



*Review of the
National Environment Protection
(Movement of Controlled Waste
between States and Territories) Measure*

Discussion Paper

September 2009

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1 BACKGROUND

1.1 NATIONAL ENVIRONMENT PROTECTION COUNCIL

The National Environment Protection Council (NEPC) is a national body established by State, Territory and Commonwealth Governments. The objective of the NEPC is to work cooperatively to ensure that all Australians enjoy the benefits of equivalent protection from air, water, soil and noise pollution and that business decisions are not distorted nor markets fragmented by variations in major environment protection measures between member Governments. The NEPC stems from the *Inter-Governmental Agreement on the Environment (IGAE) 1992*, which agreed to establish a national body with responsibility for making National Environment Protection Measures (NEPMs). The NEPC and its operations are established by the *National Environment Protection Council Act 1994* (Commonwealth) and corresponding State and Territory Acts. Since May 2002, NEPC has met in conjunction with the Environment Protection and Heritage Council. NEPC remains the legal entity for developing and making NEPMs.

NEPMs are broad framework-setting statutory instruments, which, through a process of inter-governmental and community/industry consultation, reflect agreed national objectives for protecting particular aspects of the environment. NEPMs may consist of any combination of goals, standards, protocols, and guidelines.

Implementation of NEPMs is the responsibility of each participating jurisdiction. A NEPM will take effect in each participating jurisdiction once it is notified in the Commonwealth of Australia Gazette, but is subject to disallowance by either House of the Commonwealth Parliament. Any supporting regulatory or legislative mechanisms that jurisdictions might choose to develop to assist in implementation of proposed NEPMs go through appropriate processes in those jurisdictions.

1.2 MOVEMENT OF CONTROLLED WASTE NEPM

The National Environment Protection (Movement of Controlled Waste between States and Territories) Measure, (see Appendix A) hereinafter in this document referred to as the Movement of Controlled Waste NEPM, was designed to provide a national framework for developing and integrating State and Territory systems for the management of the movement of controlled waste between States and Territories originating from commercial, trade, industrial or business activities. These management systems include:

- (a) Tracking systems that provide information to assist agencies and emergency services, and ensure that controlled wastes are directed to and reach appropriate facilities;
- (b) Prior notification systems which provide participating States and Territories with access to information, to assess the appropriateness of proposed movements of controlled wastes in terms of transportation and facility selection; and
- (c) The licensing of transporters and regulation of producers and facilities so that tracking and notification functions are compatible with requirements of participant States and Territories.

The NEPM relates to the movement of wastes between States and Territories within Australia, and is not intended to have any direct or indirect bearing upon Australia's international rights or obligations with respect to the international movement of waste.

1.3 REVIEW OF THE MOVEMENT OF CONTROLLED WASTE NEPM

The goal of the Movement of Controlled Waste NEPM is:

“... to assist in achieving the desired environmental outcomes...by providing a basis for ensuring that controlled wastes which are to be moved between States and Territories are properly identified, transported, and otherwise handled in ways which are consistent with environmentally sound practices for the management of these wastes”.

An Implementation Working Group was established to monitor progress, and assist in the resolution of any management issues associated with the implementation of the NEPM. Inter-Jurisdictional movement of controlled waste under the NEPM has been reported by jurisdictions since 1998-99. Jurisdictional reports are incorporated into Annual Reports of the NEPC as is a national assessment by the Council of implementation of the NEPM.

Clause 10(a) of the NEPM outlines the requirements for a review of the NEPM and states:

“10 (a) Council envisages that this Measure shall be subject to a comprehensive review five years from the date of commencement, which will consider:

- i. “the effectiveness of the Measure in achieving the national environment protection goals set out within it;*
- ii. the resources available for implementing the Measure;*
- iii. the need, if any, for amending the Measure, including:*
 - i. whether any changes should be made to the Schedules: and*
 - ii. whether any changes should be made to improve the effectiveness of the Measure in achieving the national environment protection goals set out within it”.*

The NEPM was gazetted on 8 July 1998, underwent its first review in 2003 and a minor variation was made by NEPC in 2004. The second five-year review was due to commence in 2009.

In May 2009 the Council agreed to the terms of reference for the review that incorporate the issues referred to in clause 10(a) of the NEPM.

2 PROCESS FOR THE REVIEW

2.1 REVIEW TEAM

A Review Team comprising a chairperson from Queensland and members from New South Wales and Victoria is conducting the Review. The NEPC Service Corporation provides a Project Manager. The Review Team is accountable to the NEPC through the NEPC Standing Committee and will prepare a report and recommendations to NEPC Committee and Council.

2.2 CONSULTATION

A Jurisdictional Reference Network (JRN) and a Non-government Organisation (NGO) Advisory Group have been established to provide policy, technical and operational advice and information. The Discussion Paper is available on the EPHC website and you are invited to make submissions (see Section 2.6 below).

2.3 PROCESS

The review process will comprise the following components:

- Establishment of Review Team, JRN and NGO Advisory Group
- Stakeholders invited to submit issues for review consideration
- Release of the Discussion Paper and call for submissions
- Assessment of submissions and preparation of a review report
- Submission of the review report and recommendations to NEPC Committee
- Transmission of the review report and recommendations to the NEPC.

2.4 Timeframe

The review commenced in June 2009 and is due to be completed in February 2010. It is anticipated that NEPC Committee will consider the review report in March 2010. This timeline will enable Council to consider the report and to make any decisions, regarding whether a variation process to the NEPM should be initiated, in April 2010.

2.5 Terms of Reference for the Review

The terms of reference for the review are based on Clause 10 (a) of the NEPM and are elaborated below.

1. The effectiveness of the NEPM in achieving the national environment protection goal
 - NEPM implementation
 - Licensing and mutual recognition
 - Prior notification and Consignment Authorisations
 - Waste tracking
 - Obligations
 - Maintenance of records
 - Furnishing of information to Council
2. The resources available for implementing the NEPM.
 - Current resource availability (government and industry)
 - Anticipated resource requirements (government and industry)
3. The need, if any, for amending the NEPM.
 - whether any changes should be made to the Schedules; and,
 - whether any changes should be made to improve the effectiveness of the NEPM

2.6 Purpose of Discussion Paper

The purpose of this Discussion Paper is to put forward proposed actions to address key issues raised by stakeholders during the review and on which stakeholder comments are invited. The paper does not stipulate a position on any issue, and as such does not reflect the views of the Commonwealth or any State or Territory government.

The Discussion Paper will be available for comment for a period of six weeks (from Friday 25 September 2009 to Friday 6 November 2009). All submissions are public documents unless clearly marked "confidential" and may be made available to other interested parties, subject to Freedom of Information Act provisions.

Submissions should be forwarded to:

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Project Manager,
NEPC Service Corporation
Level 5, 81 Flinders Street
Adelaide SA 5000

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By close of business **Friday 6 November 2009**

After examination of comments received the review team will prepare a report and recommendations in relation to the Terms of Reference for the Review. The Review Report will be provided to the NEPC.

3 TERMS OF REFERENCE: DISCUSSION OF ISSUES

3.1 EFFECTIVENESS OF THE NEPM IN ACHIEVING THE NATIONAL ENVIRONMENT PROTECTION GOAL

The goal and desired environmental outcomes of the Movement of Controlled Waste NEPM, set out in Part 2, section 11 and 12 of the NEPM, are as follows:

“The national environment protection goal of this Measure is to assist in achieving the desired environmental outcomes set out in clause 12 by providing a basis for ensuring that controlled wastes which are to be moved between States and Territories are properly identified, transported, and otherwise handled in ways which are consistent with environmentally sound practices for the management of these wastes.

The desired environmental outcomes of this Measure are to minimise the potential for adverse impacts associated with the movement of controlled waste in the environment and human health.”

3.1.1 Part 1 of the NEPM

Part 1 of the NEPM provides the title, commencement, definitions, head of power for making this measure, scope, descriptions of the schedules to the Measure, exclusions to the Measure, exemptions allowed by the Measure and review of the Measure clauses.

Issue 1: Under Part 1, section 4 Definitions, an issue was raised that the definition for “producer” does not encompass those who consign waste, such as a licensed waste consolidation or storage facility, but are not producers of waste.

Discussion: Consignors are not authorised by jurisdictional agencies and therefore may be considered unauthorised to arrange the interstate transport of waste.

Proposal: To reword the definition to read “Producer” means a person who produces *or consigns* controlled waste or a person, authorised by an agency in the jurisdiction where the controlled waste is produced, to act on behalf of the producer.

Issue 2: Clause 10(a) currently specifies a 5 year review period. Given the successful 10 years of operation of the NEPM to date, this clause should specify a 10 year review period.

Discussion: A comprehensive review of the NEPM in 2003 resulted in only a minor variation to the NEPM. Implementation issues are dealt with by the jurisdictions through the Implementation Working Group and the Agreement between Agencies.

Proposal: Amend Clause 10 to specify and review within 10 years. This does not preclude NEPC from initiating a review earlier than the 10 year period if necessary.

Issue 3: Clause 10(b) currently specifies a process for amending schedules as required. This clause should be deleted as its purpose is no longer relevant.

Discussion: This Clause was included prior to the 2004 amendment to the NEPC Act which provided for the making of a minor variation. Clause 10(b) is no longer required.

Proposal: Delete Clause 10(b) from Part 1 of the Measure.

3.1.2 NEPM implementation and progress in achieving the implementation milestones

The NEPM has put in place a nationally consistent system for the movement of controlled wastes between States and Territories that includes a process for issuing consignment authorisations prior to the movement of the wastes. This system provides for accountability from the producers, transporters, and operators of waste facilities and from the participating jurisdictions. Each of the jurisdictions has developed regulatory or administrative frameworks and arrangements with which to implement the NEPM. Each jurisdiction reports on implementation activities which are published in the NEPC Annual Report.

No issues were raised by stakeholders. Jurisdictions have reported that the NEPM has been fully implemented and that it has been effective in achieving the goal and desired environmental outcome.

The NEPM provides Guidelines for the achievement of the goal and desired environmental outcomes. In developing the process for the review an approach has been taken to examine the extent to which the Guidelines have been implemented and the effectiveness of these Guidelines in achieving the goal and desired environmental outcome. Each of these Guidelines is explained below (3.1.3 - 3.1.10), together with potential issues for consideration.

3.1.3 Licensing and Mutual Recognition

Participating States and Territories have in place a system that recognises a licence for the interstate transport of waste issued in other jurisdictions.

Participating States and Territories licence, or otherwise approve, facilities to receive and manage Controlled Wastes in accordance with the jurisdiction's standards and the local environment. For any one waste, there may be one or more treatment technologies available. The resulting licence conditions may vary from one treatment facility to another, as well as one jurisdiction to another. Those involved in disposing of waste may consider that there is an advantage in sending controlled waste to another jurisdiction in which they perceive that there is a treatment facility either better able to deal with the waste and/or provides treatment at a more competitive price. The more competitive price might reflect different treatment technologies and their energy requirements, the scale of operation, different environmental standards, and possible synergies with other waste streams or matters related to business efficiency.

The NEPM allows for the statutory movement of wastes between States and Territories, provided that this complies with the environmental policies of the affected jurisdictions.

Issue 4: Clauses 13(c), (d) and (e) of the NEPM set timeframes for implementing the NEPM. All states and territories have implemented the NEPM and these clauses are now redundant and should be deleted from the NEPM.

Discussion: Clause 13(a) and (b), which deals with licensing and mutual recognition, will not be recommended for change and therefore it is agreed that the timeframes for compliance referred to in 13(c), (d) and (e) are not relevant.

Proposal: Delete Clause 13(c), (d) and (e) from the NEPM

3.1.4 Prior notification and Consignment Authorisations

The NEPM stipulates that each jurisdiction should require a producer intending to move controlled wastes to another state or territory to obtain a consignment authorisation prior to the movement taking place. Authorisations are only refused where a licence or policy requirement of the jurisdiction is not met.

Most jurisdictions consider that the basis for refusing consignment authorisations should be on environmental grounds, for example, on the grounds that the facility nominated is not licensed to receive that waste. The NEPM enables waste generators to more readily access best available technologies operating in other jurisdictions.

No issues were raised by stakeholders. In the 2003 review it was concluded that this has been fully implemented and this has continued subsequent to date.

3.1.5 Waste Tracking System

Paper-based and electronic systems are currently used to track waste movements in Australia. Waste movements within NSW, Victoria and Western Australia and interstate controlled waste movements into NSW and Western Australia are tracked electronically. Other waste movements are tracked using paper-based systems.

Comment was raised regarding the adoption of a uniform electronic tracking system.

The NEPM allows for paper-based and electronic tracking and the current mix of systems is working well and effectively meets inter- and intrastate tracking requirements. The IWG was established to manage implementation and administration issues and works towards implementation consistency. Any future expansion of electronic tracking to interstate controlled waste movements can be considered by the Implementation Working Group under the existing NEPM.

3.1.6 Obligations

Each jurisdiction is obligated under the NEPM to ensure that certain information is provided and carried by producers, transporters and facility operators. This is implemented by the use of the Waste Transport Certificate which is required by jurisdictions. This certificate can also be used as a manifest form pursuant to the Australian Dangerous Goods (ADG) Code that obviates the need for duplicate documentation.

Issue 5: The use of electronic systems in lieu of paper based documentation was raised.

Discussion: It was recognised that while current electronic systems may not meet the requirements under the ADG Code presently, there is potential for such systems to be developed in the next few years and prior to the next review.

Proposal: Accordingly a minor variation to Schedule B allowing for the incorporation of such systems, that provide equivalent accessibility to a paper certificate during transport, particularly during a response to an accident or for roadside inspections, is proposed.

3.1.7 Maintenance of Records

The NEPM states that each participating State or Territory should ensure that records of the data generated by the tracking system in relation to requirements which are contained in Schedule B, are kept for a period of not less than 12 months.

No issues were raised by stakeholders. Each participating State or Territory maintains systems that ensure this requirement is being met.

3.1.8 Furnishing of information to Council (annual reporting to NEPC)

The NEPM requires that information be provided to the Council regarding the movement of waste, any discrepancies and the effectiveness of the NEPM.

Issue 6: The clarity and consistency of jurisdictional reporting, particularly with regard to discrepancies, was raised as an issue. Additionally, Tasmania reports waste coming from the Australian Antarctic Territory as being from the ACT, as external territories are currently not separately identified.

Discussion: It is considered that discrepancies reported should be focussed on matters of potential environmental significance, such as the non-arrival of a waste, rather than discrepancies that are administrative errors. In terms of reporting waste from the Australian Antarctic Territory, this waste is also reported under the Hazardous Waste Act which complies with requirements under the Basel convention.

Proposal: It is proposed that jurisdictions only report discrepancies where the waste does not arrive at its destination, it arrives without a valid consignment authorisation, or it is transported without the use of a waste tracking system. It is also proposed that waste coming from the Australian Antarctic Territory only be reported under the Hazardous Waste Act and not in the NEPM. Alternatively, a separate NEPM reporting column could be created to cater for transports from external territories.

3.1.9 Communication between the jurisdictions

The implementation of the NEPM relies on the flow of non-confidential communication between jurisdictions. This is also specifically addressed in the Agreement between Agencies on matters relating to the implementation of the Controlled Waste NEPM.

No issues were raised by stakeholders. In the 2003 review it was concluded that this has been fully implemented and this has continued subsequent to date. An Implementation Working Group has operated under the NEPM since its commencement and has provided for effective communications between jurisdictions on the operation of the NEPM

3.1.10 Enforcement

Each State or Territory has the ability under its own legislation to take appropriate enforcement action in the event that required information is not provided, or false or misleading information is provided by a producer, transporter or facility operator.

No issues were raised by stakeholders. At a national level this is monitored and coordinated by the Implementation Working Group and is currently working well

3.2 THE RESOURCES AVAILABLE FOR IMPLEMENTING THE NEPM

Jurisdictions have committed resources to the implementation of the NEPM to help ensure that consignment applications are considered and issued, where appropriate, to monitor movements through waste tracking systems and to report to NEPC on the implementation of the NEPM. To assist in efficient service delivery, jurisdictions have implemented mutual transport licence recognition and a system of standing consignment authorisations for multiple movements of the same waste. In order to provide a nationally consistent approach, jurisdictions have actively consulted with each other through the Implementation Working Group on issues that may arise from time to time. Jurisdictions have endeavoured to ensure that the systems under the NEPM are compatible with intrastate requirements, minimising compliance costs for industry.

Issue: No issues were raised by stakeholders. In the 2003 review it was concluded that resource use has been efficient and effective and stakeholders to this review have confirmed that this has continued subsequent to date.

3.3 THE NEED, IF ANY, FOR AMENDING THE NEPM, INCLUDING:

3.3.1 Whether any changes should be made to the Schedules

The NEPM contains two schedules. Schedule A contains two components: List 1: Waste categories and List 2: characteristics of controlled wastes. Under the Controlled Waste NEPM, a controlled waste is any waste included in Schedule A, List 1, which possesses one or more of the characteristics in List 2. State and Territory governments report annually to their Parliaments through the NEPC on the amount of controlled waste (grouped by categories based on these codes) that is transported into and from their jurisdiction. List 1 consists of wastes described either on the basis of specific chemicals or in terms of waste produced by certain processes or industry. This dual approach in some cases may allow a particular waste to be identified by more than one waste description.

A number of issues were raised by stakeholders concerning Schedule A List 1. These issues fit in two categories: the clarity of waste descriptions and 'obsolete' wastes.

Issue 7: Some issues have been raised with regard to the clarity of some of the description of wastes that are subject to the NEPM. These descriptions are:

- **Cyanides (organics)** Comments have been received that the description should be clarified to "Cyanides (organic)/nitriles".
- **Encapsulated, chemically-fixed, solidified or polymerised wastes** should be clarified to make it clear that it relates to controlled waste by amending it to "Encapsulated, chemically-fixed, solidified or polymerised wastes referred to in this list".
- **Filter cake** should be clarified to make it clear that it relates to controlled waste by amending it to "Filter cake contaminated with residues of substances referred to in this list".
- **Dangerous goods waste descriptions such as oxidising agents, reactive chemical and reducing agents should be included.**

Discussion: Some controlled wastes, while currently subject to the NEPM, require clear descriptions in the NEPM to provide certainty to industry when completing waste transport documentation.

Proposal: It is proposed that “oxidising agents”, “reactive chemicals” and “reducing agents” be added to clarify the list for industry and that similarly minor amendments occur to list entries for cyanides (organic), encapsulated waste and filter cake.

Issue 8: Some of the wastes have been identified as being managed under national programs or that the current risks to the environment from the interstate movement of the wastes are limited and adequately dealt with through other controls, such as tyres and sewage sludge and residues including nightsoil and septic tank sludge.

Discussion: A national approach (NEPM) is being developed for tyres and if made by NEPC the regulation under the Controlled Waste NEPM will no longer be necessary.

Jurisdictional programs promote the beneficial use of bio-solids and the control mechanisms in place are considered adequate. Similarly control mechanisms for nightsoil and septic tank sludge at jurisdictional level are considered sufficient and it is considered that additional controls under the NEPM do not achieve any substantive environmental benefit.

Proposal: It is proposed that “tyres” be removed from the list if the tyres NEPM is made by NEPC and that “sewage sludge and residues including nightsoil and septic tank sludge” be deleted from the list.



*National Environment Protection (Movement of
Controlled Waste between States and
Territories) Measure*

as varied

made under section 14 of the

*National Environment Protection Council Act 1994 (Cwlth),
National Environment Protection Council (New South Wales) Act
1995 (NSW), National Environment Protection Council (Victoria)
Act 1995 (Vic), National Environment Protection Council
(Queensland) Act 1994 (Qld), National Environment Protection
Council (Western Australia) Act 1996 (WA), National Environment
Protection Council (South Australia) Act 1995 (SA), National
Environment Protection Council (Tasmania) Act 1995 (Tas),
National Environment Protection Council Act 1994 (ACT) and the
National Environment Protection Council (Northern Territory) Act
1994 (NT)*

This compilation was prepared on 20 December 2004
taking into account amendments up to Variation 2004

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4 INTRODUCTORY NOTE

Section 14 of the *National Environment Protection Council Act 1994* and the equivalent provision of the corresponding Act of each participating State and Territory provides for the making of Measures by the NEPC and the matters to which they may relate. This Measure relates to the matters set out in paragraphs 14(1)(a), (b), (e), and (f).

The Measure is to be implemented by the laws and other arrangements participating jurisdictions consider necessary: see section 7 of the Commonwealth Act and the equivalent provision of the corresponding Act of each participating State and Territory.

Part 1 Preliminary

1 Title

This Measure may be cited as the National Environment Protection (Movement of Controlled Waste between States and Territories) Measure.

2 Commencement

This Measure commences on the date of gazettal of this Measure.

3 Definitions

In this Measure, unless the contrary intention appears:

Agency means a body or bodies of a participating State or a participating Territory which that State or Territory has nominated for the purposes of this Measure.

Agreement means the Intergovernmental Agreement on the Environment made on 1 May 1992 between the Commonwealth, the States, the Australian Capital Territory, the Northern Territory and the Australian Local Government Association, a copy of which is set out in the Schedule to the Commonwealth Act.

Approved Extended Producer Responsibility Scheme means a scheme approved by the affected participating jurisdictions.

Approved Recycling Scheme means a scheme approved by the affected participating jurisdictions.

Commonwealth Act means the *National Environment Protection Council Act 1994* of the Commonwealth.

Consignment Authorisation means an approval which includes a unique identifier granted by an agency or a facility delegated by an agency in the jurisdiction of destination to allow the movement of controlled waste.

Controlled Waste means any waste in List 1 provided that the waste possesses one or more of the characteristics in List 2. Unless otherwise demonstrated to the satisfaction of the nominated agency in the jurisdiction of destination, wastes in List 1 are considered to possess one or more characteristics in List 2.

Council means the National Environment Protection Council established by Section 8 of the Commonwealth Act and the equivalent provisions of the corresponding Acts of participating States or Territories.

Facility means a place where controlled wastes are received.

Facility Operator means a person in charge of a facility.

Jurisdiction of Origin in relation to a particular consignment of waste means the State or Territory from which the waste is generated or transported.

Jurisdiction of Destination in relation to a particular consignment of waste means the State or Territory in which the facility is located to which the waste is intended to be transported.

Jurisdiction of Transit in relation to a particular consignment of waste means any State or Territory through which the waste is transported to another State or Territory.

Licence means a licence, authorisation, permit, notice or approval granted by an Agency in relation to a vehicle for the purpose of moving controlled wastes.

Measure means national environment protection measure.

National environment protection goal means a goal that:

- (a) relates to desired environmental outcomes; and
- (b) guides the formulation of strategies for the management of human activities that may affect the environment.

National environment protection guideline means a guideline that gives guidance on possible means for achieving desired environmental outcomes.

National environment protection measure means a measure made under section 14(1) of the Commonwealth Act and the equivalent provisions of the corresponding Acts of participating States or Territories.

Participating jurisdiction means the Commonwealth, a participating State or a participating Territory.

Participating State means a State:

- (a) that is a party to the Agreement; and
- (b) in which an Act that corresponds to the Commonwealth Act is in force in accordance with the Agreement.

Participating Territory means a Territory:

- (a) that is a party to the Agreement; and
- (b) in which an Act that corresponds to the Commonwealth Act is in force in accordance with the Agreement.

Producer means a person who produces controlled waste or a person, authorised by an agency in the jurisdiction where the controlled waste is produced, to act on behalf of the producer.

Transporter means a person responsible for moving controlled wastes either from one participating State or Territory to another or through participating States or Territories.

Vehicle means a conveyance that is designed to be propelled or drawn by any means which is used for the movement of controlled wastes by land, air or water and includes trailer, railway locomotive or rolling stock, ship, boat or aircraft used for such purpose.

Waste means any:

- (a) discarded, rejected, unwanted, surplus or abandoned matter; or
- (b) otherwise discarded, rejected, unwanted, surplus or abandoned matter intended for:
 - (i) recycling, reprocessing, recovery, reuse, or purification by a separate operation from that which produced the matter; or
 - (ii) sale, whether of any value or not.

4 Head of power for making this Measure

This Measure is made pursuant to section 14(1) of the Commonwealth Act, and in particular, paragraphs (a), (b), (e), and (f) of that section, and the equivalent provisions of corresponding Acts in other participating States and Territories.

5 Scope

This Measure is to provide a national framework for developing and integrating State and Territory systems for the management of the movement of controlled wastes between States and Territories originating from commercial, trade, industrial or business activities. These management systems include:

- (a) tracking systems which would provide information to assist agencies and emergency services, and would ensure that controlled wastes are directed to and reach appropriate facilities;
- (b) prior notification systems which would provide participating States and Territories with access to information, to assess the appropriateness of proposed movements of controlled wastes in terms of transportation and facility selection; and
- (c) the licensing of transporters and regulation of producers and facilities so that tracking and notification functions are compatible with participating State and Territory requirements.

For the avoidance of doubt, it is noted that this Measure relates to the movement of wastes between States and Territories within Australia, and is not intended to have any direct or indirect bearing upon Australia's international rights or obligations with respect to the international movement of waste.

6. Schedule A to the Measure

Schedule A in this Measure identifies and lists:

- (a) all categories of matter for the purposes of the definition of 'controlled waste' in clause 3 of this Measure;
- (b) characteristics of controlled wastes for the purpose of the definition in clause 3 of this Measure.

7. Schedule B to the Measure

Schedule B in this Measure identifies the information to accompany the movement of controlled wastes and for reporting as required by this Measure.

8. Exclusions to the Measure

This Measure does not apply to:

- (a) the intrastate/intraterritory movement of controlled wastes;
- (b) a movement of controlled waste, which for logistical reasons (for example, closer proximity), and as agreed to between the jurisdiction of origin and the jurisdiction of transit, enters the jurisdiction of transit prior to returning to a facility in the jurisdiction of origin;
- (c) the movement of controlled wastes or other wastes in accordance with the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*;
- (d) an emergency which requires urgent action to protect human life, the environment and/or property;

- (e) controlled wastes:
 - (i) to be used in analysis for waste categorisation;
 - (ii) to be used in research subject to approval by an agency in the jurisdiction of destination;
- (f) the movement of controlled wastes by pipeline;
- (g) containers destined for direct refilling with the same substance in which there remains small amounts of residues of a substance on List 1;
- (h) the movement of unwanted farm chemicals by a farmer or property owner, without fee or reward, for the purposes of delivering such chemicals to a designated collection place under a collection scheme approved by the affected jurisdictions; or
- (i) the movement of controlled wastes subject to product recall approved by the Australian Pesticides and Veterinary Medicines Authority, Food Standards Australia New Zealand, or Therapeutic Goods Administration.

9. Exemptions allowed by the Measure

(a) Geographical exemption

The movement of a specified controlled waste stream from a defined geographic area in one jurisdiction to a defined geographic area or facility in another jurisdiction may be exempted from one or more of clauses 13(f), 13(g), 13(h), 13(i) and 13(j) of the Measure.

(b) Direct reuse exemption

Controlled waste which is destined for direct reuse without prior treatment or processing as an input into the manufacture of a product whether or not for sale may be exempted from one or more of clauses 13(f), 13(g), 13(h), 13(i), 13(j)(iii), 13(j)(iv), and 13(j)(v) of the Measure.

(c) Extended Producer Responsibility exemption

Controlled waste which is subject to an approved extended producer responsibility scheme may be exempted from one or more of clauses 13(f), 13(g), 13(h), 13(i), 13(j)(iii), 13(j)(iv), and 13(j)(v) of the Measure.

(d) Approved Recycling Scheme exemption

Controlled waste which is subject to an approved recycling scheme may be exempted from one or more of clauses 13(f), 13(g), 13(h), 13(i), 13(j)(iii), 13(j)(iv), and 13(j)(v) of the Measure.

Exemptions under 9(a), 9(b), 9(c) and 9(d) may only be given if:

- (i) such an exemption is formalised through written agreement by the affected jurisdictions.
- (ii) the written agreement is provided as part of those jurisdictions' public reporting obligations; and
- (iii) those jurisdictions consider that the exemption does not derogate from the goal of this Measure.

10. Review of the Measure

- (a) Council envisages that this Measure shall be subject to a comprehensive review five years from the date of commencement, which will consider:
 - (i) the effectiveness of the Measure in achieving the national environment protection goals set out within it;
 - (ii) the resources available for implementing the Measure; and
 - (iii) the need, if any, for amending the Measure, including:
 - (i) whether any changes should be made to the Schedules; and
 - (ii) whether any changes should be made to improve the effectiveness of the Measure in achieving the national environment protection goals set out within it.
- (b) To amend schedules in this Measure, Council, in compliance with section 20 of the Commonwealth Act, may utilise processes which comprise, but are not restricted to a nomination process. Such a process would:
 - (i) not incur a fee, but would need to be justified and have the support and sponsorship of a participating jurisdiction for submission to Council;
 - (ii) take place periodically; and
 - (iii) allow advice to be sought as may be required.

Part 2

National environment protection goal

11 Goal for this Measure

The national environment protection goal of this Measure is to assist in achieving the desired environmental outcomes set out in clause 12 by providing a basis for ensuring that controlled wastes which are to be moved between States and Territories are properly identified, transported, and otherwise handled in ways which are consistent with environmentally sound practices for the management of these wastes.

12 Environmental outcome for this Measure

The desired environmental outcomes of this Measure are to minimise the potential for adverse impacts associated with the movement of controlled waste on the environment and human health.

Part 3

National environment protection guidelines

13 Features for the establishment of a system for the movement of controlled wastes

The Council provides the following guidance on possible means for achieving the desired environmental outcomes:

Licensing and mutual recognition

- (a) Each participating State or Territory, where it is the jurisdiction of origin, should ensure that the movement of controlled waste from its jurisdiction to or through another participating State or Territory should be subject to a licence having sufficient control over the carriage of that waste to enable agreement to mutual recognition between participating States or Territories;
- (b) Participating States and Territories should agree to recognise, for the purpose of the movement of controlled waste between states and territories only, the licence issued by the jurisdiction where the transporter is established for business purposes;
- (c) Participating States and Territories should agree to the mutual recognition of licences within 6 months of this Measure coming into effect;
- (d) Participating States and Territories should make any necessary adjustments to their legal and administrative framework to implement the agreement referred to in (c) above within 18 months of that agreement being reached;
- (e) it is envisaged that jurisdictions should implement the measure as quickly as possible, but not later than 2 years from the commencement of the Measure.

Prior Notification and Consignment Authorisations

- (f) Each participating State and Territory should ensure that a producer intending to move controlled wastes to another jurisdiction obtains a consignment authorisation from an agency of the jurisdiction of destination, or from a facility delegated by that agency, prior to the movement of such wastes;
- (g) The participating State or Territory of origin and destination should ensure that, prior to a consignment authorisation being issued consultation is undertaken, wherever necessary, to determine the appropriateness of issuing a consignment authorisation;
- (h) In consideration of a completed application for a consignment authorisation, each participating State and Territory should take certain matters into consideration. These should include, but not be limited to:
 - (i) whether the facility to which the controlled wastes are directed is appropriately licensed or approved by the agency in the participating State or Territory of destination to receive the controlled waste; and

- (ii) relevant environmental protection policies and legislation of participating jurisdictions which will assist in meeting the desired environmental outcomes.

Waste Tracking

- (i) Schedule B consists of three parts:
 - (i) part 1 identifies information to be provided by producers;
 - (ii) part 2 identifies information to be provided by transporters; and
 - (iii) part 3 identifies information to be provided by facilities.Each participating State or Territory should ensure that all controlled wastes transported in accordance with this Measure are accompanied by the information set out in part 1 and part 2 of Schedule B, and that part 3 of Schedule B is completed by a facility upon acceptance of the waste;

Obligations

- (j) Each participating State or Territory should ensure that the:
 - (i) producer provides relevant information as set out in part 1 Schedule B;
 - (ii) transporter carries information as described in part 1 and 2 Schedule B when transporting controlled waste;
 - (iii) facility operator provides information described in part 3 Schedule B as required by participating States or Territories;
 - (iv) agency, or facility delegated by an agency, in the participating State or Territory of destination issues, or refuses to issue, a consignment authorisation within 5 working days following the receipt of a completed application;
 - (v) the agency or delegated facility should provide an explanation to the applicant of the reason for refusal of a consignment authorisation consistent with its obligations under relevant State or Territory legislation.

Maintenance of records

- (k) Each participating State or Territory should ensure that records of the data generated by the tracking system in relation to requirements which are contained in Schedule B, are kept for a period of not less than 12 months.

Furnishing of information to Council

- (l) In order to facilitate annual reporting on the implementation and effectiveness of the Measure, as required by section 23 of the Commonwealth Act and corresponding sections of the State and Territory NEPC Acts, the relevant agency of each participating State and Territory should provide collated summary information on the:
 - (i) movement of controlled waste into each jurisdiction, indicating jurisdiction of origin, waste code and quantity of waste;
 - (ii) level of discrepancies (eg non-arrival of a consignment) as a percentage of total authorised controlled waste movements; and
 - (iii) benefits arising from the implementation of the Measure.

14. Failure to provide information, or giving false or misleading information

Council envisages that, where a producer, transporter or facility operator does not furnish information required to an agency of the relevant participating State or Territory or provides false or misleading information, enforcement action will be taken by that jurisdiction in accordance with the following:

- (a) the nature of the offence, including the intent of the offender and whether it is a repeat occurrence; and
- (b) the effectiveness in achieving the desired outcome.

15. Confidentiality

Council envisages that all participating States or Territories shall respect commercial confidentiality of facility operators, transporters, and producers, and that for any claim for confidentiality the jurisdiction will endeavour to apply the following principles:

- (a) that claims will only be considered if they involve either commercially sensitive information or issues of national security;
- (b) that the onus of substantiating a claim for confidentiality will rest with the producer, transporter, or facility operator;

Claims for confidentiality will be assessed:

- (i) by the Commonwealth on the grounds of national security, within the legislative framework existing in the Commonwealth at the time, including the *Freedom of Information Act 1981 (Commonwealth)* where applicable; and
- (ii) by the appropriate participating State or Territory on the grounds of commercial sensitivity, in accordance with the legislative framework existing in that State or Territory at the time.

Schedule A List 1: Waste categories

| |
|---|
| WASTE STREAM OR WASTES HAVING AS CONSTITUENTS: |
| Acidic solutions or acids in solid form |
| Animal effluent and residues (abattoir effluent, poultry and fish processing waste) |
| Antimony; antimony compounds |
| Arsenic; arsenic compounds |
| Asbestos |
| Barium compounds (excluding barium sulphate) |
| Basic solutions or bases in solid form |
| Beryllium; beryllium compounds |
| Boron compounds |
| Cadmium; cadmium compounds |
| Ceramic-based fibres with physico-chemical characteristics similar to those of asbestos |
| Chlorates |
| Chromium compounds (hexavalent and trivalent) |
| Clinical and related wastes |
| Cobalt compounds |
| Containers which are contaminated with residues of substances referred to in this list |
| Copper compounds |
| Cyanides (inorganic) |
| Cyanides (organic) |
| Encapsulated, chemically-fixed, solidified or polymerised wastes |
| Ethers |
| Filter cake |
| Fire debris and fire washwaters |
| Fly ash |

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|---|
| WASTE STREAM OR WASTES HAVING AS CONSTITUENTS: |
| Grease trap waste |
| Halogenated organic solvents |
| Highly odorous organic chemicals (including mercaptans and acrylates) |
| Inorganic fluorine compounds excluding calcium fluoride |
| Inorganic sulfides |
| Isocyanate compounds |
| Lead; lead compounds |
| Mercury; mercury compounds |
| Metal carbonyls |
| Nickel compounds |
| Non toxic salts |
| Organic phosphorus compounds |
| Organic solvents excluding halogenated solvents |
| Organohalogen compounds - other than substances referred to in this list |
| Perchlorates |
| Phenols, phenol compounds including chlorophenols |
| Phosphorus compounds excluding mineral phosphates |
| Polychlorinated dibenzo-furan (any congener) |
| Polychlorinated dibenzo-p-dioxin (any congener) |
| Residues from industrial waste treatment/disposal operations. |
| Selenium; selenium compounds |
| Sewage sludge and residues including nightsoil and septic tank sludge |
| Soils contaminated with a controlled waste |
| Surface active agents (surfactants), containing principally organic constituents and which may contain metals and inorganic materials |
| Tannery wastes (including leather dust, ash, sludges and flours) |
| Tellurium, tellurium compounds |
| Thallium; thallium compounds |

| |
|---|
| WASTE STREAM OR WASTES HAVING AS CONSTITUENTS: |
| Triethylamine catalysts for setting foundry sands |
| Tyres |
| Vanadium compounds |
| Waste chemical substances arising from research and development or teaching activities including those which are not identified and/or are new and whose effects on human health and/or the environment are not known |
| Waste containing peroxides other than hydrogen peroxide |
| Waste from heat treatment and tempering operations containing cyanides |
| Waste from the manufacture, formulation and use of wood-preserving chemicals |
| Waste from the production, formulation and use of biocides and phytopharmaceuticals |
| Waste from the production, formulation and use of inks, dyes, pigments, paints, lacquers and varnish |
| Waste from the production, formulation and use of organic solvents |
| Waste from the production, formulation and use of photographic chemicals and processing materials |
| Waste from the production, formulation and use of resins, latex, plasticisers, glues and adhesives |
| Waste from the production and preparation of pharmaceutical products |
| Waste mineral oils unfit for their original intended use |
| Waste oil/water, hydrocarbons/water mixtures or emulsions |
| Waste pharmaceuticals, drugs and medicines |
| Waste resulting from surface treatment of metals and plastics |
| Waste tarry residues arising from refining, distillation, and any pyrolytic treatment |
| Waste, substances and articles containing or contaminated with polychlorinated biphenyls (PCBs), polychlorinated naphthalenes (PCNs), polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs) |
| Waste of an explosive nature not subject to other legislation |

| |
|---|
| WASTE STREAM OR WASTES HAVING AS CONSTITUENTS: |
| Wool scouring waste |
| Zinc compounds |

Schedule A List 2: Characteristics of controlled wastes

| Dangerous Goods Class (UNClass*) | UN Code | |
|----------------------------------|---------|---|
| 1 | H1 | <p>Explosive An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.</p> |
| 3 | H3 | <p>Flammable Liquids The word “flammable” has the same meaning as “inflammable”. Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off flammable vapour at temperatures of not more than 60.5 degrees Celsius, closed-cup test, or not more than 65.6 degrees Celsius, open-cup test. (Since the results of open-cup tests and of closed cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowances for such differences would be within the spirit of the definition.)</p> |
| 4.1 | H4.1 | <p>Flammable solids Solids or waste solids, other than those classified as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.</p> |
| 4.2 | H4.2 | <p>Substances or wastes liable to spontaneous combustion Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up in contact with air, and being then liable to catch fire.</p> |

| Dangerous Goods Class (UNClass*) | UN Code | |
|----------------------------------|---------|--|
| 4.3 | H4.3 | <p>Substances or wastes which, in contact with water, emit flammable gases</p> <p>Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.</p> |
| 5.1 | H5.1 | <p>Oxidising</p> <p>Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause or contribute to, the combustion of other materials.</p> |
| 5.2 | H5.2 | <p>Organic peroxides</p> <p>Organic substances or wastes which contain the bivalent-O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.</p> |
| 6.1 | H6.1 | <p>Poisonous (acute)</p> <p>Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.</p> |
| 6.2 | H6.2 | <p>Infectious substances</p> <p>Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans.</p> |
| 8 | H8 | <p>Corrosives</p> <p>Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.</p> |
| 9 | H10 | <p>Liberation of toxic gases in contact with air or water</p> <p>Substances or wastes which, by liberation with air or water, are liable to give off toxic gases in dangerous quantities.</p> |
| 9 | H11 | <p>Toxic (delayed or chronic)</p> <p>Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.</p> |

| Dangerous Goods Class (UNClass*) | UN Code | |
|---|---------|--|
| 9 | H12 | Ecotoxic Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems. |
| 9 | H13 | Capable of yielding another material which possesses H1-H12 Capable by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above. |
| | | Other Reasons Potential to have a significant adverse impact on ambient air quality. Potential to have a significant adverse impact on ambient marine, estuarine or fresh water quality. |
| *UN Class and Code relates to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods as used in Australia. | | |

Schedule B

Pursuant to clause 13 all controlled waste transported subject to this Measure shall be accompanied by the following information, wherever applicable, in a manner approved by the participating State or Territory of origin. In the event of electronic tracking being used, the information required should also accompany the wastes in printed form.

Part 1: To be supplied by the waste producer

- Description of the waste(s) [Use proper shipping name/ technical name if applicable for Dangerous Goods]
- The physical nature of the waste
- Waste code(s)
- Contaminant(s)
- UN Number(s)
- UN Code(s)
- Dangerous Goods Class(es) (UN Class(es)) [and Subsidiary Risk if applicable for Dangerous Goods]
- Packaging Group number
- Amount of waste(s)
- Waste origin code (ANZ Standard Industry Code)
- Type of package (eg bulk) [and number of packages of each type if applicable for Dangerous Goods]
- Facility name
- Facility address
- Facility licence number
- State/Territory of destination
- Name of waste producer
- Address of waste source
- Producer's telephone number
- Emergency contact number in the event of accident or spillage
- Consignment authorisation number
- Producer identification number
- Date of dispatch

Part 2: To be supplied by the transporter

- Name of transporter(s)
- Address of transporter(s)
- Vehicle registration number(s)
- Name(s) of transit State(s)/Territory or Territories
- Transport licence number(s)
- Date of transport
- Type of transport e.g. train, truck

Part 3: To be supplied by the facility operator

- Type of treatment at facility
- Date of receipt at facility

- Any discrepancies noted in information provided in parts 1 and 2 Schedule B should be reported as required by the relevant agency in the jurisdiction in which the facility is located.

5 TABLE OF AMENDMENTS

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---------------------------|---------------------------|
| C. 3 | ad. Minor Variation 2004. |
| C. 8 | ad. Minor Variation 2004. |
| C. 9 | ad. Minor Variation 2004. |

Appendix A

