

Chapter Two

Legal Controls of Hazardous Waste Movement in the South Pacific Region

The transboundary movement of materials classed as hazardous wastes are governed by a number of international agreements. Those of direct relevance to the waste activities discussed in this manual are:

- ?? The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal (1989),
- ?? The Waigani Convention (1995),
- ?? The Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations (1996).

All are based around obligations to obtain the consent of the country of destination, and any transit countries, before the commencement of any movement of relevant material.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)

The Basel Convention was adopted at Basel on 22 March 1989 and entered into force 5 May 1992.

This global environmental treaty strictly regulates the transboundary movements of hazardous wastes and provides obligations to its Parties to ensure that such wastes are managed and disposed of in an environmentally sound manner. The Basel Convention contains specific provisions for the monitoring of implementation and compliance of movements of hazardous waste. Under the Convention, transboundary movements of hazardous wastes or other wastes can take place only upon prior written notification by the State of export to the competent authorities of the States of import and transit (if appropriate). Each shipment of hazardous waste must have approval by the State of import and documentation is to be completed.

The Basel Convention prohibits waste movements between parties and non-parties, except if it has entered an Agreement defined in Article 11, where parties can enter arrangements with other parties and non-parties (such arrangements include the Waigani Convention).

The United Nations Environment Programm is the Convention Secretariat through its office based in Geneva. It is responsible for the co-ordination, collection and dissemination of information. It maintains a website (www.basel.int) of current information including the Convention and its Annexes/lists, national legislation notified by Parties, Competent Authorities, and forms to be completed for waste movement. All correspondence regarding Basel enquiries should be addressed to the Executive Secretary. Refer to contact list for further details.

There are approximately 100 countries who are Party to the Basel Convention, including (20 November, 2002):

- Australia
- Indonesia
- Kiribati
- Malaysia
- Maldives
- Federated States of Micronesia
- Nauru
- New Zealand
- Papua New Guinea
- Phillipines
- Samoa
- Singapore
- Thailand

Most Pacific Island countries are not Parties to the Basel Convention. Because the Convention prohibits movements of relevant materials between Parties and non-Parties, New Zealand is not able to trade with these countries. The French Territories may qualify through their links to a Party e.g.: New Caledonia/Tahiti (France). The Waigani Convention allows trade with Pacific Island countries that are Parties to the agreement (see section 4).

Waigani Convention (1995)

The Waigani Convention was adopted at Waigani, PNG on 16 September 1995 and entered into force 21 October 2001.

The Waigani Convention bans the import of hazardous and radioactive wastes into the South Pacific region (Forum Island Countries) and allows the collection in Australia and New Zealand. Wastes can be moved around the South Pacific Region.

This agreement allows countries which have not signed the Basel Convention to move wastes with parties who have signed the Basel Convention.

Every country has an authorising agency under the Waigani Convention which manages all enquiries on the Convention. The South Pacific Regional Environment Program (SPREP) is the Secretariat for the Waigani Convention. All correspondence regarding Waigani should be addressed to the Director of SPREP. Refer to contact list for further details. Draft notification forms are available from SPREP and will be finalised in 2003.

Countries who are party to the Waigani Convention (November 29, 2002):

- Australia
- Cook Islands
- Federated States of Micronesia
- Fiji
- Kiribati
- New Zealand
- Papua New Guinea
- Samoa
- Solomon Islands
- Tuvalu

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

Haven't been able to find out when adopted and e.i.f.

The Organisation for Economic Cooperation and Development (OECD) has special rules for shipments of waste for recovery. The rules mean that waste can be shipped between OECD countries, even if they are parties to the Basel Convention.

Wastes are categorized into three lists:

Green Tier (not subject to OECD control)

Amber Tier (subject to the OECD control system, and available for multiple or single shipments) or

Red Tier (can only move, if at all, subject to specific authorisation and conditions).

The OECD maintains a website (www.oecd.org), although finding information is quite difficult and the links on their page on the OECD Hazardous Waste Regulations were not working at last attempt (www.oecd.org/ehs/Waste/control.htm). Forms can easily be located on the Environment Australia website.

Countries who are OECD members in the Pacific Region are:

- Australia
- New Zealand

This agreement isn't important to PIC's although it is relevant to those companies who are sending a shipment via either of these countries.

Wastes of Concern

The wastes of concern that are dealt with in this document in which approval may need to be sought, include:

- waste oil,
- lead-acid batteries (with or without acid), and,
- asbestos.

Competent/authorising authorities for each country should be contacted to determine specific requirements and limits for quantity (ie. in the case for sending asbestos samples to New Zealand and Australia for laboratory testing).

Export and Import Permits

For the movement of asbestos, lead-acid batteries and waste oil from any Pacific Island Countries, there are certain import permits required. The permits and documentation required differ depending on what country the hazardous waste is going to or coming from.

Checks should also be made to ascertain whether the material concerned is covered by that Country's domestic hazardous waste legislation.

The legislation of Singapore and Hong Kong require the appointment of local agents to be responsible for the material while in transit. These agents apply for local transit licences to be issued.

What forms will I need to use?

There are several types of permits depending on what country the hazardous waste is going to or coming from and there are several different application forms depending on the permit required.

Countries may develop their own forms for use or use standard forms – Australia has developed some of their own forms, whilst New Zealand use the standard forms.

To New Zealand

The Ministry of Economic Development is the New Zealand Notification and Consent (Competent) Authority for the aforementioned agreements. Forms can be provided by this Department upon contact. External negotiations are led by the Ministry of Foreign Affairs and Trade. The New Zealand Customs Service enforces border control requirements legally established by regulations under the Import Control and Customs and Excise Acts. If waste is being imported the Basel Convention Notification and Movement Tracking forms are required. These can be obtained from the Basel Convention Website.

To Australia

If the waste is being sent to Australia, application forms for all permits can be obtained from Environment Australia and can be downloaded from their website (www.ea.gov.au/industry/hwa). This website also contains Information Papers that detail how to complete the forms. All applications for export, import or transit permits require the completion of an *Environment Australia Application Form*. Refer to Table 1 for the forms Environment Australia require to be completed.

Table 1: Forms to be completed for gaining permits in Australia.

| Type of Permit | | Purpose of Operations | Application Form and Number of Forms Required |
|----------------|-----------------------|---|---|
| Waigani | Special Import Permit | For imports of waste into Australia destined for recovery operations from a country that is party to the Waigani Convention | 1. Environment Australia Application form – one original; 2. Australia Transfrontier Movement of Wastes – Import/Transit Form – two originals 3. Australia Transfrontier Movement of Wastes – Import/Transit Movement/Tracking Form – two copies. |
| Basel | Basel Import | For import of waste destined for recovery and | 1. Environment Australia Application form – one original; |

| | | | |
|--|--------|--|---|
| | Permit | final disposal operations in a country that is party to the Basel Convention | <ol style="list-style-type: none"> 2. Australia Transfrontier Movement of Wastes – Import/Transit Form – two originals; and 3. Australia Transfrontier Movement of Wastes – Import/Transit – Movement/Tracking Form – two copies. |
|--|--------|--|---|

To Other Pacific Island Countries

The Waigani Convention does allow hazardous wastes to move between Forum Island Countries and Territories, on the condition that the country has the capability to handle the wastes in an environmentally sound manner. Approval and documentation will need to be obtained and provided in addition to any individual criteria the country may have. Pacific Island Countries are still gaining an understanding of their requirements under the Basel and Waigani conventions. For this reason each country must be contacted to gain specific information.

Transit

Due to the routing of ships through the Pacific, it may be necessary that some hazardous waste movements will need to transit a country. Approval and documentation is required by these countries of transit as well as the importing country.

Application Requirements

Waigani Convention describes various forms of information that must be transmitted between countries and to the Secretariat. These include:

- export notifications,
- written consent or disapproval,
- movement documentation,
- accident notification,
- information to the Secretariat,
- information on the sound management of wastes.

Australia

Applicants applying to Australia must have:

- appropriate insurance; (Section 18(a) of *Australia's Hazardous Waste (Regulation of Exports and Imports) Act 1989* requires that applicants for a permit must be reasonably insured against risks that might occur in relation to the hazardous waste concerned if the permit were granted. In general, this means that applicants should be covered by public liability insurance with a limit of liability of at least AUD5 million.)
- evidence of financial viability;

- in the case of all export permits, a written contract or chain of contracts, covering all movements, starting with the notifier and terminating at the disposal facility. The person specified in the contract is responsible for the management of the wastes including their return if necessary; and
- in the case of all Basel export permits, detailed evidence that the waste will be managed in an environmentally sound manner.

Please note permits are only issued to persons within Australian jurisdiction.

New Zealand

In New Zealand, applicants must complete and forward the Notification and Movement forms, along with copies of written contracts, insurance cover, details of the route to be taken, any transits and a brief explanation of how the movement is consistent with environmentally sound and efficient management, to the CA of the country of export (e.g. MED in New Zealand). Further information may be requested and/or the Consents forwarded to the CA of the Parties of destination and transit (where relevant). **Note:** so as to facilitate the Consent process it is often useful for the exporter or their agent/importer in the country of destination/transit to liaise with the local CA.

How long before I can get a permit?

If application is being made to import waste to an OECD country, an authority has 40 days in which to process applications. If application is being made to import waste from a country that is a party to the Basel Convention, a competent authority has 60 days in which to process an application.

Most permits are processed within these time frames, however, if there are difficulties which arise during the assessment process, then an extension of time of up to 60 days may eventuate. Typically, delays in processing applications arise when authorities in other countries involved do not reply to requests for a decision about consent.

How much does a permit cost?

There are no costs for permits issued from New Zealand.

The schedule of fees for permits issued from Australia is:

| | |
|--|-------|
| Basel or Special (OECD) Import Permit | \$270 |
| Basel or Special Import Permit with waste destined for an approved recovery facility | \$210 |

All permits issued will be under the Australian Hazardous Waste Act and are valid for up to twelve months. This means that a number of shipments can be made under the one permit, up to the limit of tonnes allowed under the permit, provided that the type of waste and the destination of the waste remains the same.

Pacific Island Countries will need to be contacted to determine whether there are costs associated with the issuing of permits within individual countries. Refer to the Secretariat's

of individual conventions to find out which is the appropriate contact agency in the country of concern. As PICs are still implementing the conventions, any information obtained on this for these guidelines would soon be outdated.

Penalties

In New Zealand, if no approval has been given for the shipment then Customs will not allow the waste to be imported into New Zealand and it would be returned at the expense of the exporter.

It is an offence to export, import or transit hazardous waste from, to or through Australia without a permit. The maximum penalty is up to \$1,000,000 for a body corporate or up to 5 years imprisonment for an individual. This applies to offences that are likely to result in injury or damage to human health or the environment. Lesser penalties apply to other offences.

Contact Details

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