation; and
 - (xi) the type of recovery operation the waste is to undergo.
- (2) The permit must also set out:
- (a) the condition mentioned in regulation 32; and
 - (b) conditions specified by the Minister under regulation 33; and
 - (c) other information the Minister considers appropriate.

Division 3—Special transit permits

26 Definition for Division 3

In this Division:

decision period means the period mentioned in subregulation 27 (1), together with any extension of that period under subregulation 28 (1), (2) or (3).

27 Decision on permit application

- (1) Subject to regulation 28, the Minister must grant or refuse a special transit permit authorising the carrying out of a transit proposal within 30 days after the competent authority of the OECD country from which the waste is to be exported gives the Minister written notification of the export.
- (2) As soon as practicable after granting or refusing the permit, the Minister must give the competent authority of the OECD country written notice of the decision, and:
 - (a) if the decision is to grant the permit—give the permit to the applicant; or
 - (b) if the decision is a refusal—give the applicant written notice of the decision, and the reasons for it;
- (3) Contravention of subregulation (2) does not affect the validity of the decision.
- (4) Before deciding to grant, or refuse to grant, an application for a special transit permit, the Minister:
 - (a) must allow the applicant access to, or give a copy to the applicant of, any material held by the Minister that suggests that the application should be refused; and
 - (b) if the Minister considers that the applicant needs to know the name of the person or body from whom the material was obtained to enable the applicant to consider the material properly—may tell the applicant in writing the name of the person or body; and
 - (c) must invite the applicant in writing to give written comments on the material to the Minister.
- (5) Before making the decision, the Minister must consider any written comments made by the applicant on the material.

28 Circumstances affecting decision period

- (1) If the Minister thinks that a decision cannot be made within the decision period, the Minister may extend the period by not more than 60 days.
- (2) If the Minister has invited the applicant to comment under paragraph 27 (4) (c), the decision period is extended until the end of 15 working days after receipt by the Minister of any written comments made by the applicant.

- (3) If, within the decision period, action is begun under the EPBC Act in relation to the transit proposal that is the subject of the application, the decision period is extended until the end of 5 working days after completion of the procedures required by that Act because of the action.

Note: See section 6 of the Act as to when action is begun under the EPBC Act in relation to a proposal, and when procedures under that Act are completed.

- (4) If the decision period is extended by subregulation (2) or (3), then, before the end of the period as so extended, the Minister may agree with the applicant, in writing, to extend the period further.
- (4A) As soon as practicable after extending the period under subregulation (4), the Minister must give written notice of the extension to:
- (a) the applicant; and
 - (b) the competent authority of the OECD country from which the hazardous waste is to be exported.
- (5) If the Minister has not granted or refused the permit by the end of the day by which the Minister is required by regulation 27 or this regulation to have done so, the Minister is taken to have granted the permit.

29 Grant of special transit permit

- (1) The Minister must not grant a special transit permit authorising the carrying out of a transit proposal unless the Minister is satisfied that:
- (a) the application for the permit is permitted by regulation 9 to be made; and
 - (b) carrying out the transit proposal will not pose a significant risk of injury or damage to human beings or the environment; and
 - (c) the waste will be transported to and from Australia in a way that is consistent with the environmentally sound management of the waste; and
 - (d) the applicant:
 - (i) is a suitable person to be granted the permit; and
 - (ii) has appropriate insurance.
- (2) The Minister may refuse to grant the permit if the Minister considers that it is in the public interest to do so.
- (3) For subparagraph (1) (d) (i), the Minister must consider:
- (a) the applicant's financial viability; and
 - (b) the applicant's previous record on environmental matters; and
 - (c) other relevant matters.

30 Commencement and duration of special transit permits

- (1) A special transit permit commences on:
- (a) the day on which the permit is granted; or
 - (b) if a later day of commencement is stated in the permit—the later day.

Regulation 31

- (2) A special transit permit has effect for the period stated in the permit, being a period not longer than:
- (a) if the wastes to which the permit applies are to be sent to a pre-consented recovery facility—3 years; or
 - (b) in any other case—1 year.

31 Matters to be specified in permit

- (1) A special transit permit must set out the following details:
- (a) in relation to the permit holder:
 - (i) if the person is a company—the name and Australian Company Number of the company; and
 - (ii) if the person is another type of organisation—the name of the organisation; and
 - (iii) in any other case—the full name of the person; and
 - (iv) the business address, telephone number and facsimile number of the person;
 - (b) in relation to the transit proposal to be carried out under the permit:
 - (i) the type of hazardous waste to which the proposal relates; and
 - (ii) the maximum quantity of the waste to be transported under the proposal; and
 - (iii) how the waste is to be contained during transit; and
 - (iv) how the waste is to be transported during transit; and
 - (v) full details of the carrier transporting the waste (including name, business address, telephone number and facsimile number); and
 - (vi) the time at which, or period during which, the waste is to be brought into Australia; and
 - (vii) the port at which the waste is to be brought into Australia; and
 - (viii) the time at which, or period during which, the waste is to be taken out of Australia; and
 - (ix) the port from which the waste is to be taken out of Australia.
- (2) The permit must also set out:
- (a) the condition mentioned in regulation 32; and
 - (b) conditions specified by the Minister under regulation 33; and
 - (c) other information the Minister considers appropriate.

Division 4—Special permit conditions

32 Movement/Tracking form to accompany shipment of waste

- (1) It is a condition of a special permit that each shipment of hazardous waste under the permit be accompanied by a completed Movement/Tracking form.
- (2) The Movement/Tracking form must be in the form approved by the Minister.

33 Other conditions specified in special permits

- (1) The Minister may:
 - (a) grant a special permit subject to conditions specified in it; and
 - (b) specify the day on or before which the permit holder must comply with the condition.
- (2) The day specified may be before or after the particular export or import, or before or after the carrying out of the particular transit proposal, authorised by the permit.
- (3) A special permit may be granted subject to a condition relating to the giving of 1 or more guarantees or security deposits for ensuring compliance by the permit holder with his or her obligations under, or arising out of, these Regulations.
- (4) A special transit permit may be granted subject to conditions that the Minister considers necessary or desirable for the purposes of ensuring the particular transit proposals are carried out.
- (5) A condition does not exclude the operation of a State or Territory law unless an intention to exclude the law is expressed in the permit.

Part 4—Revocation, surrender and variation of special permits

34 Revocation of permits

- (1) The Minister may revoke a special permit if:
 - (a) the Minister becomes aware that:
 - (i) information set out in, or given with, the application for the permit, a notice of variation of the application, or an application for variation of the permit, is false or misleading in a material detail; or
 - (ii) the applicant for the permit, or variation of the permit, did not disclose information that ought reasonably to have been disclosed; or
 - (b) the Minister becomes aware of information about which, had the Minister been aware at the time of granting the permit, or variation of the permit, the Minister would not have granted the permit or variation; or
 - (c) the permit holder has contravened a condition to which the permit is subject.
- (2) Before deciding to revoke a special permit, the Minister must consider:
 - (a) for the matters mentioned in paragraph (1) (a)—having regard to the seriousness of the false or misleading information or failure to disclose, whether a variation of the permit under regulation 41, rather than revocation of the permit, may be appropriate; and
 - (b) for the matter mentioned in paragraph (1) (c)—the type and seriousness of the contravention; and
 - (c) any other relevant matter.
- (2A) Before deciding to revoke a special permit, the Minister:
 - (a) must allow the applicant access to, or give a copy to the applicant of, any material held by the Minister that suggests that the application should be revoked; and
 - (b) if the Minister considers that the applicant needs to know the name of the person or body from whom the material was obtained to enable the applicant to consider the material properly—may tell the applicant in writing the name of the person or body; and
 - (c) must invite the applicant in writing to give written comments on the material to the Minister.
- (2B) Before making the decision, the Minister must consider any written comments made by the permit holder on the material.
- (3) If a special permit authorises:
 - (a) a single import or export of hazardous waste; or
 - (b) the carrying out of a single transit proposal;

the Minister may not revoke the permit after the import or export has taken place, or after the transit proposal has been carried out, as the case requires.

- (4) If a special permit authorises:
 - (a) 2 or more imports or exports of hazardous waste; or
 - (b) the carrying out of 2 or more transit proposals;a revocation of the permit applies only to an import or export, or the carrying out of a transit proposal, that has not begun at the time of the revocation.
- (5) A revocation takes effect on the day on which the permit holder is given written notice of the revocation and the reasons for it.

35 Surrender of permits

- (1) The holder of a special permit may surrender it by returning the permit to the Minister with written notice of its surrender.
- (2) However, if the permit is a special import permit, it may not be surrendered after an import authorised by the permit has begun.
- (3) Also, if the permit is a special export permit, it may not be surrendered after an export authorised by the permit has begun.
- (4) Also, if the permit is a special transit permit, it may not be surrendered after the carrying out of a transit proposal authorised by the permit has begun.
- (5) A surrender takes effect on the day on which the permit and notice are given to the Minister.

36 Applications to vary permits

- (1) The holder of a special permit may apply to the Minister to vary the permit in a particular way.
- (2) The holder of a special export permit or special import permit must apply to the Minister to vary the permit if, after the export or import of hazardous waste to which the permit relates, the waste is not dealt with in accordance with the permit.
- (3) An application must:
 - (a) be in the form approved by the Minister; and
 - (b) set out, or be accompanied by, the information about the proposed variation as requested in the form.

37 Minister may request more information

- (1) If the Minister needs more information to deal with a variation application, the Minister may ask the applicant to provide the information in writing.
- (2) The request must be:
 - (a) in writing; and

Regulation 38

- (b) given to the applicant within 60 days after the Minister receives the application.

38 Acknowledgment and notification

- (1) Within 3 working days after receiving a variation application, the Minister must give the applicant written acknowledgment of the receipt.
- (2) Within 5 working days after receiving the application, the Minister must:
 - (a) for a proposed variation of a special export permit—give the competent authority of the importing country:
 - (i) written notice of the receipt; and
 - (ii) full details of the proposed variation; or
 - (b) for a proposed variation of a special import permit—give the competent authority of the exporting country written notice of the receipt; or
 - (c) for a proposed variation of a special transit permit—give the competent authority of the OECD country from which the hazardous waste concerned is to be exported, written notice of the receipt.

39 Decision on variation applications

- (1) Subject to subregulation (3A), the Minister must vary, or refuse to vary, a special permit within 60 days after receiving an application to vary the permit.
- (2) The Minister must vary the permit if the Minister is satisfied that, had the Minister been asked to grant, under these Regulations, the permit as proposed to be varied, the Minister would have done so.
- (3) However, for an application to vary a special import permit to allow the export to an OECD country (other than the originating exporting country) of hazardous waste that, after import under the permit, was not dealt with in accordance with the permit, the Minister must not make the variation without the written consent of the original exporting country.
- (3A) Before deciding an application to vary a special permit, the Minister:
 - (a) must allow the applicant access to, or give a copy to the applicant of, any material held by the Minister that suggests that the application should be refused; and
 - (b) if the Minister considers that the applicant needs to know the name of the person or body from whom the material was obtained to enable the applicant to consider the material properly—may tell the applicant in writing the name of the person or body; and
 - (c) must invite the applicant in writing to give written comments on the material to the Minister.
- (3B) Before making the decision, the Minister must consider any written comments made by the applicant on the material.

- (4) As soon as practicable after varying the permit or refusing to do so, the Minister must:
- (a) give the applicant written notice of the decision and, if the decision is a refusal, the reasons for it; and
 - (b) if the decision relates to a special export permit—give the competent authority of the importing country written notice of the decision; and
 - (c) if the decision relates to a special import permit—give the competent authority of the exporting country written notice of the decision; and
 - (d) if the decision relates to a special transit permit—give the competent authority of the OECD country from which the hazardous waste concerned is to be exported, written notice of the decision.
- (5) A variation takes effect:
- (a) if a day is set out in the written notice given to the applicant—on that day; or
 - (b) if no day is set out—on the day after the day on which the notice is given.
- (6) Contravention of subregulation (4) does not affect the validity of the decision.

40 Variation applications—circumstances affecting decision period

- (1) If the holder of a special export permit applies to vary the permit and, within the period mentioned in subregulation 39 (1) (the *decision period*):
- (a) the competent authority of the importing country has neither consented nor objected to the proposed variation; or
 - (b) if the applicant for the special export permit proposes to transport the hazardous waste to which the permit applies through a foreign country—the competent authority of that country has not decided whether transport of the waste through the country should be allowed;
- the decision period is extended until the end of 5 working days after the Ministerial receipt day.
- (2) In subregulation (1):
- Ministerial receipt day* has the same meaning as in subregulation 15 (2).
- (3) If the Minister considers that a decision on an application to vary a special permit cannot be made within the decision period (including, for a special export permit, that period as extended under subregulation (1)), the Minister may extend the period by not more than 60 days.
- (4) If the Minister has invited the applicant to comment under paragraph 39 (3A) (c), the decision period is extended until the end of 15 working days after receipt by the Minister of any written comments made by the applicant.
- (4A) If, within the decision period, action is begun under the EPBC Act in relation to a varied export or import proposal that is the subject of the application, the decision period is extended until the end of 5 working days after completion of the procedures required by that Act because of the action.

Schedule 1 OECD Decision

Part 4 Revocation, surrender and variation of special permits

Division 4 Special permit conditions

Regulation 41

Note: See section 6 of the Act as to when action is begun under the EPBC Act in relation to a proposal, and when procedures under that Act are completed.

- (5) If the decision period is extended by subregulation (4) or (4A), then, before the end of the period as so extended, the Minister may agree with the applicant, in writing, to extend the period further.
- (6) As soon as practicable after extending the period under subregulation (5), the Minister must give written notice of the extension to the applicant and:
 - (a) if the extension relates to a special export permit—to the competent authority of the importing country; and
 - (b) if the extension relates to a special import permit—to the competent authority of the exporting country; and
 - (c) if the decision relates to a special transit permit—to the competent authority of the OECD country from which the hazardous waste concerned is to be exported.
- (7) If the Minister has not varied the permit or refused to do so by the end of the day by which the Minister is required by regulation 39 or this regulation to have done so, the Minister is taken to have:
 - (a) for an application to vary a special import permit or special transit permit relating to amber list hazardous waste—varied the permit; or
 - (b) in any other case—refused to vary the permit.
- (8) A variation under paragraph (7) (a) takes effect on the day after the day mentioned in that subregulation.

41 Variation of permits without application

- (1) Without the need for an application under regulation 36, the Minister may vary a special permit by giving written notice of the variation to the permit holder.
- (2) A permit may be varied:
 - (a) by imposing a condition to which the permit is subject; or
 - (b) by varying or revoking a condition; or
 - (c) if a condition is to be complied with on or before a particular day—by varying the day.
- (3) However, the Minister may vary a permit only if:
 - (a) the Minister becomes aware that:
 - (i) information set out in, or given with, the application for the permit, a notice of variation of the application, or an application for variation of the permit, is false or misleading in a material detail; or
 - (ii) the applicant for the permit, or variation of the permit, did not disclose information that ought reasonably to have been disclosed; or
 - (b) having regard to information that was not considered before granting the permit or variation of the permit, the Minister is satisfied that the variation is

required to protect human beings or the environment from a significant risk of injury or damage.

- (4) Before deciding to vary a permit, the Minister must consider:
 - (a) for the matters mentioned in paragraph (a)—having regard to the seriousness of the false or misleading information or failure to disclose, whether revocation, rather than variation, of the permit may be appropriate; and
 - (b) any other relevant matter.
- (4A) Before deciding to vary a special permit without application, the Minister:
 - (a) must allow the permit holder access to, or give a copy to the permit holder of, any material held by the Minister that suggests that the permit should be varied; and
 - (b) if the Minister considers that the permit holder needs to know the name of the person or body from whom the material was obtained to enable the applicant to consider the material properly—may tell the permit holder in writing the name of the person or body; and
 - (c) must invite the permit holder in writing to give written comments on the material to the Minister.
- (4B) Before making the decision, the Minister must consider any written comments made by the permit holder on the material.
- (5) If the Minister varies a special permit under this regulation, the Minister must set out in the notice given to the permit holder the reasons for the variation.
- (6) Regulation 33 applies to the imposition or variation of a condition under this regulation as if it were imposed at the time of granting the permit.
- (7) A variation under this regulation takes effect:
 - (a) if a day is set out in the written notice given to the permit holder—on that day; or
 - (b) if no day is set out—on the day after the day on which the notice is given.

Part 5—Miscellaneous

42 Pre-consent of recovery facilities

- (1) The Minister may give pre-consent, in writing, to a facility for the purpose of carrying out recovery operations on waste subject to the amber control procedure that is imported under a special import permit granted under these Regulations.
- (2) The Minister must not give pre-consent to a facility unless the Minister is satisfied that the facility is capable of carrying out recovery operations on waste subject to the amber control procedure in a manner appropriate to give effect to Australia's obligations under the OECD Decision.
- (3) The Minister may give a pre-consent under subregulation (1) for a specified period of time.
- (4) The Minister may at any time revoke a pre-consent given under subregulation (1).

Note: Chapter II Section D (2) Case 2 of the OECD Decision outlines matters relevant to pre-consent of recovery facilities.

43 Review of decisions

Application may be made under the *Administrative Appeals Tribunal Act 1974* to the Administrative Appeals Tribunal for review of a decision of the Minister:

- (a) to grant a special permit for less than:
 - (i) if the wastes are to be sent to a pre-consented recovery facility—3 years (see paragraphs 17 (2) (a), 24 (2) (a) and 30 (2) (a)); or
 - (ii) in any other case—1 year (see paragraphs 17 (2) (b), 24 (2) (b) and 30 (2) (b)); or
- (b) refusing to give pre-consent to a facility (see regulation 42); or
- (c) revoking a pre-consent given to a facility (see subregulation 42 (4)).

Note: Section 57 of the Act provides for review of decisions relating to, among other things, the grant, revocation or variation of special permits and the imposition of conditions on special permits.

44 Delegation

The Minister may delegate, in writing, any or all of the Minister's functions and powers under these Regulations to:

- (a) the Secretary to the Department; or
- (b) an SES employee, or acting SES employee, in the Department; or
- (c) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

Schedule 1—OECD Decision

REVISION OF THE DECISION OF THE COUNCIL C(92)39/FINAL ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF WASTES DESTINED FOR RECOVERY OPERATIONS

THE COUNCIL,

1. Having regard to Article 5a) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;
2. Having regard to the Decision of the Council of 30 March 1992 concerning the control of transfrontier movements of wastes destined for recovery operations C(92)39/FINAL, as amended, which establishes an operational control system for transboundary movements of wastes destined for recovery operations;
3. Having regard to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, which entered into force on 5 May 1992, as amended on 6 November 1998 with Annexes VIII and IX listing respectively wastes characterised as hazardous pursuant to Article 1(1)(a) of the Convention and wastes not covered by Article 1(1)(a) of the Convention;
4. Noting that most OECD Member countries (hereafter Member countries) and the European Community have become Parties to the Basel Convention;
5. Noting that Member countries agreed at the Working Group on Waste Management Policy (WGWMP) meeting in Vienna in October 1998 to further harmonisation of procedures and requirements of OECD Decision C(92)39/FINAL with those of the Basel Convention;
6. Noting that recovery of valuable materials and energy from wastes is an integral part of the international economic system and that well established international markets exist for the collection and processing of such materials within Member countries;
7. Noting further that many industrial sectors in Member countries have already implemented waste recovery techniques in an environmentally sound and economically efficient manner, thus increasing resource efficiency and contributing to sustainable development, and convinced that further efforts to promote and facilitate waste recovery are necessary and should be encouraged;
8. Recognising that the environmentally sound and economically efficient recovery of wastes may justify transboundary movements of wastes between Member countries;
9. Recognising that the operational Control System established by Decision C(92)39/FINAL has provided a valuable framework for Member countries to control transboundary movements of wastes destined for recovery operations in an environmentally sound and economically efficient manner;

10. Desiring, therefore, to continue this agreement or arrangement under Article 11.2 of the Basel Convention;
11. Recognising that Member countries may, within their jurisdiction, impose requirements consistent with this Decision and in accordance with the rules of international law, in order to better protect human health and the environment; and
12. Recognising the need to revise Decision C(92)39/FINAL in order to improve certain elements of the Control System and to enhance harmonisation with the Basel Convention,

On the proposal of the Environment Policy Committee:

DECIDES that the text of Decision C(92)39/FINAL is revised as follows:

CHAPTER I:

1. **DECIDES** that Member countries shall control transboundary movements of wastes destined for recovery operations within the OECD area in accordance with the provisions set out in Chapter II of this Decision and in the appendices to it.
2. **INSTRUCTS** the Environment Policy Committee in co-operation with other relevant OECD bodies, in particular the Trade Committee, to ensure that the provisions of this Control System remain compatible with the needs of Member countries to recover wastes in an environmentally sound and economically efficient manner.
3. **RECOMMENDS** Member countries to use for the Notification Document and Movement Document the forms contained in Appendix 8 to this Decision.
4. **INSTRUCTS** the Environment Policy Committee to amend the forms for the Notification Document and Movement Document as necessary.
5. **INSTRUCTS** the Environment Policy Committee to review the procedure for amending the waste lists under Chapter II. B, (3) at the latest seven (7) years after the adoption of the present Decision.
6. **REQUESTS** Member countries to provide the information that is necessary for the implementation of this Decision and is listed in Appendix 7 to this Decision.
7. **REQUESTS** the Secretary General to transmit this Decision to the United Nations Environment Programme and the Secretariat of the Basel Convention.

CHAPTER II

A. DEFINITIONS

For the purposes of this Decision:

1. **WASTES** are substances or objects, other than radioactive materials covered by other international agreements, which:

- (i) are disposed of or are being recovered; or
 - (ii) are intended to be disposed of or recovered; or
 - (iii) are required, by the provisions of national law, to be disposed of or recovered.
2. **HAZARDOUS WASTES** are:
- (i) Wastes that belong to any category contained in Appendix 1 to this Decision unless they do not possess any of the characteristics contained in Appendix 2 to this Decision; and
 - (ii) Wastes that are not covered under sub-paragraph 2.(i) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Member country of export, import or transit. Member countries shall not be required to enforce laws other than their own.
3. **DISPOSAL** means any of the operations specified in Appendix 5.A to this Decision.
4. **RECOVERY** means any of the operations specified in Appendix 5.B to this Decision.
5. **TRANSBOUNDARY MOVEMENT** means any movement of wastes from an area under the national jurisdiction of a Member country to an area under the national jurisdiction of another Member country.
6. **RECOVERY FACILITY** means a facility which, under applicable domestic law, is operating or is authorised or permitted to operate in the country of import to receive wastes and to perform recovery operations on them.
7. **COUNTRY OF EXPORT** means a Member country from which a transboundary movement of wastes is planned to be initiated or is initiated.
8. **COUNTRY OF IMPORT** means a Member country to which a transboundary movement of wastes is planned or takes place.
9. **COUNTRY OF TRANSIT** means a Member country other than the country of export or import through which a transboundary movement of wastes is planned or takes place.
10. **COUNTRIES CONCERNED** means the countries of export and import and any country of transit, as defined above.
11. **OECD AREA** means all land and marine areas, under the national jurisdiction of any Member country.
12. **COMPETENT AUTHORITIES** means the regulatory authorities of countries concerned having jurisdiction over transboundary movements of wastes covered by this Decision.
13. **PERSON** means any natural or legal person.

14. EXPORTER means any person under the jurisdiction of the country of export who initiates the transboundary movement of wastes or who has, at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes.
15. IMPORTER means any person under the jurisdiction of the country of import to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.
16. RECOGNISED TRADER means any person under the jurisdiction of a Member country who, with appropriate authorisation of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.
17. GENERATOR means any person whose activities create wastes.
18. A MIXTURE OF WASTES means a waste that results from an intentional or unintentional mixing of two or more different wastes. A single shipment of wastes, consisting of two or more wastes, where each waste is separated, is not a mixture of wastes.

B. GENERAL PROVISIONS

(1) Conditions

The following conditions shall apply to transboundary movements of wastes subject to this Decision:

- (a) The wastes shall be destined for recovery operations within a recovery facility which will recover the wastes in an environmentally sound manner according to national laws, regulations and practices to which the facility is subject.
- (b) All persons involved in any contracts or arrangements for transboundary movements of wastes destined for recovery operations should have the appropriate legal status, in accordance with domestic legislation and regulations.
- (c) The transboundary movements shall be carried out under the terms of applicable international transport agreements.
- (d) Any transit of wastes through a non-member country shall be subject to international law and to all applicable national laws and regulations.

(2) Control Procedures

A two-tiered system serves to delineate controls to be applied to such transboundary movements of wastes:

a) Green Control Procedure:

Wastes falling under the Green control procedure are those wastes in Appendix 3 to this Decision. This Appendix has two parts:

- Part I contains the wastes in Annex IX of the Basel Convention, some of which are subject to a note for the purposes of this Decision;
- Part II contains additional wastes that OECD Member countries agreed to be subject to the Green control procedure, in accordance with criteria referred to in Appendix 6 to this Decision.

The Green control procedure is described in Section C.

b) Amber Control Procedure:

Wastes falling under the Amber control procedure are those wastes in Appendix 4 to this Decision. This Appendix has two parts:

- Part I contains the wastes in Annexes II and VIII of the Basel Convention, some of which are subject to a note for the purposes of this Decision;
- Part II contains additional wastes that OECD Member countries agreed to be subject to the Amber control procedure, in accordance with criteria referred to in Appendix 6 to this Decision.

The Amber control procedure is described in Section D.

(3) Procedure for Amendments to the Lists of Wastes in Appendices 3 and 4

Normally, and without any other formal decision, amendments made to Annex IX under the Basel Convention will be incorporated into Part I of Appendix 3 to this Decision and amendments made to Annexes II and VIII under the Basel Convention will be incorporated into Part I of Appendix 4 to this Decision, entering into effect from the date on which the amendment to the Basel Convention (hereafter the Amendment) becomes effective for the Parties to the Convention. On that same date any relevant change will be automatically made to Part II of Appendices 3 or 4.

In exceptional cases:

- a) A Member country that determines, in accordance with the criteria referred to in Appendix 6, that a different level of control is justified for one or more wastes covered by the Amendment, may object in writing to the OECD Secretariat within sixty (60) days following the adoption of the Amendment by the Conference of the Parties to the Basel Convention. Such an objection, which shall provide an alternative proposal for inclusion into the relevant appendix or appendices to this Decision, will be immediately disseminated by the OECD Secretariat to all Member countries.
- b) The notification of an objection to the OECD Secretariat suspends the incorporation of the waste(s) concerned into the relevant appendix to this Decision. Pending examination of the objection by the appropriate OECD body, the waste(s) concerned shall be subject to the provisions of Section 6 (b) and 6 (c) hereunder.
- c) The appropriate OECD body shall promptly examine the objection and the related alternative proposal and shall reach a conclusion one month before the Amendment becomes effective for the Parties to the Basel Convention.

- d) If consensus is reached within the appropriate OECD body during that period, the relevant Appendix to this Decision will be modified as appropriate. Any modification becomes effective on the same date on which the amendment to the Basel Convention becomes effective for the Parties to the Convention.
- e) If no consensus is reached within the appropriate OECD body during that period, the Amendment will not be applied within the OECD Control System. With respect to the waste(s) concerned, the relevant appendix to this Decision will be modified as appropriate. Each Member country retains its right to control such waste(s) in conformity with its domestic legislation and international law.

(4) Provision for specific national control

- a) This Decision does not prejudice the right of a Member country to control, on an exceptional basis, certain wastes differently, in conformity with domestic legislation and the rules of international law, in order to protect human health and the environment.
- b) Thus, a Member country may control wastes subject to the Green control procedure as if those wastes had been subject to the Amber control procedure.
- c) A Member country may, in conformity with domestic legislation, legally define or consider a waste subject to the Amber control procedure as subject to the Green control procedure because it does not exhibit any of the hazardous characteristics listed in Appendix 2 of this Decision, as determined using national procedures¹
- d) In the case of a transboundary movement of wastes where the wastes are legally defined as, or considered to be, wastes subject to the Amber control procedure only by the country of import, the requirements of section D that apply to the exporter and the country of export, shall apply *mutatis mutandis* to the importer and the country of import, respectively.

(5) Information Requirements

Any Member country exercising the right to apply a different level of control shall immediately inform the OECD secretariat citing the specific waste(s) and applicable legislative requirements. Member countries which prescribe the use of certain tests and testing procedures in order to determine whether a waste exhibits one or more of the hazardous characteristics listed in Appendix 2 of this Decision shall also inform the OECD secretariat concerning which tests and testing procedures are being so utilised; and, if possible, which wastes would or would not be legally defined or considered to be hazardous wastes based upon application of these national procedures. All the above information requirements are specified in Appendix 7 to this Decision.

1. In addition, certain Member countries have developed regulations used to determine whether or not wastes are controlled as hazardous wastes.

(6) Wastes not listed in Appendices 3 or 4 to this Decision

Wastes which are destined for recovery operations but have not yet been assigned to Appendices 3 or 4 of this Decision, shall be eligible for transboundary movements pursuant to this Decision subject to the following conditions:

- (a) Member countries shall identify such wastes and, if appropriate, make applications to the Technical Working Group of the Basel Convention in order to amend the relevant Annexes of the Basel Convention;
- (b) Pending assignment to a list, such wastes shall be subject to the controls required for the transboundary movements of wastes by the domestic legislation of the countries concerned in order that no country is obliged to enforce laws other than its own;
- (c) However, if such wastes exhibit a hazardous characteristic listed in Appendix 2 to this Decision as determined by using national procedures² and any applicable international agreements, such wastes shall be subject to the Amber control procedure

(7) Generator of Mixed or Transformed Waste

If two or more lots of wastes are mixed and/or otherwise subjected to physical or chemical transformation operations, the person who performs these operations shall be deemed to be the generator of the new wastes resulting from these operations.

(8) Procedures for Mixtures of Wastes

Having regard to paragraph 11 of the preamble of this Decision, a mixture of wastes, for which no individual entry exists, shall be subject to the following control procedure:

- (i) a mixture of two or more Green wastes shall be subject to the Green control procedure, provided the composition of this mixture does not impair its environmentally sound recovery;
- (ii) a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes shall be subject to the Amber control procedure, provided the composition of this mixture does not impair its environmentally sound recovery.

C. GREEN CONTROL PROCEDURE

Transboundary movements of wastes subject to the Green control procedure shall be subject to all existing controls normally applied in commercial transactions.

Regardless of whether or not wastes are included on the list of wastes subject to the Green Control Procedure (Appendix 3), they may not be subject to the Green control procedure if they are contaminated by other materials to an extent which

2. In addition, certain Member countries have developed regulations used to determine whether or not wastes are controlled as hazardous wastes

(a) increases the risks associated with the wastes sufficiently to render them appropriate for submission to the amber control procedure, when taking into account the criteria in Appendix 6 to this Decision, or (b) prevents the recovery of the wastes in an environmentally sound manner.

D. AMBER CONTROL PROCEDURE

(1) Conditions

(a) Contracts

Transboundary movements of wastes under the Amber control procedure may only occur under the terms of a valid written contract, or chain of contracts, or equivalent arrangements between facilities controlled by the same legal entity, starting with the exporter and terminating at the recovery facility. All persons involved in the contracts, or arrangements shall have appropriate legal status.

The contracts shall:

- i) clearly identify: the generator of each type of waste, each person who shall have legal control of the wastes and the recovery facility;
- ii) provide that relevant requirements of this Decision are taken into account and are binding on all parties to the contracts.
- iii) specify which party to the contract (i) shall assume responsibility for an alternative management of the wastes in compliance with applicable laws and regulations including, if necessary, the return of the wastes in accordance with section D. (3) (a) below and (ii), as the case may be, shall provide the notification for re-export in accordance with section D.(3) (b) below.

Upon the request of the competent authorities of the countries of export or import, the exporter shall provide copies of such contracts or portions thereof.

Any information contained in the contracts provided under terms of the above paragraph shall be held strictly confidential in accordance with and to the extent required by domestic laws.

(b) Financial guarantees

Where applicable, the exporter or the importer shall provide financial guarantees in accordance with national or international law requirements, for alternative recycling, disposal or other means of environmentally sound management of the wastes in cases where arrangements for the transboundary movement and the recovery operations cannot be carried out as foreseen.

(c) Transboundary movements of amber wastes for laboratory analysis

Member countries may exempt a transboundary movement of a waste from the Amber control procedure, if it is explicitly destined for laboratory analysis to

assess its physical or chemical characteristics or to determine its suitability for recovery operations. The amount of such waste so exempted shall be determined by the minimum quantity reasonably needed to adequately perform the analysis in each particular case, but not more than 25 kg. Analytical samples must be appropriately packaged and labelled and they remain subject to the conditions set out in Chapter II Section B. (1)(c) and (d) of this Decision. Where a competent authority of a country of import or country of export is required to be informed under its domestic legislation, the exporter shall inform that authority of a transboundary movement of a laboratory sample.

(2) Functioning of the Amber control procedure:

Procedures are provided under the Amber control procedure for the following two cases:

Case 1: individual transboundary movements or multiple shipments to a recovery facility;

Case 2: transboundary movements to pre-consented recovery facilities

Case 1: Individual transboundary movements of wastes or multiple shipments to a recovery facility.

- (a) Prior to commencement of each transboundary movement of wastes, the exporter shall provide written notification (“**single notification**”) to the competent authorities of the countries concerned. The notification document shall include all of the information listed in Appendix 8.A to this Decision. In accordance with domestic laws, the competent authorities of the country of export, instead of the exporter, may themselves transmit this notification.
- (b) In instances where competent authorities acting under the terms of their domestic laws are required to review the contracts referred to in section D. (1) above, the contract(s) or portions thereof to be reviewed must be sent together with the notification document in order that such review may be appropriately performed.
- (c) The competent authorities of the countries concerned may request additional information if the notification is not complete. Upon receipt of the complete notification document referred to in paragraph (a) above, the competent authorities of the country of import and, if applicable, the country of export shall transmit an **acknowledgement** to the exporter with a copy to the competent authorities of all other countries concerned within three (3) working days of the receipt of the notification.
- (d) The competent authorities of the countries concerned shall have **thirty (30) days to object**, according to their domestic laws, to the proposed transboundary movement of wastes. The thirty (30)-day period for possible objection shall commence upon issuance of the acknowledgement of the competent authority of the country of import.
- (e) **Any objection** by any of the competent authorities of the countries concerned must be provided in writing to the exporter and to the competent authorities of all other countries concerned within the thirty (30)-day period.

- (f) If no objection has been lodged (**tacit consent**), the transboundary movement of wastes may commence after this thirty (30)-day period has passed. Tacit consent expires within one (1) calendar year from the end of the thirty (30)-day period.
- (g) In cases where the competent authorities of the countries concerned do not object and decide to provide **written consent**, it shall be issued within the thirty (30)-day period commencing upon issuance of the acknowledgement of the receipt of notification by the competent authority of the country of import. The transboundary movement of wastes may commence after all consents are received. Copies of the written consent(s) shall be sent to competent authorities of all countries concerned. Written consent is valid for up to one (1) calendar year from the date of its issuance.
- (h) Objection or written consent may be provided by post, e-mail with a digital signature, e-mail without digital signature followed by post, or telefax followed by post.
- (i) The transboundary movement of wastes may only take place during the period when the consents of all competent authorities (tacit or written consent) are valid.
- (j) Each transboundary movement of wastes shall be accompanied by a **movement document** which includes the information listed in Appendix 8.B to this Decision.
- (k) Within three (3) days of the receipt of the wastes by the recovery facility, the recovery facility shall return a **signed copy of the movement document** to the exporter and to the competent authorities of the countries of export, transit and import. Those countries of transit that do not wish to receive a signed copy of the movement document shall inform the OECD Secretariat. The recovery facility shall retain the original of the movement document for three (3) years.
- (l) As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the waste, the recovery facility shall send a **certificate of recovery** to the exporter and to the competent authorities of the countries of export and import by post, e-mail with a digital signature, email without digital signature followed by post, or telefax followed by post.
- (m) In cases where essentially similar wastes (e.g. those having essentially similar physical and chemical characteristics) are to be sent periodically to the same recovery facility by the same exporter, the competent authorities of the countries concerned may elect to accept one "**general notification**" for such multiple shipments for a period of up to one year. Each shipment must be accompanied by its own movement document, which includes the information listed in Appendix 8.B to this Decision.
- (n) Revocation of the acceptance in (m) above may be accomplished by means of an official notice to the exporter from any of the competent authorities of the countries concerned. Notice of revocation of acceptance for transboundary movements previously granted under this provision shall be given to the competent authorities of all countries concerned by the competent authorities of the country that revokes such acceptance.

Case 2: Transboundary movements of wastes to pre-consented recovery facilities

- (a) Competent authorities having jurisdiction over specific recovery facilities in the country of import may decide not to raise objections concerning transboundary movements of certain types of wastes to a specific recovery facility (**pre-consented recovery facility**). Such decisions can be limited to a specified period of time and can be revoked at any time.
- (b) Competent authorities that elect this option shall inform the OECD secretariat of the recovery facility name, address, technologies employed, waste types to which the pre-consent applies, and the period covered. The OECD secretariat must also be notified of any revocations.
- (c) For all transboundary movements of wastes to such facilities paragraphs (a), (b) and (c) of Case 1 shall apply.
- (d) The competent authorities of the countries of export and transit shall have seven (7) working days to object, according to their domestic laws, to the proposed transboundary movement of wastes. The seven (7) working days period for possible objection shall commence upon issuance of the acknowledgement of the competent authority of the country of import. In exceptional cases where the competent authority of the country of export needs more than seven (7) working days in order to receive additional information from the exporter as necessary to meet the requirements of its domestic law, it may inform the exporter within the seven (7) working days that additional time is needed. This additional time may be up to thirty (30) days starting from the day of the issuance of the acknowledgement of the competent authority of the country of import.
- (e) Paragraphs (e), (f) and (g) of Case 1 shall apply with a period of seven (7) working days instead of thirty (30) days but for the exceptional cases mentioned in paragraph (d) above, in which case the period shall remain thirty (30) days.
- (f) Paragraphs (h), (i), (j), (k) and (l) of Case 1 shall apply.
- (g) In the case of the acceptance of a general notification, paragraph (m) of Case 1 shall apply with the exception that the shipments can cover a period of up to three (3) years. For the revocation of this acceptance, paragraph (n) in Case 1 shall apply.

(3) Duty to return or re-export wastes subject to the Amber control procedure

When a transboundary movement of wastes subject to the Amber control procedure, to which countries concerned have given consent, cannot be completed in accordance with the terms of the contract, for any reason such as illegal shipments, the competent authority of the country of import shall immediately inform the competent authority of the country of export. If alternative arrangements cannot be made to recover these wastes in an environmentally sound manner in the country of import, the following provisions shall apply as the case may be:

- (a) Return from a country of import to the country of export:
The competent authority of the country of import shall inform the competent authorities of the countries of export and transit, mentioning

in particular the reason for returning the waste. The competent authority of the country of export shall admit the return of those wastes. In addition, the competent authorities of the countries of export and transit shall not oppose or prevent the return of these wastes. The return should take place within ninety (90) days from the time the country of import informs the country of export or such other period of time as the concerned Member countries agree. Any new transit country would require a new notification.

- (b) Re-export from a country of import to a country other than the initial country of export:

Re-export from a country of import of wastes subject to the Amber control procedure may only occur following notification by an exporter in the country of import to the countries concerned, as well as to the initial country of export. The notification and control procedure shall follow the provisions set out in Case 1 of Section D. (2) with the addition that the provisions concerning the competent authorities of countries concerned shall also apply to the competent authority of the initial country of export.

(4) Duty to return wastes subject to the Amber Control Procedure from a country of transit

When the competent authority of the country of transit observes that a transboundary movement of wastes subject to the Amber control procedure, to which countries concerned have given consent, does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, the competent authority of the country of transit shall immediately inform the competent authorities of the countries of export and import and any other countries of transit.

If alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the competent authority of the country of export shall admit the return of the shipment of these wastes. In addition, the competent authorities of the country of export and other countries of transit shall not oppose or prevent the return of the wastes. The return should take place within ninety (90) days from the time the country of transit informs the country of export or such other period of time as the concerned countries agree.

(5) Provisions relating to recognised traders

- (a) A recognised trader may act as an exporter or importer for wastes with all the responsibilities associated with being an exporter or importer.
- (b) The notification document called for in Chapter II section D (2), case 1, a) above shall include a signed declaration by the exporter that the appropriate contracts referred to in Chapter II section D (1) (a) are in place and are legally enforceable in all countries concerned.

(6) Provisions relating to exchange (R12) and accumulation (R13) operations

For transboundary movements of wastes destined for exchange (R12) or accumulation (R13) operations paragraphs (a) to (j), (m) and (n) of Case 1 shall apply. In addition:

- (a) If wastes are destined for a facility or facilities where a R12 or R13 recovery operation as designated in Appendix 5.B to this Decision takes place, the recovery facility or facilities where the subsequent R1-R11 recovery operation as designated in Appendix 5.B takes place or may take place, shall also be indicated in the notification document.
- (b) Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facilit(y)ies shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facilit(y)ies shall retain the original of the movement document for three (3) years.
- (c) As soon as possible but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facilit(y)ies shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by post, e-mail with a digital signature, email without digital signature followed by post, or telefax followed by post.
- (d) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible but no later than one calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility shall promptly transmit the applicable certification(s) to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification(s) pertain.
- (e) When an R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located:
 - i) in the initial country of export, a new notification is required in accordance with Section D. (2); or
 - ii) in a third country other than the initial country of export, a new notification is required in accordance with Section D. (3)(b).

**APPENDIX 1:
CATEGORIES OF WASTES TO BE CONTROLLED³**

Waste streams:

- Y1 Clinical wastes from medical care in hospitals, medical centres and clinics
- Y2 Wastes from the production and preparation of pharmaceutical products
- Y3 Waste pharmaceuticals, drugs and medicines

3. This Appendix is identical to Annex I of the Basel Convention.

- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals
- Y5 Wastes from the manufacture, formulation and use of wood preserving chemicals
- Y6 Wastes from the production, formulation and use of organic solvents
- Y7 Wastes from heat treatment and tempering operations containing cyanides
- Y8 Waste mineral oils unfit for their originally intended use
- Y9 Waste oil/water, hydrocarbon/water mixtures, emulsions
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCB's) and/or polychlorinated terphenyls (PCT's) and/or polybrominated biphenyls (PBB's)
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment
- Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, laquers, varnish
- Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives
- Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known
- Y15 Wastes of an explosive nature not subject to other legislation
- Y16 Wastes from production, formulation and use of photographic chemicals and processing materials
- Y17 Wastes resulting from surface treatment of metals and plastics
- Y18 Residues arising from industrial waste disposal operations

Wastes having as constituents:

- Y19 Metal carbonyls
- Y20 Beryllium; beryllium compounds
- Y21 Hexavalent chromium compounds
- Y22 Copper compounds
- Y23 Zinc compounds
- Y24 Arsenic; arsenic compounds
- Y25 Selenium; selenium compounds

- Y26 Cadmium; cadmium compounds
- Y27 Antimony; antimony compounds
- Y28 Tellurium; tellurium compounds
- Y29 Mercury; mercury compounds
- Y30 Thallium; thallium compounds
- Y31 Lead; lead compounds
- Y32 Inorganic fluorine compounds excluding calcium fluoride
- Y33 Inorganic cyanides
- Y34 Acidic solutions or acids in solid form
- Y35 Basic solutions or bases in solid form
- Y36 Asbestos (dust and fibres)
- Y37 Organic phosphorous compounds
- Y38 Organic cyanides
- Y39 Phenols; phenol compounds including chlorophenols
- Y40 Ethers
- Y41 Halogenated organic solvents
- Y42 Organic solvents excluding halogenated solvents
- Y43 Any congener of polychlorinated dibenzo-furan
- Y44 Any congener of polychlorinated dibenzo-p-dioxin
- Y45 Organohalogen compounds other than substances referred to in this Appendix (e.g. Y39, Y41, Y42 Y43, Y44)

**APPENDIX 2:
LIST OF HAZARDOUS CHARACTERISTICS⁴**

Code⁵ Characteristics

H1:Explosive

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- 4. Codes and hazardous characteristics are identical to those in Annex III of the Basel Convention.
 - 5. Corresponds to hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (11th Revised Edition, UN, New York, October 1999) for H1 through H9; omissions of H2, H7 and H9 are deliberate. Codes H10-H13 correspond to UN class 9.
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An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

H3: Flammable liquids

The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc. but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5°C, closed-cup test, or not more than 65.6°C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such differences would be within the spirit of this definition.)

H4.1: Flammable Solids.

Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.

H4.2: Substances or Wastes Liable to Spontaneous Combustion.

Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up in contact with air, and being liable to catch fire.

H4.3: Substances or Wastes which, in Contact with Water Emit Flammable Gases.

Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.

H5.1: Oxidising.

Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen cause, or contribute to, the combustion of other materials.

H5.2: Organic Peroxides.

Organic substances or wastes that contain the bivalent-O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.

H6.1: Poisonous (Acute)

Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.

H6.2: Infectious substances

Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans.

H8: Corrosives

Substances or wastes that, by chemical action, will cause severe damage when in contact with living tissue, or, in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.

H10: Liberation of toxic gases in contact with air or water

Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.

H11: Toxic (Delayed or chronic)

Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.

H12: Ecotoxic

Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.

H13:

Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

Tests

The potential hazards posed by certain types of wastes are not yet fully documented; objective tests to define quantitatively these hazards do not exist. Further research is necessary in order to develop means to characterise potential hazards posed to man and/or the environment by these wastes. Standardised tests have been derived with respect to pure substances and materials. Many Member countries have developed tests which can be applied to materials destined for disposal or recovery by means of operations listed in Appendices 5.A or 5.B in order to decide if these materials exhibit any of the characteristics listed in this Appendix.

**APPENDIX 3:
LIST OF WASTES SUBJECT TO THE GREEN CONTROL PROCEDURE**

Regardless of whether or not wastes are included on this list, they may not be subject to the Green control procedure if they are contaminated by other materials to an extent which (a) increases the risks associated with the wastes sufficiently to render them appropriate for submission to the amber control procedure, when taking into account the criteria in Appendix 6, or (b) prevents the recovery of the wastes in an environmentally sound manner.

Part I:

Wastes listed in Annex IX of the Basel Convention.

For the purposes of this Decision:

- (a) Any reference to list A in Annex IX of the Basel Convention shall be understood as a reference to Appendix 4 of this Decision.
- (b) In Basel entry B1020 the term “bulk finished form” includes all metallic non-dispersible⁶ forms of the scrap listed therein.
- (c) The part of Basel entry B1100 that refers to “Slags from copper processing” etc does not apply and OECD entry GB040 in Part II applies instead.
- (d) Basel entry B1110 does not apply and OECD entries GC010 and GC020 in Part II apply instead.
- (e) Basel entry B2050 does not apply and OECD entry GG040 in Part II applies instead.
- (f) The reference in Basel entry B3010 to fluorinated polymer wastes shall be deemed to include polymers and co-polymers of fluorinated ethylene (PTFE).

Part II:

The following wastes will also be subject to the Green control procedure:

Metal and Metal-Alloy Wastes in Metallic, Non-Dispersible⁶ Form

GA300 ex 811220 Chromium waste and scrap

Metal Bearing Wastes Arising from Melting, Smelting and Refining of Metals

GB040 7112 Slags from precious metals and copper
 processing for further refining
 262030
 262090

6. “Non-dispersible” does not include any wastes in the form of powder, sludge, dust or solid items containing encased hazardous waste liquids.

Other Wastes Containing Metals

GC010		Electrical assemblies consisting only of metals or alloys.
GC020		Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc.) and reclaimed electronic components suitable for base and precious metal recovery.
GC030	ex 890800	Vessels and other floating structures for breaking up, properly emptied of any cargo and other materials arising from the operation of the vessel which may have been classified as a dangerous substance or waste
GC040	ex 8701-05 ex 8709-11	Motor vehicle wrecks, drained of liquids
GC050		Spent Fluid Catalytic Cracking (FCC) Catalysts (e.g.: aluminium oxide, zeolites)

The following metal and metal alloy wastes in metallic dispersible form:

GC090 Molybdenum

GC100 Tungsten

GC110 Tantalum

GC120 Titanium

GC130 Niobium

GC140 Rhenium

Glass Waste in Non-dispersible Form

GE020	ex 7001 ex 701939	Glass Fibre Waste
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Ceramic Wastes in Non-Dispersible Form

GF010 Ceramic wastes which have been fired after shaping, including ceramic vessels (before and/or after use)

Other Wastes Containing Principally Inorganic Constituents, Which May Contain Metals and Organic Materials

GG030	ex 2621	Bottom ash and slag tap from coal fired power plants
GG040	ex 2621	Coal fired power plants fly ash

GG160 Bituminous materials (asphalt waste) from road construction and maintenance, not containing tar

Solid Plastic Wastes

GH013 391530 Polymers of vinyl chloride
ex 390410-40

Textile Wastes

GJ140 ex 6310 Waste textile floor coverings, carpets

Wastes Arising from Agro-Food Industries

GM140 ex 1500 Waste edible fats and oils of animal or vegetable origin (e.g. frying oils)

Wastes Arising from Tanning and Fellmongery Operations and Leather Use

GN010 ex 050200 Waste of pigs', hogs' or boars' bristles and hair or of badger hair and other brush making hair

GN020 ex 050300 Horsehair waste, whether or not put up as a layer with or without supporting material

GN030 ex 050590 Waste of skins and other parts of birds, with their feathers or down, of feathers and parts of feathers (whether or not with trimmed edges) and down, not further worked than cleaned, disinfected or treated for preservation

**APPENDIX 4:
LIST OF WASTES SUBJECT TO THE AMBER CONTROL PROCEDURE**

Part I:

Wastes listed in Annexes II and VIII of the Basel Convention.

For the purposes of this Decision:

- (a) Any reference to list B in Annex VIII of the Basel Convention shall be understood as a reference to Appendix 3 of this Decision.
- (b) In Basel entry A1010, the term "excluding such wastes specifically listed on List B (Annex IX)" is a reference both to Basel entry B1020 and the note on B1020 in Appendix 3 to this Decision, Part I (b).

- (c) Basel entries A1180 and A2060 do not apply and OECD entries GC010, GC020 and GG040 in Appendix 3 Part II apply instead when appropriate. Member countries may control these wastes differently in accordance with Chapter II B 6 of this Decision concerning wastes not listed in Appendices 3 or 4, and the chapeau of Appendix 3.
- (d) Basel entry A4050 includes spent potlinings from aluminium smelting because they contain Y33 inorganic cyanides. If the cyanides have been destroyed, spent potlinings are assigned to Part II entry AB120 because they contain Y32, inorganic fluorine compounds excluding calcium fluoride.

Part II:

The following wastes will also be subject to the Amber control procedure:

Metal Bearing Wastes

AA010	261900	Dross, scalings and other wastes from the manufacture of iron and steel ⁷
AA060	262050	Vanadium ashes and residues
AA190	810420 ex 810430	Magnesium waste and scrap that is flammable, pyrophoric or emits, upon contact with water, flammable gases in dangerous quantities

Wastes Containing Principally Inorganic Constituents, Which May Contain Metals and Organic Materials

AB030		Wastes from non-cyanide based systems which arise from surface treatment of metals
AB070		Sands used in foundry operations
AB120	ex 281290 ex 3824	Inorganic halide compounds, not elsewhere specified or included
AB130		Used blasting grit
AB150	ex 382490	Unrefined calcium sulphite and calcium sulphate from flue gas desulphurisation (FGD)

7. This listing includes wastes in the form of ash, residue, slag, dross, skimming, scaling, dust, powder, sludge and cake, unless a material is expressly listed elsewhere.

Wastes Containing Principally Organic Constituents, Which May Contain Metals and Inorganic Materials

AC020		Bituminous materials (asphalt waste) not specified or included	elsewhere
AC060	ex 381900	Hydraulic fluids	
AC070	ex 381900	Brake fluids	
AC080	ex 382000	Antifreeze fluids	
AC150		Chlorofluorocarbons	
AC160		Halons	
AC170	ex 440310	Treated cork and wood wastes	
AC250		Surface active agents (surfactants)	
AC260	ex 3101	Liquid pig manure; faeces	
AC270		Sewage sludge	

Wastes Which May Contain either Inorganic or Organic Constituents

AD090	ex 382490	Wastes from production, formulation and use of reprographic and photographic chemicals and materials not specified or included	
AD100		Wastes from non-cyanide based systems which arise from surface treatment of plastics	
AD120	ex 391400 ex 3915	Ion exchange resins	
AD150		Naturally occurring organic material used as a filter medium (such as bio-filters)	

Wastes Containing Principally Inorganic Constituents, Which May Contain Metals and Organic Materials

RB020	ex 6815	Ceramic based fibres of physico-chemical characteristics similar to those of asbestos	
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**APPENDIX 5.A:
DISPOSAL OPERATIONS⁸**

Appendix 5.A is meant to encompass all such disposal operations that occur in practice, whether or not they are adequate from the point of view of environmental protection.

- D1 Deposit into or onto land, (e.g., landfill, etc.)
- D2 Land treatment, (e.g., biodegradation of liquid or sludgy discards in soils, etc.)
- D3 Deep injection, (e.g., injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)
- D4 Surface impoundment, (e.g., placement of liquid or sludge discards into pits, ponds or lagoons, etc.)
- D5 Specially engineered landfill, (e.g., placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
- D6 Release into a water body except seas/oceans
- D7 Release into seas/oceans including sea-bed insertion
- D8 Biological treatment not specified elsewhere in this Appendix which results in final compounds or mixtures which are discarded by means of any of the operations in Appendix 5.A
- D9 Physico chemical treatment not specified elsewhere in this Appendix which results in final compounds or mixtures which are discarded by means of any of the operations in Appendix 5.A, (e.g., evaporation, drying, calcination, etc.)
- D10 Incineration on land
- D11 Incineration at sea
- D12 Permanent storage (e.g., emplacement of containers in a mine, etc.)
- D13 Blending or mixing prior to submission to any of the operations in Appendix 5.A
- D14 Repackaging prior to submission to any of the operations in Appendix 5.A
- D15 Storage pending any of the operations in Appendix 5.A

**APPENDIX 5.B:
RECOVERY OPERATIONS⁹**

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- 8. The wording of D1 to D15 in Appendix 5.A is identical to that of Annex IV.A of the Basel Convention.
 - 9. The wording of R1 to R13 in Appendix 5.B is identical to that of Annex IV.B of the Basel Convention.
-

Appendix 5.B is meant to encompass all such operations with respect to materials considered to be or legally defined as wastes and which otherwise would have been destined for operations included in Appendix 5.A.

- R1 Use as a fuel (other than in direct incineration) or other means to generate energy
- R2 Solvent reclamation/regeneration
- R3 Recycling/reclamation of organic substances which are not used as solvents
- R4 Recycling/reclamation of metals and metal compounds
- R5 Recycling/reclamation of other inorganic materials
- R6 Regeneration of acids or bases
- R7 Recovery of components used for pollution abatement
- R8 Recovery of components from catalysts
- R9 Used oil re-refining or other reuses of previously used oil
- R10 Land treatment resulting in benefit to agriculture or ecological improvement
- R11 Uses of residual materials obtained from any of the operations numbered R1-R10
- R12 Exchange of wastes for submission to any of the operations numbered R1-R11
- R13 Accumulation of material intended for any operation in Appendix 5.B

**APPENDIX 6:
CRITERIA FOR THE OECD RISK-BASED APPROACH**

A) Properties

- 1) Does the waste normally exhibit any of the hazardous characteristics listed in Appendix 2 to this Decision? Furthermore, it is useful to know if the waste is legally defined as or considered to be a hazardous waste in one or more Member countries.
- 2) Is the waste typically contaminated?
- 3) What is the physical state of the waste?
- 4) What is the degree of difficulty of cleanup in the case of accidental spillage or mismanagement?
- 5) What is the economic value of the waste bearing in mind historical price fluctuations?

B) Management

- 6) Does the technological capability to recover the waste exist?
- 7) Is there a history of adverse environmental incidents arising from transboundary movements of the waste or associated recovery operations?
- 8) Is the waste routinely traded through established channels and is that evidenced by commercial classification?
- 9) Is the waste usually moved internationally under the terms of a valid contract or chain of contracts?
- 10) What is the extent of reuse and recovery of the waste and how is any portion separated from the waste but not subject to recovery managed?
- 11) What are the overall environmental benefits arising from the recovery operations?

APPENDIX 7:
PRACTICAL INFORMATION TO BE PROVIDED BY MEMBER COUNTRIES

- (1) **Competent Authority**: indicates the address, telephone, e-mail and fax numbers of the regulatory authority having jurisdiction over transboundary movements of wastes destined for recovery operations. If separate competent authorities are known to exist for different types of movements (e.g. different authorities for transit than for import/export), this is also indicated. When applicable, indicate the code number of the national competent authorities.
- (2) **Contact Point**: provides the point of correspondence, including the address, telephone e-mail and fax numbers, through which individuals can, if desired, obtain additional or complementary information.
- (3) **Acceptable Languages**: indicates the languages that can be used by the exporter so that the notification document is understandable for the competent authority receiving it.
- (4) **Required Points of Entry/Exit**: notes if and when national regulations prescribe that shipments of recoverable wastes must enter or exit the territory through specific customs offices.
- (5) **Pre-consented Recovery Facilities**: indicates if a Member country has granted pre-consent for certain wastes to be accepted by one or more pre-consented recovery facilities within its jurisdiction, in conformity with Chapter II, D, (2), Case 2. Details on the company, the location, the expiry of pre-consent, the relevant waste types, and total quantity pre-consented is also indicated when known.
- (6) **Classification Differences**: this item is meant to indicate when divergent classifications exist between the OECD Appendices 3 and 4 and national waste lists, according to provisions of Section B(4) of this Decision. When known specific wastes and associated controls are cited.

- (7) **Prohibitions**: provides information on wastes specifically banned or prohibited for import or export under the Member country's pertinent national laws or regulations.
- (8) **Contractual Requirements**: notes requirements concerning contracts between the exporter and the importer, including whether the competent authority shall review the contract.
- (9) **Written Consent**: indicates if Member countries require written consent for exports or imports of wastes.
- (10) **Information related to Environmentally Sound Management**: Indicates additional information under the terms of domestic legislation on environmentally sound management of wastes.
- (11) **Notification for Export**: Indicates whether notifications for export are transmitted by the competent authorities instead of the exporter.
- (12) **Movement Document**: Indicates if a country of transit does not wish to receive a signed copy of the movement document, indicating the receipt of wastes by the recovery facility in the country of import.
- (13) **Financial Requirements**: If Member countries require financial guarantees for transboundary movements of recoverable wastes, such requirements would be specified under this entry. Information provided may *inter alia* include: the types of guarantee (e.g. insurance statement, bank letters, bonds, etc.), the amount of guarantee (minimum and maximum, if any), whether the guarantee varies according to amount and/or hazardousness of the waste, the damages to be covered.
- (14) **Pertinent National Laws/Regulations**: provides citations to relevant domestic laws and regulations containing provisions that relate to the conditions of this Decision.
- (15) **Other** is used to indicate:
 - additional differences between this Decision and national provisions;
 - pending amendments to pertinent national laws/ regulations; and
 - other requirements or issues deemed relevant by the Member country.

APPENDIX 8: NOTIFICATION AND MOVEMENT DOCUMENTS

A. Information to be included in the Notification Document:

- 1) Serial number or other accepted identifier of notification document.
- 2) Exporter name, address, telephone, telefax, e-mail and contact person.
- 3) Recovery facility name, address, telephone, telefax, e-mail and technologies employed.

- 4) Importer name, address, telephone, telefax, e-mail.
- 5) Address, telephone, telefax, e-mail of any intended carrier(s) and/or their agents.
- 6) Country of export and relevant competent authority.
- 7) Countries of transit and relevant competent authorities.
- 8) Country of import and relevant competent authority.
- 9) Single notification or general notification. If general, period of validity requested.
- 10) Date(s) foreseen for commencement of transboundary movement(s).
- 11) Means of transport envisaged.
- 12) Certification that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.
- 13) Designation of waste type(s) on the appropriate list (Part I or II of Appendix 3 or 4) and their description(s), probable total quantity of each, and any hazardous characteristics.
- 14) Specification of the recovery operation(s) according to Appendix 5.B to this Decision.
- 15) Certification of the existence of written contract or chain of contracts or equivalent arrangement as required by this Decision.
- 16) Certification by the exporter that the information is complete and correct to the best of his knowledge.

B. Information to be included in the Movement Document:

Include all information at A. above plus:

- (a) Date shipment has commenced.
- (b) Carrier(s) name, address, telephone, telefax, e-mail.
- (c) Type of packaging envisaged.
- (d) Any special precautions to be taken by carrier(s).
- (e) Declaration by exporter that no objection has been lodged by the competent authorities of all countries concerned. This declaration requires signature of the exporter.
- (f) Appropriate signatures for each custody transfer.

C. Recommended forms for the Notification and Movement Documents (see Chapter I paragraph 3)

These forms and the instructions to complete them are being elaborated and will be incorporated in this Appendix as soon as they are finalised.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement date	Application, saving and transitional provisions
1996 No. 283	12 Dec 1996	12 Dec 1996	
1999 No. 74	19 May 1999	19 May 1999	—
2004 No. 73	30 Apr 2004	30 Apr 2004	—

Name	Registration	Commencement	Application, saving and transitional provisions
Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017	29 June 2017 (F2017L00788)	Sch 1 (items 4, 5): 1 July 2017 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
r. 1	rs. 1999 No. 74
r. 2	rep LA s 48D
r. 4	am. 1999 No. 74; 2004 No. 73
r. 6	am. 1999 No. 74 rs. 2004 No. 73
Note to r. 6 (1)	ad. 1999 No. 74 rep. 2004 No. 73
r. 7	am. 1999 No. 74 rs. 2004 No. 73
Note to r. 7 (1)	ad. 1999 No. 74 rep. 2004 No. 73
Note 2 to r. 7.....	ad. 1999 No. 74 rep. 2004 No. 73
r. 8	am. 1999 No. 74 rs. 2004 No. 73
r. 8A	ad. 2004 No. 73
Part 2	
r. 9	am. 2004 No. 73
Part 3	
Division 1	
r. 13	am. 1999 No. 74
r. 14	am. 1999 No. 74
r. 15	am. 1999 No. 74; 2004 No. 73
r. 16	am. 1999 No. 74; 2004 No. 73
r. 17	rs. 1999 No. 74 am. 2004 No. 73
r. 18	am F2017L00788
Division 2	
Heading to r. 19.....	rs. 1999 No. 74
r. 19	am. 1999 No. 74
r. 20	am. 1999 No. 74
r. 21	am. 1999 No. 74; 2004 No. 73
r. 22	am. 1999 No. 74; 2004 No. 73
r. 23	am. 2004 No. 73
r. 24	rs. 1999 No. 74

Endnote 4—Amendment history

Provision affected	How affected
	am. 2004 No. 73
Division 3	
Heading to r. 26.....	rs. 1999 No. 74
r. 26.....	am. 1999 No. 74
r. 27.....	am. 1999 No. 74
r. 28.....	am. 1999 No. 74; 2004 No. 73
r. 30.....	rs. 1999 No. 74
	am. 2004 No. 73
Part 4	
r. 34.....	am. 1999 No. 74
r. 39.....	am. 1999 No. 74
r. 40.....	am. 1999 No. 74; 2004 No. 73
r. 41.....	am. 1999 No. 74
Part 5	
r. 42.....	rs. 2004 No. 73
r. 43.....	am. 2004 No. 73
r. 44.....	am F2017L00788
Schedule 1	
Schedule 1.....	am. 1999 No. 74
	rs. 2004 No. 73
Schedule 2	
Schedule 2.....	rs. 1999 No. 74
	rep. 2004 No. 73