

## **Answers from Switzerland to the concept paper by Canada on the review of annexes IV and related aspects of annex IX to the Basel convention, as well as on the review of annexes I and II to the Basel Convention**

Switzerland would like to thank Canada for having provided this very well prepared concept paper that seeks views on the objectives of the review, the process and the issues to be addressed. The concept paper is clear, facilitates the submission of views and will thus guide the work ahead. It will be useful in developing the report for the consideration of COP-13 and we thank Canada for its expertise and efforts in this process.

Please find specific answers and comments directly in the survey.

### **Concept Paper by Canada**

#### **Review of Annex IV and related aspects of Annex IX (B1110) to the Convention, as well as on the review of Annexes I and III to the Convention**

##### **Introduction**

1. During its tenth meeting (30 May-2 June 2016, Nairobi), the Open-ended Working Group adopted decision OEWG-10/8 on providing further legal clarity regarding the Convention. The decision, among other things, welcomed the offer of Canada to serve as lead country until the thirteenth meeting of the Conference of the Parties (COP-13) for the review of Annexes I, III and IV to the Convention and related aspects of Annex IX (entry B1110) to the Convention.
2. As part of this review, Canada was invited to develop by 26 August 2016 a concept paper on the review of Annex IV to the Convention and related aspects of Annex IX (B1110) to the Convention, as well as on the review of Annexes I and III to the Convention, taking into account the documentation referred to in paragraph 6 of the OEWG-10/8 decision: legally binding options for further steps towards the consistent interpretation of terminology (UNEP/CHW.12/INF/52), Parties' and others' submissions thereon (UNEP/CHW/OEWG.10/INF/11), the Secretariat report on the review of Annex IV and related aspects of Annex IX to the Convention (UNEP/CHW/OEWG.10/INF/12), and any further submission by Parties and others as of 15 July, 2016. As of that date, no further views have been submitted to the Secretariat.
3. Parties, with the support of the Basel Convention Regional Centres as appropriate, and others are invited to submit by 28 October 2016 views on this concept paper to the Secretariat and Canada. The views submitted will be analysed and enable Canada to prepare, in consultation with the Small Intersessional Working Group on legal clarity, a report for the consideration of COP-13.
4. The purpose of this concept paper is to facilitate the submission of views by Parties and others on the review of the Annexes by providing some basic information and soliciting input on key considerations for guiding the work ahead. Canada wishes to emphasize that the information submitted by 28 October 2016 is intended to inform the development of a report for the

consideration of COP-13. It is understood that any submission received during this consultation is without prejudice to any subsequent views that may be put forward by the time of and during COP-13. This concept paper seeks your views on the following three elements:

- I. Objectives of the review
- II. Process to conduct the review
- III. Issues identified to date by Parties and others under each Annex (Annex IV, IX (B1110), I, III)

## I. Objectives of the review

5. The goal of reviewing the four Annexes is to improve the legal clarity of the Convention, which will help Parties implement and comply with its requirements, and ultimately help improve the overall effectiveness of the Convention. The Basel Convention was adopted more than 25 years ago and could benefit from a review based on scientific and technical considerations to maintain the ongoing relevance of some of its Annexes.
6. After reviewing the documentation referred to in paragraph 2 above, the following objectives for the review have been identified:

Objectives	Example
1. Address conflicting or overlapping provisions in the Convention	In Annex IV the interpretations of operation D1 "deposit into or onto land" and operation D5 "specially engineered landfill" potentially overlap and could benefit from a better description.
2. Improve/update the description of wastes and disposal operations within the scope of the Convention	In Annex I, entry Y29 is for mercury and mercury compounds, waste. This currently does not allow for a clear distinction between the three types of mercury wastes described in the Basel Convention technical guidelines on mercury wastes <sup>1</sup> . Additional Y entries to differentiate between the three types of mercury wastes could be added to clarify the applicability of the Convention to specific waste streams, facilitate the implementation of the Convention, and improve the clarity of national reporting.
3. Improve environmental controls by expanding the scope of the Convention to include new waste streams and/or new disposal operations in order to protect human health and the environment	The national law of some countries recognizes disposal operations not listed in Annex IV. The list of operations could be reviewed to ensure its completeness, taking into account any advances since the adoption of the Convention, and provide for comprehensive environmental controls.

**Question 1:** Do you agree with the above objectives? Yes  No

We agree with above mentioned objectives, but have some additional suggestions see question 2.

1. A clarification of the description of D1 and D5 or a guideline how to interpret these operations would be helpful. But there are also other disposal operation which should be clarified , e.g. D3, D6 and D7

<sup>1</sup> Technical guidelines on the environmentally sound management of wastes consisting of, containing or contaminated with mercury or mercury compounds (UNEP/CHW.12/5/Add.8/Rev.1)

2. We see benefits in subdividing different types of mercury wastes also in order to report accordingly.  
3. It is true that sometimes it is difficult to understand and allocate the disposal operations listed in annex IV. It may be difficult to present a complete and absolutely clear selection of disposal operations as the state of technology proceeds and new operations still maybe developed. So the descriptions maybe must remain generic to a certain extent. Alternatively, a guideline could provide interpretations on how to use the disposal operations.

**Question 2:** Should there be any other objectives for this review? **Yes X** **No**

1. A discussion should be undertaken whether there are other aspects or contents of mainly Annexes I, III, IV and IX that should be addressed.
2. Annex II may also be reviewed in this context.
3. Annex I was primarily developed by the OECD for waste descriptions but this was only one part of the waste description. Annexes I and III are used for classifying a waste as hazardous or not. In daily praxis difficulties can arise when classifying the wastes based on these two annexes. Therefore we suggest reviewing both annexes I and III. Clearer descriptions could already be helpful.
4. Concerning annex IV it could be helpful to Divide the Annex in three parts:  
-> Part A: Final disposal operations / Part B: Recycling operations / Part C: Repair/Refurbishmnet operations. Such a division may help in the discussion waste / non-waste.

**Other comments:**

## II. Process for the review (post COP-13)

7. The most efficient way to conduct the work ahead still needs to be determined. Some Parties and others expressed that a review of the Annexes should be supported by a rigorous and inclusive process and based on comprehensive legal and technical information. It was also suggested that a working group including Parties and others could be established to ensure consistency and continuity in the approach and principles guiding the work ahead.
8. Procedures for amendments to the Convention Annexes are articulated in Articles 17 and 18 of the Convention. In addition, Decision VIII/15 articulates the procedures for the review or adjustments of the lists of wastes contained in Annexes VIII and IX, including forms for putting forward proposed amendments, which are without prejudice to the provisions of Articles 17 and 18 on the amendment of the Convention.
9. Some information is already available to inform the review of the Annexes such as the Basel technical guidelines, Parties' national legislation, Parties' national annual reports, and national studies on the use of D and R operations.

**Question 3:** What would be the most effective mechanism to conduct this work?

See answers under Question 4. A new group under the control of the OEWG should conduct the work.

**Question 4:** Do you think that a working group post COP-13 should be established? **Yes X** **No**

If yes should COP-13:

**4a.** Establish a new working group? **Yes X** **No**

**4b.** Mandate an existing group to undertake the work? **Yes**  **No X**

**4c.** Mandate the OEWG to undertake the work? **Yes X** **No**

The OEWG should constantly oversee and guide the work. The best concrete working mode should be established, when the working area is clearly defined. It could even result in two new groups.

<p><b>Question 5:</b> If a working group is to be mandated by COP-13 to undertake the work:</p> <p><b>5a.</b> Do you have specific views on the mandate of the group, bearing in mind your views on the objective of the review (questions 1 and 2 above)? <b>Yes</b> <input type="checkbox"/> <b>No</b> <input checked="" type="checkbox"/></p> <p><b>5b.</b> Should the COP-13 adopt a workplan for the group? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/></p> <p><b>5c.</b> Should the COP-13 adopt terms of reference for the group? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/></p> <p><b>5d.</b> Should the COP-13 identify the level of priority of this work within the Open-ended Working Group programme of work? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/></p> <p>If yes, what level of priority should be given for this work? <b>High</b> <input checked="" type="checkbox"/> <b>Medium</b> <input type="checkbox"/> <b>Low</b> <input type="checkbox"/></p> <p>Please elaborate:</p>
<p><b>Question 6:</b> Should the review of the Annexes be funded through the Convention's core budget (i.e. assessed contributions)? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/></p> <p>We think this is a core work of the BC, but we expect that additional voluntary funding will be needed.</p>
<p><b>Question 7:</b> Should the review of the Annexes be based on voluntary funding available? <b>Yes</b> <input type="checkbox"/> <b>No</b> <input checked="" type="checkbox"/></p> <p>See answer above.</p>
<p><b>Question 8:</b> If a working group is to be mandated to undertake the work, COP-13 will need to decide on its composition. Please review the various options below and indicate your preferences:</p> <p>Open-ended <input type="checkbox"/></p> <p>Limited size <input checked="" type="checkbox"/></p> <p>Composed of representatives of Parties and observers <input type="checkbox"/></p> <p>Composed of representatives of Parties and open to observers' contribution <input checked="" type="checkbox"/></p>
<p><b>Question 9:</b> What information should be used beyond the documentation referred to in paragraph 2 above to conduct the review of the Annexes?</p> <p>Today this can't be answered in detail, but we expect that additional documentation and information will be needed.</p>
<p><b>Question 10:</b> Some Parties suggested that two studies be conducted to facilitate the review of the Annexes namely: 1) a study analysing existing legislation of Parties relevant to Annexes I, III, IV and IX; and 2) a study on the use of disposal operations in practice:</p> <p><b>10a.</b> Do you think it would be useful to conduct these studies? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/></p> <p>Probably yes, but the scope of the studies may have to be enlarged.</p> <p><b>10b.</b> Do you have any other suggestions on preliminary work that could facilitate the review of the annexes?</p> <p>Today this can't be answered in detail, it depends on the mandate of the future work. Before the results of this questionnaire are not available this may be very difficult. It depends if, e.g. a follow-up questionnaire will be made before next COP, or if these discussions will "only" be conducted at the next COP.</p>
<p><b>Other comments:</b></p>

### III. Issues identified to date by Parties and others under each Annex (IV, IX (B1110), I and III)

10. Whether a transboundary movement of a substance or object is subject to the Basel Convention depends upon whether it is a "waste", which in turn depends upon whether it is disposed of, intended to be disposed of, or required to be disposed of under national law. Thus, the definition of "disposed of" and the meaning of "intended" in the phrase "intended to be disposed of" are key to

determining whether a substance or object is a waste, and thus potentially a hazardous or other waste.

11. The Basel Convention defines “disposal” as any operation specified in its Annex IV. In practice, the national legal framework<sup>2</sup> of some Parties recognizes disposal operations not listed in Annex IV or defined differently than in Annex IV. In addition, regarding the distinction between hazardous and non-hazardous wastes, in practice, the national legal framework of some Parties also recognizes hazardous characteristics not defined in Annex III or hazardous characteristics defined differently than in Annex III<sup>3</sup>.
12. In the following section, Parties are asked to submit their views on each of the Annexes under review based on their practical implementation of the Annexes and their domestic regulations and controls. The questions below have been formulated based on documents referred to in paragraph 2 above, which includes Parties’ and others’ submissions to date, the Secretariat report and options on further legal clarity<sup>4</sup>. The proposed scope of review of each Annex will be informed by responses to this concept paper.

#### ANNEX IV: DISPOSAL OPERATIONS

<p><b>Question 11:</b> Do you think Annex IV should be reviewed to:</p> <p><b>11a.</b> Update the list of operations listed in Annex IV A? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>See also question 2 point 4.</p> <p><b>11b.</b> Update the list of operations listed in Annex IV B, for instance by including some recovery operations as they occur in practice? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p><b>11c.</b> Review the description of the disposal operations? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p>	
<p><b>Question 12:</b> Do you think a clearer distinction between Annex IV.A and B operations is needed? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>E.g. For the distinction of D10 and R1 only national definitions exist. A harmonisation would be useful.</p>	
<b>Annex IV caption text</b>	
<p><b>A. Operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses</b></p>	<p><b>B. Operations which may lead to resource recovery, recycling, reclamation, direct re-use or alternative uses</b></p>
<p><b>Question 13:</b> Should the caption text be simplified and changed to "final disposal operations"? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>Please note “Final disposal” table A contains also an operations to prepare wastes for final disposal D15 and D15.</p>	<p><b>Question 15:</b> Should the caption text be simplified and changed to "recovery operations"? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>Please elaborate:</p>
<p><b>Question 14:</b> Should the caption text be reviewed in relation to the term "direct re-use"? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>Please elaborate: see comment to question 16 See also question 2 point 4.</p>	<p><b>Question 16:</b> Should the caption text be reviewed in relation to the term "direct re-use"? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>Please elaborate: Direct re-use is not a waste treatment. If a waste fulfils technical and formal</p>

<sup>2</sup> Legal framework refers is used here as a generic formulation to encompass legislation, regulations, and related administrative measures

<sup>3</sup> Basel document: UNEP/CHW.12/INF/52

<sup>4</sup> UNEP/CHW/OEWG.10/INF/11, UNEP/CHW/OEWG.10/INF/12, UNEP/CHW.12/INF/52

	requirement of a product and it will be re-used for its intended usage it is not waste. However, if a recovery operation has to be applied to fulfil the product requirement it is waste.
<b>Introductory text</b>	
<b>Section A encompasses all such disposal operations which occur in practice.</b>	<b>Section B encompasses all such operations with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in Section A</b>
<b>Question 17:</b> Should there be changes to the introductory text? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b> Please elaborate:	<b>Question 18:</b> Should there be changes to the introductory text? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>  The definition should also be applicable for other wastes not only hazardous wastes.
<b>Operations</b>	
<b>D1 to D15</b>	<b>R1 to R13</b>
<b>Question 19:</b> Are there operations missing, which need to be included? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>  These will be identified in the discussions and are depending on new wording used clarifying existing entries	<b>Question 24:</b> Are there operations missing which need to be included? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>  These will be identified in the discussions and are depending on new wording used clarifying existing entries.
<b>Question 20:</b> Are there operations which should be deleted? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>  These will be identified in the discussions and are depending on new wording used clarifying existing entries	<b>Question 25:</b> Are there operations which should be deleted? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>  E.g. R11, R12
<b>Question 21:</b> Should the description of certain disposal operations be updated? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>	<b>Question 26:</b> Should the description of certain disposal operations be updated? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>
<b>Question 22:</b> Do you see conflicting text? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>	<b>Question 27:</b> Should the description of operation R9 be reviewed in relation to the term "reuses"? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>
<b>Question 23:</b> Are there terms that would benefit from a definition? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>  E.g. D10 vs. R1	<b>Question 28:</b> Do you see conflicting text? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>
	<b>Question 29:</b> Are there terms that would benefit from a definition? <b>Yes X No <input type="checkbox"/> Unsure <input type="checkbox"/></b>
<b>Other comments:</b>	

**ANNEX IX. ENTRY B1110: ELECTRICAL AND ELECTRONIC ASSEMBLIES:**

- |   |
|---|
| <ul style="list-style-type: none"> <li>- Electronic assemblies consisting only of metals or alloys</li> <li>- Waste electrical and electronic assemblies or scrap<sup>19</sup> (including printed circuit boards) not containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and other activated glass and PCB capacitors, or not contaminated with Annex I constituents (e.g., cadmium, mercury, lead, polychlorinated biphenyl)</li> </ul> |
|---|

<p>or from which these have been removed, to an extent that they do not possess any of the characteristics contained in Annex III (note the related entry on list A A1180)</p> <ul style="list-style-type: none"> <li>- Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for <b>direct reuse</b>,<sup>20</sup> and not for recycling or final disposal<sup>21</sup></li> </ul> <p><b>Footnote</b>  19 This entry does not include scrap from electrical power generation.  20 <b>Reuse</b> can include repair, refurbishment or upgrading, but not major reassembly.  21 In some countries these materials destined for direct re-use are not considered wastes.</p>
<p><b>Question 30:</b> Should the text be reviewed in relation to the term "direct reuse"?  <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>Direct reuse is not a waste treatment. Electric and electronic assemblies that are proven to be functional or require minor repair or refurbishment (i.e. software update) are not waste. However, major reassembly would be considered as waste treatment (disassembly and use of spare parts).</p>
<p><b>Question 31:</b> Should footnotes 20 and 21 be reviewed in relation to the term "reuse and direct re-use"?  <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>Please elaborate: see comments to question 30</p>
<p><b>Other comments:</b></p>

#### ANNEX I: CATEGORIES OF WASTE STREAMS TO BE CONTROLLED

<p><b>Waste streams : Y1-Y18 and Waste having as constituents: Y19-Y45</b></p>
<p><b>Question 32:</b> Are there waste streams missing that need to be included? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>E.g. "Other organic constituents" and "other inorganic constituents" for substances that are not listed in annex I but may exhibit Annex III characteristics</p>
<p><b>Question 33:</b> Are there waste streams which should be deleted? <b>Yes</b> <input type="checkbox"/> <b>No</b> <input checked="" type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>But clarifications are needed.</p>
<p><b>Question 34:</b> Should the description of certain waste streams be updated? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>Please elaborate:</p>
<p><b>Question 35:</b> Do you see conflicting text? <b>Yes</b> <input type="checkbox"/> <b>No</b> <input checked="" type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>This will be dependent on the progressing work</p>
<p><b>Other comments:</b></p>

#### ANNEX III: LIST OF HAZARDOUS CHARACTERISTICS

<p><b>Hazardous characteristics H1, H3, H4.1, H4.2, H4.3, H5.1, H5.2</b></p>
<p><b>Question 36:</b> Are there characteristics missing that need to be included? <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>e.g. Flammable gases, irritant, sensitising, release of toxic gases in contact with acids</p>
<p><b>Question 37:</b> Should the description of certain hazardous characteristics be updated to be in line with the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS)?  <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input type="checkbox"/></p> <p>The description should be harmonised wherever possible and meaningful.</p>
<p><b>Question 38:</b> Do you see conflicting text? <b>Yes</b> <input type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Unsure</b> <input checked="" type="checkbox"/></p> <p>This will be dependent on the progressing work.</p>
<p><b>Other comments:</b></p>

**Identification of the respondent**

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# Thank you!