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**Open-ended Working Group of the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal
Eighth meeting**

Geneva, 25–28 September 2012

Item 3 (b) (iii) of the provisional agenda*

Matters related to the work programme of the

Open-ended Working Group for 2012–2013:

scientific and technical matters:

applications for new entries to Annex IX to the Basel Convention

**Compilation of comments received from parties on the
applications for new entries to Annex IX to the Basel
Convention on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal**

Note by the Secretariat

Addendum

1. Information on applications for new entries to Annex IX to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal is set out in document UNEP/CHW/OEWG.8/8.
2. The annex to the present note contains additional comments received from parties (Bahrain and the European Union) on the applications for new entries to Annex IX to the Basel Convention compiled in document UNEP/CHW/OEWG.8/INF/11. The comments are reproduced as received, without formal editing.

* UNEP/CHW/OEWG.8/1.

Annex

Comments submitted by Bahrain

Subject: RE: Basel Convention communication - Amendments to the list of wastes contained in Annexes VIII and IX of the Basel Convention

With reference to the subject mentioned above, I suggest to do chemical analysis for the waste (a) Non-separable plastic from the pre-treatment of used liquid packages for some parameter such as Cr+6,Zn,Cd,Pb (TCLP), TBBPA, PBDOs, PBBs before adding the new entries to Annex IX to the Basel Convention.

Comments submitted by the European Union



Application for new entries to Annex IX to the Basel Convention

The EU and its Member States thank Bahrain, Canada and Colombia for their comments on the EU proposals for including new entries in Annex IX (list B) of the Basel Convention. We respond below to these comments and try to clarify why we are of the opinion that these entries should be included in Annex IX (list B).

EU response to Bahrain

The EU and its Member States do not consider that a chemical analysis is necessary for the following reason:

The company listed as applicant in the application form states that:

Liquid packaging boards are produced from safe raw materials, because they are mostly meant for food-contact applications.

The extrusion coated paperboard complies with the EU Packaging and Packaging Waste Directive (94/62/EC amended by 2004/12/EC).

The sum of lead, cadmium, mercury and hexavalent chromium in the paperboard is less than 100 ppm (EN 13428).

The level of substances hazardous* to the environment in the paperboard is less than 0.1 % (EN 13428).

* Classified in EU directive 67/548/EC and listed as N-classified in www.kemi.se/nclass

EU response to Canada

Constituents vs. the product/article

The EU and its Member States agree that waste should in general be listed by product constituents. Therefore, in the case of "composite packaging" we have not only used the description composite packaging, but also added the constituents to the description (consisting of mainly paper and some plastic). Nevertheless it is also important in case of composite wastes to make clear what kind of waste is intended. Enforcement inspectors start with a visual inspection of the waste, so the description of the waste entry should be quite clear.

Concerning the entry related to "pressure sensitive adhesive label laminate waste", the constituents indicated in the application may be unclear to some extent. However, in the original information from the company listed as applicant in the application form, the adhesive is said to be acrylic dispersion, acrylate polymers. The additional information given by this company states that the most commonly used (70 - 80%) adhesives are water-based acrylic adhesives. Some rubber based hot melt adhesives are used for e.g. labels used in freezers. Least used solvent based adhesives are used for labels in demanding circumstances e.g. for cars. The components are non-hazardous and the solvents evaporate in the

production process. The company also stated that all the components used are in accordance with the industrial standards and they are established components in the industry.

Concerning the two entries related to liquid packages and the entry on biodegradable waste, the constituents are given.

Already covered by Annex IX?

Each entry on Annex IX stands on its own. An intended or unintended mixture of different entries of Annex IX should not be regarded as a waste of Annex IX. The Court of Justice of the European Union (the Court) made clear that those mixtures should not be regarded as waste of Annex IX (in Europe Annex IX has been implemented in Annex III of the Waste Shipment Regulation 1013/2006, the former Regulation 259/93 contained Annex II as waste list for non hazardous waste). We refer to court-case C-259/05: (<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd5607a4a25c794c72ba1edb07ca693800.e34KaxiLc3qMb40Rch0SaxqTbxb0?text=&docid=61146&pageIndex=0&doclang=EN&mode=doc&dir=&occ=first&part=1&cid=312141>). The conclusion of the Court is: In the light of all the above considerations, the answer must be that Regulation No 259/93 is to be construed in such a way that the fact that composite waste is a combination of two materials both of which are mentioned in the green list of wastes in Annex II to that Regulation does not have the effect of making the rules laid down by that Regulation concerning the waste mentioned on that list applicable to such composite waste. Based on this verdict the Dutch Court made a similar decision on composed packaging (<http://www.rechtspraak.nl/english/Pages/default.asp>)

The main reason for our proposals related to liquid packages, pressure sensitive adhesive label laminate waste and composite packaging is that we recognize that these are not hazardous wastes, but due to the judgment of the Court those composite wastes must be regarded as unlisted waste in which case a notification procedure would be necessary in the EU.

Use of clear definitions

The term “clean” in the proposed entry on clean biodegradable waste was introduced to clarify that the waste should not be mixed with other waste. The point in relation to the term ‘clean’ is accepted and we would propose using the term ‘natural’ as an alternative. This latter term is used within the EU Directive on waste (2008/98/EC) in the context of similar wastes. We also suggest use of the term “plant based biomass’ as it has a less ambiguous meaning (excludes biodegradable waste such as paper & card packaging and biological tissue waste as may be generated in agricultural activities).

In our view the description “composite packaging of mainly paper and some plastic, not containing residues” is clear, although “not containing residues” might provide some discussion. But the common view is that a bag should be empty after shaking.

The naming of the entries was thoroughly considered in the EU in order to provide a description of the entries as precise as possible. It is also noted that the entries have full meaning in practice within the industry and also that all the constituents are in line with established industrial standards.

EU response to Colombia

Mirror entries

According to our information most composite packaging will or has been used for non-hazardous substances. To address the concerns of contamination of hazardous components we could sharpen the definition into:

- Composite packaging used for non hazardous substances and consisting of mainly paper and some plastic, not containing residues and not covered by entry B3020.

As regards the addition of a mirror entry, we are open to the idea and think that entry A4130 (Waste packages and containers containing Annex I substances in concentrations sufficient to exhibit Annex III hazard characteristics) should be taken into account.

Generally there are no mirror entries for paper, plastics or aluminum, the main constituents of the proposed entries. However, we are open to the addition of mirror entries if necessary. In such a case the phrasing of the entry should be adjusted accordingly

Risk of living organisms

The waste in question consists of natural plant based biomass type material generated through agricultural, horticulture, forestry and grounds maintenance activities and which is sent for recycling (composting, AD, etc). This material is low value and it would usually be managed rather near to the point of origin. Given the limited range of transport of the material, any trans-national phytosanitary and zoosanitary risks to biodiversity would not be expected. Regardless, there are international rules governing such risks which are not set aside by the waste transfer relief sought (Convention on Biological Diversity & WTO Agreement on sanitary and phytosanitary measures).

Taking into account the comments by Colombia and Canada we will propose the following entry:

Revised proposed list entry: *Natural plant based biomass waste from agriculture, horticulture, forestry, gardens, parks and cemeteries*

Final remarks

Finally, we wish to point out that the proposed entries to the Basel Convention (Annex IX) have already been included in Commission Regulation (EU No. 135/2012 amending Annex IIIB of Regulation EC No 1013/2006 on Shipments of Waste). In considering wastes to be added in this Annex, the following information was considered, inter alia: the properties of the waste, such as its possible hazardous characteristics, its potential for contamination and its physical state; the management aspects, such as the technological capacity to recover the waste, and the environmental benefits arising from the recovery operation, including whether the environmentally sound management of the waste may be impaired.