

# **Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999 1999 No. 102**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 1999 No. 102**

Issued by the Authority of the Minister for the Environment and Heritage

Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999

Section 62 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Act) provides that the Governor-General may make regulations for the purposes of the Act.

The Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999, implement Decision IV/9 of the fourth meeting of the Conference of Parties to the Basel Convention which amended Annex I and adopted new Annexes VIII and IX to the Convention. The new Annexes provide greater clarity as to which wastes are subject or not subject to the Convention, and as such, provide greater certainty to governments and industry as to what wastes are intended to be regulated under the Convention. The changes do not alter the scope of the Convention.

The Regulations were developed in consultation with the Hazardous Waste Act Policy Reference Group on which various industry and environment groups, overseas aid and development organisations, trade unions, and relevant Commonwealth and State and Territory Departments are represented. They were unanimously supported by members of this Group.

Details of the Regulations are at Attachment 1. A Regulation Impact Statement is also attached.

The Regulations are taken to have commenced on 6 November 1998. In accordance with ss48(2) of the *Acts Interpretation Act 1901*, the rights of persons other than the Commonwealth are not adversely affected by the retrospective commencement of these regulations, nor are any liabilities imposed on such persons in respect of anything done or omitted to be done before the date of notification. ATTACHMENT 1

Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999

Details of the Regulations are as follows:

Regulation 1 is a citation provision.

Regulation 2 states that the purpose of the Regulations is to amend the Schedule to the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* which contains the text of the Convention. The amendment incorporates new Annexes XIII and IX that were agreed at the fourth meeting of the Conference of the Parties to the Basel Convention in Kuching in February 1998. The Annexes contain detailed lists of wastes that clarify which wastes are regulated by the Convention and which are not.

Regulation 3 provides that the Regulations are taken to have commenced on 6 November 1998.

Regulation 4 provides for the Schedule to the Regulations to amend the Schedule to the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* as set out in Schedule 1 to the Regulations

Schedule 1 item 1 changes a note in the text to the Convention to reflect the fact that the Convention was amended in 1998 to incorporate changes made by Decision IV/9 of the fourth meeting of the Conference of the Parties to the Convention.

Schedule 1[2] inserts into the Schedule at the end of Annex 1, text which clarifies that wastes listed in Annex VIII are covered by the Convention and wastes listed in Annex IX are not. Placement of wastes on Annexes VIII and IX are merely intended to assist in interpreting the Convention and in no way affect the normal application of Annexes I and III when determining whether or not a particular waste falls within the scope of the Convention.

Schedule 1[3] inserts the text of Annexes VIII and IX at the end of the Annexes to the Convention. **DRAFT**

**Amendment, done at Kuching, Malaysia on 27 February 1998, to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989, done at Basel, Switzerland on 22 March 1989**

## **REGULATION IMPACT STATEMENT**

### **Introduction**

Australia signed the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on 22 March 1989. It entered into force for Australia on 5 May 1992. The Convention regulates the movement of hazardous wastes between Parties through a process of requirements for prior consent from importing countries, and requires the exporting country to ensure that waste ' will be managed in an environmentally sound manner before approving its export.

The Basel Convention is implemented in Australia through the Commonwealth's Hazardous Waste (Regulation of Exports and Imports) Act 1989. The Act is administered by the Minister for the Environment and Heritage. The new Annexes clarify and elaborate on the lists of wastes that are explicitly subject (Annex VIII) or not subject (Annex IX) to the Convention.

The Schedule to the Act sets out the English text of the Basel Convention as in force from time to time. The Commonwealth proposes to amend the Schedule by regulations made pursuant to Section 62 of the Act. The proposed amendments would incorporate amendments to Annex I and the new Annexes VIII and IX as agreed at the fourth meeting of the Conference of the Parties to the Basel Convention (COP 4) in Kuching in February 1998.

### **1. Problem or Issue Identification**

Some degree of uncertainty currently exists for industry and government alike in determining whether or not specific wastes fall within the broad waste categories identified in Annex I of the Basel Convention. When such questions arise, Australian industry contacts Environment Australia for advice as to whether the waste is subject to the Convention, and therefore regulated under the Hazardous Waste Act. Because of the technical complexity surrounding such questions, the matter is often referred to the Hazardous Waste Technical Group, a statutory committee consisting of technical experts in the hazardous waste and related fields appointed by the Minister.

The Hazardous Waste Technical Group was first established in 1995 and was given statutory authority under the 1996 amendments to the Act. The Group's role is to provide advice to the Minister on more complex technical issues arising from implementation of the Act. Since the amendments came into force, membership of the Hazardous Waste Technical Group has been determined in accordance with Section 58E of the Act. Section 58E(2) states that before appointing a person as a member of the Hazardous Waste Technical Group the Minister must have regard to the person's expertise in, or experience of matters relevant to the scientific and/or technical, social and/economic, environmental, and public health and safety aspects of the management of hazardous waste.

Since its inception, the Hazardous Waste Technical Group has held 35 meetings and dealt with about 50 enquiries concerning the scope of the Act. On average, the Technical Group deliberates for around three hours on a typical enquiry, with discussions conducted over two to three meetings. This allows time for applicants to orally present their case to the Group (if required) and for outstanding issues or questions to be resolved before a final recommendation is made. For example, an enquiry about the waste status of solder residues was made by a solder manufacturing company in August 1998. A half-hour preliminary evaluation was carried out by the Technical Group in anticipation of an oral presentation by the company. The company presented their case at a half-hour session with the Technical Group at the next meeting, and after two hours of further deliberations the Group concluded that the material was considered to be a waste for the purposes of the Act.

The cost of such enquiries is met entirely by the Commonwealth. The estimated cost per hour of convening the Technical Group is \$A1,800, or \$A5,400 per enquiry.

If the Schedule to the Act were to be amended to reflect the Decision to adopt new Annexes VIII and IX, uncertainty could be expected to decrease as the wastes contained in the new Annexes better reflect the intent of the Convention in respect of a particular material's hazardous characteristics. With greater certainty as to the intent of the Convention, companies can determine with greater confidence that a particular material is regulated and the number of enquiries referred to the Technical Group for consideration could be expected to decrease. The Technical Group's time could then be more usefully applied to other areas such as developing technical advisory papers to assist prospective applicants in meeting the requirements of the Act.

### **3. Specification of the desired objective**

The objective of this regulatory initiative is to provide greater immediate certainty to industry and the Commonwealth as to what wastes are subject to the Basel Convention, and so subject to regulation under the Hazardous Waste Act. This would reduce the need for time-consuming consultation by industry with Environment Australia and the Technical Group.

The Regulations implement Decision IV/9 of COP 4, held in Kuching, Malaysia on 2327 February 1998, where Parties voted to adopt two new Annexes to the Convention (Annexes VIII and IX). The new Annexes clarify detailed lists of wastes that are explicitly subject (Annex VIII) or not subject (Annex IX) to the Convention. The new Annexes are created through an amendment to Annex 1, and do not extend the scope of that existing Annex.

### **4. Identification of options**

At COP 4 it was decided to amend Annex 1 to the Convention and adopt new Annexes VIII and IX which would provide greater clarity as to which wastes are subject or not subject to the Convention. The Decision aimed to provide greater certainty to governments and industry in determining which wastes are intended to be regulated under the Convention while not altering the scope of the Convention.

The Commonwealth has two options for addressing this issue. The first is to remain with the status quo; that is, to reject the amendments to the Basel Convention annexes, and to continue on with the current system of identification of wastes subject to regulation in Australia. This option would require industry to approach Environment Australia for advice as to whether a material is intended to be regulated each time there is an uncertainty about its hazard or waste status. Environment Australia would, in turn, need to refer any difficult questions arising to the Hazardous Waste Technical Group for an expert opinion.

The alternative option is for Australia to accept the amendments to the Basel Convention annexes, and implement the new annexes by amendments to the Hazardous Waste Act. The amended Act would reflect the Convention's new approach to identifying hazardous wastes and provide greater clarity as to which materials are intended to be regulated.

### **5. Assessment of impacts**

Should the Convention's amendments be implemented through amendments to the Hazardous Waste Act, cost savings could be made through reduced compliance costs for industry and lower administrative costs for Government in processing permits under the Act. These cost savings would derive from swifter and easier identification by industry, the community and the Commonwealth of whether or not a given waste is subject to regulation in Australia.

The main group of industries which could be expected to benefit from this alternative option are waste producing industries for whom uncertainty exists as to whether their wastes are regulated under the Hazardous Waste Act. For example industries which generate or deal with metallic wastes such lead scrap or zinc dross have consistently argued that their materials should not be regulated. Industries such as electrical and electronic scrap merchants have also faced uncertainty as to whether or not some of the materials with which they deal such as PVC or electronic scrap are covered by the Act.

These industries should all stand to benefit if the Act is amended to reflect the new annexes. In cases where such wastes are deemed not to be regulated, industries dealing in these wastes will not require a permit when importing or exporting unless the waste to be transported contains Annex I material to the *extent that* it exhibits an Annex III hazardous characteristic. These industries will gain savings in transport costs and time taken to arrange shipments. In other cases, greater certainty as to what wastes are regulated should strengthen business confidence, with small business enterprises, in particular, benefiting from this change. The benefits of greater certainty are especially relevant to the hazardous waste industry which is largely comprised of small business enterprises which have fewer *resources available* from their core operations to consider issues of compliance.

With respect to the benefits derived by Government, implementing the amendments to the Convention could be expected to result in a cost saving for the Commonwealth in terms of assessing whether or not particular wastes are subject to the Convention. With the new Annexes VIII and IX providing *greater certainty* on *this* point, there should be fewer queries from industry requiring the attention of the Hazardous Waste Act Technical Group to be *resolved*. *This* should, in turn, lead to reduced costs associated with convening the Technical Group on a less frequent basis (although the Group will still meet to consider other issues relating to implementation of the Act).

Acceptance of the creation of new Annexes VIII and IX to the Basel Convention, and of the amendments to Annex I, can *therefore be* expected to provide greater certainty overall to both the Commonwealth and industry. The new Annexes will help to determine what wastes are subject to the Convention, without affecting any increase or decrease in the scope of the Convention. While some of the more complex examples will still require resolution by Environment Australia and/ or the Australian Hazardous Waste Technical Group, the new Basel Annexes will provide far more immediate and internationally recognised guidance on what wastes are subject to the Convention.

## **6. Consultation**

The Commonwealth undertakes consultation with State and Territory governments as well as hazardous waste stakeholder groups through the Hazardous Waste Act Policy Reference Group (PRG), which is convened three to four times each year by Environment Australia.

State and Territory governments are represented by a senior official of the Environment Protection Authority of Victoria, who was nominated by State and Territory environment agencies to attend *meetings* on their behalf and report back to them on any issues of interest or relevance. Representatives from Australian industry and environment groups are also represented on the PRG, as are officers of interested Commonwealth government departments and agencies.

The PRG acts as a forum for the Commonwealth to raise issues of policy development with stakeholders, and to receive their direct feedback. It also provides a conduit for interested parties to report on any issues they consider to be of importance to the Implementation of the

Hazardous Waste Act, and the development of briefing positions for Australian delegations to Basel Convention meetings.

Environment Australia consulted with the PRG in advance of COP 4 on the proposal to adopt the new lists of wastes in new Annexes. Support was received from industry and environment groups for the adoption of the new Annexes. The State and Territory government representative did not raise any concerns about the proposal.

The Minister for the Environment, Senator the Hon Robert Hill, and the Acting Minister for Foreign Affairs and Trade, the Hon Tim Fischer MP, wrote to relevant Commonwealth Ministers before COP 4, seeking their agreement to the proposed Australian position which supported the adoption of new Annexes VIII and IX, and the amendment of Annex 1. All Ministers consulted agreed with the proposed position.

After the amendments were agreed at COP 4 in February 1998, the Head of Environment Australia wrote to the heads of State and Territory environment agencies seeking confirmation of their support for Australia to accept the amendments. They responded that as the new Annexes will provide greater certainty for industry and Governments in deciding what wastes are subject to the Basel Convention they would support the Commonwealth in accepting the new Annexes to the Basel Convention.

## **7. Conclusion and recommended option**

Environment Australia recommends that Australia accept the amendments to the Annexes of the Basel Convention. This will reduce the time required to answer questions on whether a given waste is subject to regulation, while imposing no new obligations on either industry or government. Environment Australia also recommends that the Convention amendments then be implemented in the interim through regulations made pursuant to Section 62 of the Hazardous Waste Act, and also through amendments to the Act itself at a subsequent date.

## **8. Implementation and review**

Environment Australia and the Department of Foreign Affairs and Trade will monitor the impact of the amendments to the Basel Convention and the Hazardous Waste Act on an ongoing basis. In addition Environment Australia has in place consultative arrangements to obtain regular feedback from industry and environment group stakeholders on the effectiveness of the Basel Convention and the Act. An amendment to the body of the Act to insert references to Annexes VIII and IX would be desirable when the Act is next amended.