

VIII/15: Revisions to the procedure for the review or adjustment of the lists of wastes contained in Annexes VIII and IX and the status of decision VII/21

The Conference of the Parties

1. *Decides* to clarify the procedure for the review or adjustment of the lists of wastes contained in Annexes VIII and IX of the Basel Convention set forth in the appendix to its decision VI/35 and adopts the amended procedure set forth in the annex to the present decision;

2. *Invites* Parties and others to provide comments with regard to a technical review of the wording of the entries in each of the language versions of Annexes VIII and IX of the Basel Convention, and particularly of entry B1030, by 31 March 2007, to be compiled by the Secretariat for further consideration by the Open-ended Working Group at its sixth session.

Annex to decision VIII/15

Procedure for the review or adjustment of lists of wastes contained in Annexes VIII and IX

1. The review or adjustment of the lists of wastes contained in Annexes VIII and IX of the Basel Convention can entail either amendments or corrections of those annexes. There is a legal distinction between amendments, on the one hand, and corrections, on the other.

2. An amendment refers to formal changes made to the provisions of a treaty by the Parties. The procedure for amending annexes of the Convention is governed by articles 17 and 18 of the Convention. More particularly, any proposed amendment must be made by a Party and communicated by the Secretariat to all Parties at least six months before the meeting at which it is proposed for adoption. In addition, any such amendment must be adopted at a meeting of the Conference of the Parties and may become effective six months from the date of issuance of a circular notification by the Depositary.

3. Corrections to the original text of a treaty may become necessary because of:

- (a) A physical error in typing or printing, spelling, punctuation, etc.;
- (b) A lack of conformity of the original of the treaty with the official records of the diplomatic conference which adopted the treaty;
- (c) A lack of concordance between the different authentic texts constituting the original of the treaty.

4. The procedures for correcting the original text of a treaty are governed by Depositary practice.

I. Procedure for changes to the text of Annexes VIII and IX

A. Applications

5. Applications for any changes to the text of Annexes VIII or IX must be submitted to the secretariat using the form below. Any Party, observer State, non-governmental organization, private company or individual has the right to fill out the application form with the proposed placement of wastes under Annex VIII or Annex IX or with a proposal for removing wastes from Annex VIII, Annex IX or working list C. Any application submitted to the secretariat shall be by or through a Party or observer State.

6. A Party submitting an application shall clearly state whether or not the application is also intended to serve as a formal proposal for amendment of the annexes to the Basel Convention in accordance with articles 17 and 18 of the Convention.

7. Competent authorities and focal points are requested to make available any information in addition to the form to all focal points of the Basel Convention and to advise the Secretariat that this has been done. If a competent authority or focal point is unable to make available any annexes or attachments to all focal points of the Basel Convention, it may request the Secretariat to undertake that function.

B. Procedure for transmission of the form

8. The applicant must present the application form with any additional information to a national authority for the Basel Convention.

9. The competent authority and/or focal point should consider the application form with any additional information and only forward it to the Secretariat of the Basel Convention if it is properly completed and if the completed application provides sufficient information for the Open-ended Working Group to reach a decision.

10. The Open-ended Working Group will consider the application at its following meeting, provided it is received by the Secretariat within the time frame stipulated in paragraph 11 (a) below.

C. Time frame for application

11. Paragraph 2 of article 17 of the Basel Convention requires that the text of any proposed amendment to the Convention be communicated to the Parties by the Secretariat at least six months before the meeting of the Conference of the Parties at which it is proposed for adoption. To this end, the following conditions must be met:

(a) The application form for placement or removal of wastes must be submitted to the Secretariat of the Basel Convention at least three months prior to the meeting of the Open-ended Working Group. Any information in addition to the form should also be submitted within that time frame;

(b) In exceptional circumstances, a Party may submit the application form for placement or removal of wastes two months before the meeting of the Open-ended Working Group if such proposal(s) cannot be sent to the Secretariat within the three-month deadline. The Open-ended Working Group will endeavour to consider such application(s) at its following meeting.

D. Procedure before consideration in the Open-ended Working Group

12. After receiving an application, the Secretariat will place the application on the Internet website of the Basel Convention (www.basel.int) within 30 days.

13. The Secretariat will send an e-mail to all focal points announcing that the application is available. Those Parties which have no access to Internet or e-mail facilities will be sent the application by mail or facsimile.

14. The Secretariat will invite the Parties to comment on the application within 20 days directly to the applicant (by mail, facsimile or e-mail).

15. The applicant will make, as necessary, an addendum to the application containing answers to the questions within 20 days.

16. The Secretariat will make the addendum available to the Parties at least 20 days before the meeting.

17. In the exceptional cases mentioned in paragraph 11 (b) above, the time frames stipulated in paragraphs 12 and 15 above are reduced to 10 days.

E. Action by the Open-ended Working Group

18. The Open-ended Working Group will consider and review the applications for placement or removal of wastes in Annexes VIII and IX. The applications must be based on sound scientific assessment in accordance with paragraph 1 (a) of article 1 of the Basel Convention.

19. The Open-ended Working Group should arrive at a decision by consensus.

20. The decisions of the Open-ended Working Group on the placement or removal of wastes on the lists contained in Annexes VIII and IX shall be transmitted in a report of the Open-ended Working Group through the secretariat to the following meeting of the Conference of the Parties. In cases where no formal proposal for amendment to the annexes to the Basel Convention has been made by a Party when submitting an application, the Open-ended Working Group should invite other Parties to submit such a formal proposal to the Conference of the Parties in accordance with articles 17 and 18 of the Convention.

F. Effective review procedure

21. Costs of review should be kept to a minimum. Restricting the summary of cases to eight additional pages would help save costs, although a Party wishing to provide more information could do so at its own cost.

G. Role of the Secretariat

22. The Secretariat of the Basel Convention will assist the Parties by acting as liaison with the Depositary with a view to facilitating the implementation of the amendment procedure, as necessary.

H. Reporting

23. The Secretariat of the Basel Convention should provide a report to Parties on the status of the lists of wastes in Annexes VIII and IX of the Basel Convention on a regular basis and when changes have entered into force.

II. Procedure for corrections

24. Parties, the Open-ended Working Group or the Conference of the Parties may inform the Depositary on corrections of Annexes VIII and IX of the Basel Convention. In the case of a correction to Annex VIII and/or Annex IX of the Basel Convention, the Depositary initiates the formal correction procedure by notifying the Parties and signatories of the error and the proposed correction.

25. The Depositary has the responsibility to scrutinize each apparent error in order to determine that it falls into one of the above categories and that it does not have the effect of modifying the meaning or substance of the text of the treaty. In case of doubt, the Depositary will seek to resolve it in consultation with the Party that proposed the correction. The Secretariat of the Basel Convention will assist the Parties by acting as liaison with the Depositary, with a view to facilitating the implementation of the correction, as necessary.

26. If, on the expiry of a specified time limit, no signatory or Party objects, the Depositary circulates a procès-verbal of rectification to Parties and signatories and causes the corrections to be effected in the authentic text(s) *ab initio*. States have 90 days to object to a proposed correction; this period can be shortened if necessary.

APPLICATION FORM FOR THE PLACEMENT OR REMOVAL OF WASTES ON ANNEXES VIII AND IX

A. WASTE IDENTIFICATION

Proposed wording for the placement (or replacement wording for an existing category)

1. Name of the waste: _____
2. Origin of the waste: _____
3. Physical form: _____
4. Major constituents: _____
5. Typical contaminants: _____

6. Waste Code: UN Class _____ UN number _____
 _____ IWIC _____ OECD _____
 _____ EWC _____ Others (e.g. Harmonized
 System Code, _____ BIR, ISRI, IPMI, etc.)

7. Enter all relevant Y numbers

8. Hazardous characteristics

- | | | | |
|-------------------------------|-------------------------------|-------------------------------|--------------------------|
| <input type="checkbox"/> H1 | <input type="checkbox"/> H4.3 | <input type="checkbox"/> H6.2 | <input type="checkbox"/> |
| <input type="checkbox"/> H12 | | | |
| <input type="checkbox"/> H3 | <input type="checkbox"/> H5.1 | <input type="checkbox"/> H8 | <input type="checkbox"/> |
| <input type="checkbox"/> H13 | | | |
| <input type="checkbox"/> H4.1 | <input type="checkbox"/> H5.2 | <input type="checkbox"/> H10 | |
| <input type="checkbox"/> H4.2 | <input type="checkbox"/> H6.1 | <input type="checkbox"/> H11 | |

B. PROPOSED PLACEMENT

- List A of Annex VIII
 List B of Annex IX

PROPOSED REMOVAL

- From list A of Annex VIII
 From list B of Annex IX

C. NATIONAL DEFINITION

Is the waste legally defined as or considered to be hazardous in the country submitting the application?

- Yes No

D. COMMERCIAL CLASSIFICATION

Is the waste routinely traded through established channels and is that evidenced by commercial classifications?

- Yes No

SUMMARY OF REASONS FOR PROPOSED PLACEMENT

NB: A detailed case study (no more than eight additional pages) should be attached, taking into consideration the category(ies) in Annex I to the Basel Convention under which the waste falls and with evidence demonstrating that the waste does or does not exhibit any of the hazardous characteristics in Annex III to the Convention (guidance document to be drafted). Additional material may be submitted in the form of annexes or attachments. All such annexes or attachments must be listed in the application form, together with instructions on how to obtain the documents.

E. NAME OF APPLICANT

Name: _____
Address: _____

Tel: _____

Fax: _____

E-mail: _____

Party
Observer State
NGO
Company
Individual

(Signature)

(Stamp)

F. AUTHORITY TRANSMITTING APPLICATION

Name: _____
Address: _____

Tel: _____
Fax: _____
E-mail: _____

(Signature)

(Stamp)

Date of transmission: _____

This application form may include up to 8 additional pages.