
REGIONAL ACTION PROGRAM AND GUIDELINES TO PREVENT ILLEGAL TRAFFIC IN HAZARDOUS WASTES IN THE ASIA-PACIFIC REGION

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SUMMARY

In accordance with United Nations General Assembly resolution 44/226 (1989), the author undertook an assessment of the present state of illegal traffic in hazardous wastes in the Asia-Pacific region. The assessment report was the main document at the 1994 Economic And Social Commission For Asia And The Pacific/United Nations Environment Program Expert-level Workshop on the Prevention of Illegal Traffic in Hazardous Wastes held in Tokyo which produced a regional program and guidelines to prevent illegal traffic in hazardous wastes. The paper discusses the action program, the main objective of which is to promote implementation of the Basel Convention and guidelines for use in capacity-building through national-level workshop or other training programs for strengthening institutional and legislative frameworks for hazardous waste management.

1 INTRODUCTION

The style of living to which many people throughout the world have become accustomed depends on the free movement of a wide range of goods or commodities from production to consumption sites. These goods vary from the absolutely harmless to the highly dangerous and include the whole range of chemical substances and mixtures. Recently, interest in safety and in protection from chemicals has developed from worker protection in factories and plants to the transport and handling operations and user sites and now, to the external environment, in particular as regards the disposal of hazardous wastes which has resulted to illegal traffic as a way of disposing of the same.

Indeed, technological progress brought immense benefits to mankind - increased food production, improved health care, eradication of deadly diseases and bestowal of longer life expectancy and a better standards of living. However, it also brought enormous number of pollutants to the environment. Among these pollutants are wastes from food processing, detergents, agricultural run-offs, heavy metals, radioactive wastes, inorganic chemicals and heated water. The pollution threat attendant to their transport, handling, and disposal from one place to another is an ever present danger too because of their general characteristics which may include ignitability, explosiveness, corrosiveness, toxicity and radioactivity.

Due to its very nature, therefore, hazardous waste control has to be taken care of from the "womb to the tomb." This means identification of hazardous waste generators, monitoring of the transport of shipping of waste for treatment/storage/disposal, assurance that treatment/storage/disposal sites meet the minimum standards and constant and competent surveillance of their operation, and lastly, when a site is filled up or to be phased out, its closure should be in accordance with the required procedure. After a site's closure, there is the continuing need for routine monitoring and maintenance to ensure safety against personal injury and damage to property for at least 20 to 30 years.

Legislation represents an essential element for hazardous waste control. The general trend is for legislation to emphasize the protection of human health and well-being as the prime consideration. The following is a brief account of the significant features in legislation and management strategies for hazardous waste illegal traffic control.

2 UNITED NATIONS ENVIRONMENT Program/ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC PROJECT ON PRELIMINARY ASSESSMENT OF ILLEGAL TRAFFIC IN TOXIC AND DANGEROUS PRODUCTS AND WASTES ON THE ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC REGION

While industrialization is essential to enhance the quality of life of the people, the toxic products and waste generated in the process pose great risks to human health and the environment. Many countries do not have the capacity for handling and disposal of toxic wastes. This situation is further aggravated by the illegal traffic in these products and wastes.

Considering the gravity of the situation, the UN General Assembly in its resolution 44/226 (1989) requested each regional commission to contribute to the prevention of the illegal traffic in toxic and dangerous products and wastes by monitoring and making regional assessments of this illegal traffic and its environmental and health implications. To follow up on this resolution, a project on preliminary assessment of illegal traffic in toxic and dangerous products and wastes in the region was implemented by the Economic and Social Commission for Asia and the Pacific with funding provided by the United Nations Environment Program. The preliminary assessment conducted by Economic And Social Commission For Asia And The Pacific is in line with paragraph 20.45 of Agenda 21, the program of action for sustainable development agreed upon by the countries at the United Nations Conference on Environment and Development. Agenda 21 stipulates that "the regional commissions, in cooperation with and relying upon expert support and advice from United Nations Environment Program and other relevant bodies of the United Nations system, taking full account of the Basel Convention, shall continue to monitor and assess the illegal traffic in hazardous wastes, including its environmental and health implications on a continuing basis, drawing upon the results and experience gained in the joint United Nations Environment Program/Economic And Social Commission For Asia And The Pacific preliminary assessment of illegal traffic."

The Economic And Social Commission For Asia And The Pacific assessment report was completed in 1993 based on fact-finding visits to five countries: Fiji, Pakistan, Singapore, Sri Lanka and Thailand. It also tried to give an overview of the situation in the Pacific based on information obtained from the South Pacific Regional Environment Program. Something which is illegal is very difficult to assess. Economic And Social Commission For Asia And The Pacific in 1990 circulated a questionnaire for this purpose. The effort did not yield any significant information. Therefore, instead of reporting the quantities of waste involved in this traffic, the assessment was made on the legislative weaknesses, institutional arrangements and control system, manpower capability, to lay the foundation of the regional strategy to control the illegal traffic in hazardous wastes.

In order to have a good cross-sectorial view of the status with respect to hazardous wastes, the participating countries for the assessment project were selected to represent various economic categories, geographic location and the capacity to deal with this problem. The main objective in this effort is to promote regional cooperation to strengthen the capacity of the region to deal with the problem.

The assessment report revealed that scant information was available on the extent of illegal traffic in hazardous products and wastes in the Asian and Pacific region. However, there was open supposition that illegal traffic was ongoing owing to the laxity in the implementation and enforcement of relevant legislations and regulations and in the absence of the necessary laws and rules to prevent such traffic. There were deficiencies in the capabilities of the countries to control imports and to detect and stop the entry or exit unwanted chemical products and wastes. Basic to the deficiencies was the uncertainty as to the most appropriate infrastructure for chemical/waste management within a country. Among the major problems, issues and limitations encountered were: (a) the absence or inadequacy of national control system; (b) legislative constraints; and (c) ineffective institutional arrangements. Other impediments to toxic and dangerous products and wastes management included inappropriate dissemination and use of international documentation related to toxic and dangerous products and wastes, such as those on risk/hazard assessment; the absence of a systematic data system covering information on quantities of hazardous products/wastes imported, produced or exported as well as the regulated parties, for example, importers, exporters, generators, collectors, transporters; the lack of coordination, liaison and sharing of resources and results among existing laboratories; the lack of personnel trained in the various aspects of chemical management, for example, the implementation of regulations, inspections, prior informed consent procedure, identification, testing and analyses of chemicals/wastes and weak public understanding and support to effective chemical management.

3 REGIONAL ACTION PROGRAM TO PREVENT ILLEGAL TRAFFIC IN HAZARDOUS WASTES

In early 1994, an Economic And Social Commission For Asia And The Pacific/United Nations Environment Program Expert-Level Workshop on the Prevention of Illegal Traffic in Hazardous Wastes was held in Tokyo which found the assessment report an excellent background material with which to formulate an action program to promote regional cooperation to strengthen the capacity of the countries to deal with the problem posed by illegal traffic in toxic and dangerous products and wastes.

The regional action program as recommended by the said workshop attended by representatives from Economic And Social Commission For Asia And The Pacific countries consists of the following:

3.1 National controls

- It should be ensured that hazardous wastes, as defined by the Basel Convention, are clearly identified as such by the Harmonized Commodity Description and Coding System administered by the Customs Cooperation Council. In the meantime, national inventories for regulatory control of transboundary movements of hazardous wastes should be set up.
- While the definitions of hazardous wastes should follow the Basel Convention, work should be done towards achieving a uniform interpretation of those definitions in accordance with existing international standards and codes, such as those contained in the relevant United Nations publications, the International Convention for the Prevention of Pollution from Ships, 1973.

- Gaps should be closed and duplication avoided in efforts to combat illegal traffic, collaboration and cooperation among national programs should be encouraged, working through the secretariat of the Basel Convention.

While many countries of the region have some form of control system for the import/export of toxic wastes, there are still a number of others which have yet to begin with their respective regulatory scheme on the same. The latter includes countries which have not embarked on, among others, an inventory of all hazardous wastes generated, imposition of licensing or permitting requirements for importers/exporters as well as registration procedures for dangerous products and wastes, review and revision of import/export regulations, acquisition of laboratory testing facilities to monitor traded chemicals/wastes, creation of an interagency coordinating committee to oversee and resolve chemical/waste related issues, all of which could lead to appropriate controls to prevent illegal traffic. In some countries where control systems are in place, efforts should be exerted to make the system more efficient.

3.2 Institutional capabilities

- There should be effective interagency cooperation between government institutions such as ports and customs authorities and the judiciary so that all concerned officers are kept up-to-date and well-informed on regulatory control measures.
- There should be effective communication between regulatory agencies and the business and trade communities on the scope and application of the regulatory measures.
- Assistance should be provided for training of ports and customs and other officials including members of the judiciary, in the implementation of regulatory measures at an international level.

Practically all reports, studies and appraisals on waste management recognize that institutional constraints are among the greatest obstacle to effective development of regulatory control for toxic wastes. Inadequate infrastructure and absence of coordinating mechanisms among chemical management-related agencies, characterize the state of institutional arrangements on the subject. Consequently, ways must be found to create or improve not only the institutional arrangements but the national structure, procedure and information system on hazardous wastes as well and to adopt the regulatory control on import/export of the same to the full development of a chemical management system.

3.3 Non-governmental organizations

- The role of Nongovernmental Organizations was recognized as complementary to that of Governments. Action should be taken to extend facilities, information and cooperation to them, and to identify the assistance required to ensure that the contribution of Nongovernmental Organizations is effective.

Nongovernmental Organizations have assumed important roles in many aspects of environmental protection during the last decade. They have grown rapidly to meet real needs in certain identified environmental sectors but with very few exceptions, their efforts in regard to hazardous waste management had been often without a supporting legal framework.

Toxic wastes policies and laws have not yet been extensively formulated to allow the mobilization of all private efforts in a much more effective way. Ways should, therefore, be sought to improve the management and support of Nongovernmental Organizations if they are to play a more positive role in hazardous management.

3.4 Establishment/strengthening of analytical laboratories

- National laboratories should be established or the infrastructure for appropriate analytical laboratories should be strengthened.
- Appropriate uniform national and regional standards should be adopted.

The present system of analytical laboratories in the countries of the region comprise a number of laboratories operating under several different government ministries or departments, e.g., agriculture, health, industry, environment, etc., as well as hospital and university laboratories. Different services are offered by them but not one could be said to have the complete analytical or administrative facilities to conduct work related to hazardous waste identification, testing, analysis as well as other related specialized analytical services. Indeed, it is difficult to see how the analytical functions of a structured chemical management system could be effectively accommodated within the present laboratory system in the countries of the region particularly as it relates to prevention of illegal traffic.

3.5 Promotion of education

- Public awareness and information systems on hazardous waste management should be promoted.
- Relevant academic research institutions should be identified to carry out training on the management of hazardous wastes.
- The media should be encourage to play a role in promoting public education. Simple courses on waste management should be introduced in school and college syllabi.

The types of behavior which constitute illegal traffic as well as the long term adverse effects of toxic chemicals and hazardous wastes to public health and the environment are not known to the great majority of the population in developing countries. Harmonized hazard assessment and hazard communications, e.g., classification, packaging and labeling schemes, are useful for the transport sector but do not usually benefit the actual users of chemicals or disposers of wastes or of the resultant products. Access to international chemical/waste information systems is not sufficient because of the lack of computer and software facilities to reach such systems.

Moreover, the export to developing countries of chemicals which have been banned or severely restricted in producing countries or of the latter's hazardous wastes have been the subject of concern because many importing countries do not have the capability to assure safe use of those chemicals or disposal of those wastes. For this reason, the prior informed consent procedure was introduced to enhance sound management of chemicals and wastes through the exchange of scientific, technical, economic and legal information thereby preventing illegal traffic in the same. Be that as it may, increased cooperation at the national, subregional and regional levels is still necessary to effectively implement the procedures laid down by international instruments.

3.6 Promotion of regional cooperation

- Regional cooperation should be promoted to minimize transboundary movements of hazardous wastes, particularly from outside the region, and to prevent illegal traffic. To that end, States in the region should accede to and ratify the Basel Convention and, where appropriate, should enter into regional agreements to supplement international efforts.
- Support should be given in the region to national emergencies arising from the storage, transport, treatment and disposal or accidental release of hazardous wastes.
- Legislation and enforcement mechanisms should be strengthened to Prevent illegal traffic of hazardous wastes.

Country reports in the region show serious deficiencies in the capabilities of many developing countries to detect and stop the clandestine entry of unwanted toxic and dangerous products/wastes. Despite wide implementation of import/ export procedures, many changes ought to be done to reduce or prevent the environmentally unacceptable traffic. Although normally, the model approach for developing countries is not advisable on account of diversity of legal, political, economic and social systems, perhaps the area of toxic and dangerous products and wastes i.e., one about which harmonization of procedures including classification, packaging and labeling to prevent illegal entry and exit could be done considering the fact that the same dangerous products and wastes come from producers or exporters which are commonly from developed countries.

4 GUIDELINES TO PREVENT ILLEGAL TRAFFIC IN HAZARDOUS PRODUCTS/WASTES

Economic And Social Commission For Asia And The Pacific in 1994 came out with a publication entitled "guidelines for the Development of a Legal and Institutional Framework to Prevent Illegal Traffic in Toxic and Dangerous Products and Wastes." By way of introduction, the import and export of chemicals/wastes in the developing countries of Asia and the Pacific are regulated by customs laws or import/export control laws and for some chemicals e.g., drugs, poisons, pesticides by the applicable chemical product/waste control law. Among other documentation, reliance is on a permit or license to import or export the chemical/waste before allowing entry or exit of shipments. Studies revealed, however, that Customs and even Ports authorities are not yet in a position to properly control import and export of chemical/waste not only because of lack of personnel and facilities but more because of lack of sufficient information on chemical regulatory control with which to cope with the problem. Another hindrance to a control system is the loosening of import requirements to hasten economic development in many countries.

Nevertheless, chemical product/waste control legislation should have guidelines on how to incorporate import and export controls in order to enable the authorities to have a basis to enforce national regulatory actions. Apart from import/export permits or licenses, Customs and Ports authorities should be provided with a list and profiles of toxic and dangerous products and wastes. A special unit to take charge of dangerous chemicals and wastes should be set up at the Customs and Port authorities and given access to competent laboratories. Furthermore, countries with or without official bans on hazardous waste importation/exportation should lay down special controls to properly manage and monitor their movements.

What would perhaps be appropriate for the developing countries of Asia and the Pacific is a chemical waste management system under one law and one agency. However, in as much as a number of countries already have laws covering particular kinds of chemicals and their wastes administered by various government agencies, a comprehensive national chemical product/waste legislation is suggested which harmonizes existing laws on the subject and coordinates the operations of all chemical/waste regulatory/control agencies especially as it relates to prevention of illegal traffic. More detailed regulations should then be administratively issued which can be amended or updated as and when necessary without the need to amend the main legislation.

The value of guidelines to help implement the intent and objective of legislation and regulations should not be lost sight of. This is particularly true in chemical product/waste control which is scientific/technical in nature and, therefore, requires appropriate guidelines for its effective implementation and enforcement.

Briefly, the basic structure of a comprehensive chemical product/waste control legislation consists of: 1) organizational infrastructure; 2) information system; 3) regulatory system; and 4) enforcement scheme.

4.1 Organizational infrastructure

The chemical product/waste control legislation may commence with general provisions which encompass the statement of policy, objectives, scope of the legislation, definitions and the institutional arrangements for the implementation of the law.

4.1.1 Statement of Policy— The statement of policy gives a general overview of the country's management strategy with respect to toxic and hazardous products and wastes.

4.1.2 Objective — The objective sets out the purposes of the law which, among others, should include the protection of human health and the environment against the detrimental effects of chemical products/wastes; and the establishment of appropriate mechanisms to control or regulate their movements so as to prevent/combat illegal traffic in the same.

4.1.3 Scope — This provision describes what the law will cover such as identification of the chemical products/wastes and the activities which are subject to regulation.

4.1.4 Definition — The definition explains the meaning of certain terms as used in the law like chemical, hazardous waste, import and export, etc.

4.1.5 Establishment of an Authority — This provision identifies the government agency that will carry out the law. Lately, pollution-oriented chemical legislation as well as industrial chemical laws are placed under the jurisdiction of the Environment Ministry/ Agency particularly in regard to new and unregulated chemicals.

4.1.6 Inter-Agency Coordination — Chemical legislation have traditionally been implemented by government agencies with responsibility for a particular kind of chemical, e.g., Ministry of Agriculture (pesticides), Ministry of Trade and Industry (industrial chemicals) Ministry of Health (consumer chemicals). This situation calls for an inter-

agency committee for better coordination of efforts in chemical management with one agency designated as lead agency. The main objectives of an interagency committee are to make policy recommendations for control measures and to assist the national authority in implementing the law. It may also work on scientific or technical matters such as assessment of hazards of chemicals/wastes, formulation of regulations to implement the legislation, updating of the listing or inventory of chemicals, etc. Commonly, the members of the coordinative committee are agencies with expertise or interest in handling chemicals such as those on Agriculture, Health, Environment, Industry, Trade, Labor, Science, Customs, Ports, Police and Justice. In addition, representatives of nongovernmental organizations may also be appointed to coordinative committees.

4.2 Information system

In order to prevent illegal traffic in toxic substances and hazardous wastes, it is necessary to identify the chemicals/wastes being imported into the country as well as those being exported to other countries. This is done through an inventory, or register or a list of chemicals/wastes which is attached to the chemical legislation.

National Register of Chemicals/Wastes. An inventory of chemicals/ wastes identifies the existing chemicals/wastes in the country and identifies also new chemicals/wastes which have not been imported or exported before the establishment of the inventory. It is the first step to identify possible problems and the necessary measures to solve problems which can be caused by chemicals/wastes as they affect human health and the environment.

The inventory which becomes the national register of chemicals/ wastes includes a designation of identity of chemicals/wastes, the category in which it is classified (e.g., explosive, oxidizing, flammable, toxic, harmful, etc.), description of the effects they may have on man and the environment and data relative to the ways of rendering them harmless.

4.3 Regulatory system

Regulatory measures on chemical products/wastes include any action to control chemicals/wastes and usually focus on preventing or reducing the harm they may cause to human health and the environment. Among regulatory measures in use are: classification, prioritization; registration schemes, new chemical notification programs and permitting or licensing procedures. While many options exist to regulate/control toxic chemicals and hazardous wastes, a country should select only those which are appropriate and capable of being implemented given the availability of resources to enforce within the country. This lack of resources have led many countries to persuade the industry to regulate itself as much as possible and work with the government in effecting control.

Import and Export Requirements — A very useful measure for controlling activities involving toxic chemicals and hazardous wastes is the permitting or licensing procedure. A permit or license issued by the competent national authority gives the holder the right to import/export hazardous chemicals or import/export toxic wastes subject to withdrawal if the holder violates any provision of the chemical legislation or any regulation issued pursuant thereto.

Chemicals/wastes for export should comply with the packaging and labeling requirements which are domestically required as well as with the specific requirements of the importing country. Labeling should be in an official language understandable to the importing country.

Decisions made to prohibit the export of certain chemicals/wastes should apply generally to all sources of import as well as any domestic manufacture, formulation or production for local use.

Import/Export of Hazardous Chemical Substances — Import of chemicals for the first time should be subject to notification which means provision of detailed information about the new chemical to the competent national authority by the importer. A new chemical for the purpose of notification is one which is not included in the existing national inventory of chemicals. The information to be provided should include data relative to testing results as well as assessment of chemicals including possible effects on human health and the environment. In this connection, reference should be made to IRPTC and the prior informed consent procedure being implemented by United Nations Environment Program and FAO.

Import/Export of Hazardous Wastes — The importation of hazardous wastes would only be upon authorization/license duly issued by the national competent authority and the exporter should have the prior informed consent of the competent national authority of the State of import. Be it noted that export of hazardous wastes should take place only in the absence of local technical capacity and facilities to dispose of the wastes in an environmentally sound manner. Furthermore, the export of hazardous wastes shall not be permitted in the following instances: (i) if there is reason to believe that their environmentally sound management and disposal could not be guaranteed in the prospective State of import; (ii) if the State of import has officially banned the import of hazardous wastes. As noted above, reference should be made to information available at the Secretariat of the Basel Convention.

4.4 Enforcement scheme

A chemical product/waste control legislation will not meet its objectives if there is inadequate enforcement. The main elements of an enforcement scheme are: monitoring of compliance (e.g., recordkeeping and reporting, surveillance and inspections; compelling of compliance (e.g., warnings, investigations, prosecution, imposition of penalties); and promotion of compliance (e.g., training and education, economic incentives, voluntary agreements, environmental auditing). It is usually carried out by government officers in the competent national authority in-charge of the law's implementation who may be assisted by officers of other government agencies, notably the Customs authority. In particular, legislation should provide the Customs office with power to intercept, inspect and prevent imports or exports which do not comply with the requirements laid down by the Competent National Authority. Appropriate personnel and other resources should be provided to the Customs office to enable it to pursue enforcement actions.

Enforcement Power — A competent national authority in the government's machinery is assigned and empowered to ensure compliance with the law and its regulations as well as conditions issued pursuant to the law. It may also issue injunctions and prohibitions under penalty of a fine.

Inspection — A vital component of a chemical product/waste control legislation is the power of the competent national authority to make inspection. Said inspection is carried out in the premises of manufacturers, importers, exporters and users in order to go over documents and other relevant materials including inquiry on individuals and collect samples to find out if the chemical products/wastes are legal and not objects of illegal traffic in the same.

Prohibited Act — Among specific offenses which may be enumerated in the law are: import and export of banned chemicals/wastes; import and export of chemicals/wastes which have not been properly packaged or labeled; import and export without the required license;

export of banned or severely restricted chemicals without the consent of the importing country or use of false statements; and misrepresentation or fraud to obtain the necessary consent or license.

5 CONCLUSION

It is indeed surprising that toxic waste control, i.e., prevention of illegal traffic, is neglected in many jurisdictions particularly in the developing countries of Asia and the Pacific. This attitude should be changed soon considering the increased toxicity of many wastes caused by wider use of chemical and advent of modern transportation and communication. The problem is further aggravated by increased urban population concentrations and less space for landfill as the easiest and most available method of disposal.

Be that as it may, a hazardous waste control system should begin with a political commitment. The creation of a specific governmental infrastructure is also necessary for an effective control system considering the clear and present danger posed by hazardous wastes to the environment. Likewise, trained personnel in hazardous waste management is a requirement of a control system not only for the industry but also for the government. Both regulator and regulated should be well equipped with the wherewithal to achieve the desired control. Well-informed and trained staff are needed both in the technical aspect of hazardous waste management and in the legal and policy areas to assist in the formulation and implementation of laws and regulations particularly those which would prevent illegal traffic.

Training of personnel, however, need not always flow from developed to developing countries. Country experiences showed that sharing of experiences among similarly situated countries such as those in Asia and the Pacific proved more valuable on account of identified similarities in problems, issues and applicable solutions. But there is no substitute for on-the-job training to acquire the necessary expertise in regard to hazardous waste management/control.

Above all, a system of control can only be as effective as its means of enforcement. The more critical need today is the effective implementation and enforcement of hazardous substances control legislations/regulations. This demands the creation of awareness of the importance of environmental control and compliance with the requirements to develop the facilities (laboratories and equipment) and the expertise (qualified technical staff and other supporting manpower) to sustain a sophisticated environmental regulatory management framework. Lastly, and perhaps the most important of all, citizen participation should be stressed as a solution to the problem posed by toxic wastes. The best legal framework will go awry, even the machines and modern technology will prove ineffective without the active involvement of the citizenry in the prevention of illegal hazardous waste traffic.

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