

*National Environment Protection
(Movement of Controlled Waste
between States and Territories)
Measure as varied December 2004*

NEPC



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**NATIONAL ENVIRONMENT PROTECTION
(MOVEMENT OF CONTROLLED WASTE
BETWEEN STATES AND TERRITORIES) MEASURE
AS VARIED DECEMBER 2004**

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:
 - (iv) the effectiveness of the Measure in achieving the national environment protection goals set out within it;
 - (v) the resources available for implementing the Measure; and
 - (vi) 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
Grease trap waste

WASTE STREAM OR WASTES HAVING AS CONSTITUENTS:
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
Triethylamine catalysts for setting foundry sands

WASTE STREAM OR WASTES HAVING AS CONSTITUENTS:
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
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>
4.3	H4.3	<p>Substances or wastes which, in contact with water, emit flammable gases 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 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>

Dangerous Goods Class (UNClass*)	UN Code	
5.2	H5.2	Organic peroxides Organic substances or wastes which contain the bivalent-O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
6.1	H6.1	Poisonous (acute) Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.
6.2	H6.2	Infectious substances Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans.
8	H8	Corrosives 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.
9	H10	Liberation of toxic gases in contact with air or water Substances or wastes which, by liberation with air or water, are liable to give off toxic gases in dangerous quantities.
9	H11	Toxic (delayed or chronic) Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
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 eg 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.

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.