

## Purpose

1. To present this report of the work of the *Working Group on Amending the Waigani Convention to Adopt Basel Convention Plastic Waste Amendments of 2019* according to the Terms of Reference agreed by Scientific and Technical Advisory Committee (STAC) on 10 May 2022.
2. To provide feedback on the options developed by the Working Group and to select the preferred options to be presented at the twelfth meeting of the Waigani Conference of Parties for their consideration.

## Background

3. At the Basel Convention Conference of Parties held in May 2019, amendments were agreed to Annexes II, VIII and IX (Decision BC-14/12), with the objectives of enhancing the control of the transboundary movements of plastic waste and clarifying the scope of the Convention as it applies to such waste (**Attachment A**). The new entries are effective from 1 January 2021.
4. The amended entries are:
  - B3011 in Annex IX that clarifies the types of plastic wastes that are presumed to not be hazardous and, as such, not subject to the Prior Informed Consent (PIC) procedure. The entry covers plastic waste consisting exclusively of one non-halogenated polymer or resin, selected fluorinated polymers or mixtures of polyethylene, polypropylene and/or polyethylene terephthalate, provided the waste is destined for recycling in an environmentally sound manner and almost free from contamination and other types of wastes.
  - A3210 in Annex VIII that clarifies the scope of plastic wastes presumed to be hazardous and therefore subject to the PIC procedure.
  - Y48 in Annex II which covers the remaining plastic wastes, including mixtures of such wastes that are not covered by entries B3011 and A3210. These wastes are also subject to the PIC procedure.
5. At the eighth Meeting of the STAC, the Secretariat agreed to prepare a proposal to amend the Waigani Convention and to present this to the next meeting of the Conference of Parties to the Waigani Convention (Waigani COP).
6. At the eleventh meeting of the Waigani COP, held on 3 September 2021, the Secretariat presented a process for Parties to progress the amendments as agreed to by STAC and a Working Group was formed to undertake intersessional work.
7. The Working Group was asked to develop proposals to amend the Waigani Convention that would:
  - Implement the Basel plastic amendments
  - Allow for the streamlined adoption of future changes to the Basel Convention Annexes.
8. The Working Group is led by Australia, and has New Zealand, Papua New Guinea and Samoa as members. The Working Group met virtually 3 times to develop the current report (10 March 2022, 14 April 2022 and 23 August 2022.)

## Incorporating the Basel plastic amendments

9. The Working Group has developed four options to incorporate the plastic waste amendments.
10. The plastic amendments include a new category of waste in Annex II of the Basel Convention (Y48). Annex II lists non-hazardous wastes that are subject to control under the Convention because they may still cause harm to human health and the environment.
  - The existing Basel Annex II Wastes, household waste (Y46) and incineration residues (Y47), are listed in Annex I of the Waigani Convention.
  - Article 2 of the Waigani Convention defines “hazardous wastes” as any waste listed in Annex I unless it does not possess any hazardous characteristic.
  - As a result, although non-hazardous wastes are included in Annex I, they are only within the scope of the Waigani Convention if they also have hazardous characteristics.
11. Three of the options developed by the Working Group allow the control of wastes that do not possess any hazardous characteristics and therefore align the treatment of these waste with their control under the Basel Convention.
12. The plastic amendments also create new entries in Annex VIII (A3220) and IX (B3011) of the Basel Convention that provide additional clarity on the categorisation of plastic waste. These Annexes are not currently reflected in the Waigani Convention.
13. Two of the options developed by the Working Group introduce Annex VIII and Annex IX into the Waigani Convention for all waste types.
14. The options are (See **Attachment B** for a full analysis of these options):

### 1.1 Option 1: Add the new Y48 entry

15. This is the simplest option to implement and adds the new Y48 entry into Annex I of the Waigani Convention.
16. However, as noted above, Y48 will only be within the scope of the Convention if it also contains hazardous characteristics. This does not meet the intent of the Basel plastic amendments which controls non-hazardous plastic wastes.
17. This option also does not reflect the new entries in Annex VIII and IX.
18. No consequential amendments are required.

### 1.2 Option 2A: New Annex for non-hazardous wastes

19. This option will create a new Annex for non-hazardous wastes that will contain the existing entries for household waste (Y46) and incineration residues (Y47), as well as the new entry for non-hazardous mixed plastics (Y48).
20. Consequential changes to the Convention will be required that ensure the wastes listed in the new Annex are within scope of the Convention when non-hazardous.
21. This option does not include the new entries in Annex VIII and IX.

### 1.3 Option 2B: Inclusion of Annex VIII and IX

22. This option is the same as Option 2A but will also add equivalents of the Basel Annexes VIII and IX to the Waigani Convention. This option will duplicate the text from the Annexes in the Basel Convention into the text of the Annexes in the Waigani Convention.
23. Although this option requires the most change to the Waigani Convention, it is the recommended option as it:
  - captures the full scope of the changes and allows for the control of non-hazardous wastes to minimise the risk that these wastes pose to human health and the environment.
  - maintains the full text of the Annexes within the Waigani Convention making interpretation easier.
  - provides a simpler mechanism to allow for divergence in the control of wastes between the Basel Convention and the Waigani Convention where Parties agree there should be a difference.
24. The text of the amendment proposal for implementing Option 2B is at **Attachment C**.

### 1.4 Option 3: Annex alignment

25. This option is the same as 2B, but rather than duplicating the text of the Annexes in the Waigani Convention, this option will refer directly to the Annexes in the Basel Convention.
26. The text of the amendment proposal for implementing Option 3 is at **Attachment D**.

## Mechanism for adopting future amendments

27. The Working Group has developed two options that provide a mechanism for future amendments to the Basel Convention Annexes to be incorporated into the Waigani Convention. The two proposals provide a way for changes to be distributed to Parties and adopted into the text of the Convention without requiring a proposal to be put forward by one or more Parties to be decided at the following Waigani COP.
28. The aim of these proposals is to streamline future amendments to minimise the time taken for them to be adopted. Examples of current work under the Basel Convention that will impact on the Annexes includes:
  - The fifteenth meeting of the Conference of the Parties to the Basel Convention (face-to-face segment of COP-15 held 6-17 June 2022) adopted amendments to Annexes II, VIII and IX to the Convention with the objectives of enlarging the control of transboundary movements of e-waste.
  - The Expert Working Group (EWG) on the Review of Annexes was established to review Annexes I, III and IV, and related aspects of Annexes VIII and IX to the Basel Convention.

29. The options outlined below are only available if either option 2B or 3 is chosen when incorporating the plastic amendments into the Waigani Convention. This is because these two amendments have aligned the operation of Waigani Convention with the Basel Convention by allowing the control of non-hazardous wastes and including Annex VIII and IX that list hazardous and non-hazardous wastes.
30. The process for automatically amending the Waigani Convention is simplified if the Annexes of the Basel and Waigani Conventions align as this will allow for a direct transfer of obligations. The Working Group is also suggesting the following re-ordering of Annexes:

Current Annex	Amended Annex
Annex I – Categories of wastes which are hazardous wastes	Annex I – Categories of wastes to be controlled
	Add Annex II – Categories of wastes requiring special consideration
Annex II – List of hazardous characteristics	Renamed Annex III – List of hazardous characteristics
Annex III – Pacific Island Developing Parties	Renamed Annex VII A – Pacific Island developing parties
Annex IV – Other Parties	Renamed Annex VII B – Other parties (Aus/NZ)
Annex V – Disposal operations	Renamed Annex IV– Disposal operations
Annex VI A – Information to be provided on notification	Renamed Annex V A – Information to be provided on notification
Annex VI B – Information to be provided on movement document	Renamed Annex V B – Information to be provided on movement document Regulation 13 of the Waigani Regulations will need to be updated to reference Annex V B
Annex VII – Arbitration	Renamed Annex VI – Arbitration
	Add Annex VIII – List A
	Add Annex IX – List B

## 1.5 Option A: Notification with opt out

31. This option would require the Waigani Secretariat to circulate an amended Waigani Convention after amendments to the Basel Convention are made. These changes would come into effect after a certain period of time following circulation of the amendment to the Waigani Convention.
- For the proposed text below, this period is 6 months.
  - Any period could be agreed by the Waigani COP if 6 months was not suitable.
32. The Waigani Convention could be amended to give effect to this intention by introducing a new Article 18(4) in the following terms:

*Upon [the publication of] an amendment to the annexes to the Basel Convention, the Secretariat shall circulate to the Parties a notification of an identical amendment to the annexes of this Convention. This amendment shall come into force for all Parties [six months] after the date of circulation.<sup>1</sup>*

<sup>1</sup> Text enclosed in square brackets are variables which can be changed to suit the needs of Parties, e.g. ‘the circulation’ vs ‘the publication’ or a different timeframe. Six months has been suggested in order to align with the Basel Convention entry into force, however Parties may choose a different timeframe.

33. Under this approach, Parties can opt-out of an amendment through the pre-existing Article 18(2) procedure.

## 1.6 Option B: Notification with negotiation option

34. The second option builds on option A by introducing the ability of Parties to respond to the amendment's proposal provided by the Secretariat by proposing new text. If the new text obtains sufficient support, then that proposal would be adopted.
35. The Working Group has proposed text that requires two thirds of Parties to either object to an amendment proposal, or to agree to an alternative proposal put forward by one or more Parties. The Working Group has recommended two thirds majority, but any agreeable majority could be proposed for the Waigani COP.
36. The Waigani Convention could be amended to give effect to this by introducing the following Articles:

*18(4) Upon [the publication of] an amendment to the annexes to the Basel Convention, the Secretariat shall circulate to the Parties a notification of an identical amendment to the annexes of this Convention. This amendment shall come into force for all Parties [six months] after the date of circulation.*

*18(5) Within [60 days]<sup>2</sup> of receipt of communication of an amendment, any Party may notify the Secretariat of a proposal to alter the amendment. The Secretariat shall circulate such notifications to all Parties.*

*18(6) If [two thirds of] Parties, including the original notifying Party, submit a notification of support of the alternative amendment prior to [one month] before the original amendment would otherwise enter into force, the alternative amendment will be adopted and will enter into force [6 months]<sup>3</sup> from the date of circulation by the Depository of the original amendment. If less than two thirds of Parties submit a notification supporting the alternative amendment, the original amendment will enter into force.*

*18(7) If [two thirds of] Parties submit an objection to an amendment under Article 18(2), or two thirds of Parties agree to an alternative to that amendment under Article 18(5), the original amendment will not be adopted and will not enter into force.*

37. Under this approach, Parties can still opt-out of an amendment or an amendment proposal through the pre-existing Article 18(2) procedure.

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<sup>2</sup> The 60 days has been suggested to align with the OECD Decision on the Control of Transboundary Movements of Wastes Destined for Recovery Operations, however, any time may be selected by Parties.

<sup>3</sup> This date has been suggested as it would allow the amendment to enter into force in parallel with the amendments to the annexes of the Basel Convention, however, any other time may be selected by Parties.

## Conclusion

38. STAC-9 is now invited to consider this report as the final report of the Working Group and the options contained in the report of the Working Group.
39. The working group is also requesting STAC:
  - Provide feedback on the proposals, their operation, or suggested changes.
  - Provide guidance on the preferred option for incorporating the Basel Plastic amendments into the Waigani Convention for consideration at the twelfth meeting of the Waigani COP.
  - Provide guidance on the preferred option (if any) for introducing a mechanism that will allow future amendments to be incorporated into the Waigani Convention for consideration at the twelfth meeting of the Waigani COP.

## Attachments

**Attachment A:** The Basel Convention Conference of the Parties Decision on plastic waste amendments BC-14/12.

**Attachment B:** Detailed analysis for incorporating the plastic amendments.

**Attachment C:** The draft wording for implementing Option 2B.

**Attachment D:** The draft wording for implementing Option 3.