



Tonga

HAZARDOUS WASTES AND CHEMICALS ACT 2010

Act No. 28 of 2010



HAZARDOUS WASTES AND CHEMICALS ACT 2010

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HAZARDOUS WASTES AND CHEMICALS ACT 2010

Act No. 28 of 2010

**AN ACT TO PROVIDE FOR THE REGULATION AND PROPER
MANAGEMENT OF HAZARDOUS WASTES AND CHEMICALS IN
ACCORDANCE WITH ACCEPTED INTERNATIONAL PRACTICES AND
THE INTERNATIONAL CONVENTIONS APPLYING TO THE USE,
TRANSBOUNDARY MOVEMENT AND DISPOSAL OF HAZARDOUS
SUBSTANCES AND FOR RELATED PURPOSES**

I assent,
GEORGE TUPOU V,
27th August 2010.

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Short Title

- (1) This Act may be cited as the Hazardous Wastes and Chemicals Act 2010.
- (2) This Act shall come into force on a date to be declared by His Majesty's Cabinet and notified in the Gazette.

2 Interpretation

(1) In this Act, unless the context otherwise requires:

“**applicable Conventions**” means the –

- (a) Stockholm Convention;
- (b) Rotterdam Convention;
- (c) Basel Convention; and
- (d) Waigani Convention;

“**Basel Convention**” means the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 1989;

“**chemical**” means any manufactured or naturally occurring substance existing by itself or in a mixture or preparation, and specifically includes all pesticides and other preparations used in agriculture and industry;

“**Competent Authority**” means the Competent Authority for the Kingdom appointed under section 17, which for all purposes shall be the –

- (a) competent authority required to be appointed under the Basel and Waigani Conventions; and
- (b) the national authority required to be designated under the Rotterdam Convention;

“**Director**” means the Director for Environment and Climate Change;

“**environmentally sound manner**” means the taking of all practicable steps to ensure that hazardous substances are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;

“**Hazardous chemical**” means all –

- (a) persistent organic pollutants;
- (b) chemicals prohibited or regulated in accordance with the Rotterdam Convention;
- (c) other chemicals designated as hazardous under any law or by regulations made under this Act; and
- (d) any chemical which appears in a list of hazardous chemicals declared by the Minister;

“**Hazardous substance**” means any hazardous chemical and hazardous waste;

“**Hazardous waste**” means all wastes of any description which –

- (a) are regarded as hazardous wastes under the Basel or Waigani Conventions;
- (b) designated as hazardous wastes under any law in the Kingdom or by regulations made under this Act; or

(c) any substances which appears in a list of hazardous wastes declared by the Minister;

“**Minister**” means the Minister for Environment and Climate Change;

“**Ministry**” means the Ministry of Environment and Climate Change;

“**notifier**” means any person who gives a notification under this Act as authorised by section 30;

“**persistent organic pollutant**” means any of the chemicals or substances regulated under the Stockholm Convention;

“**prohibited persistent organic pollutant**” means all persistent organic pollutants which are, or contain, aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex and toxaphene;

“**radioactive wastes**” means waste which, as a result of being radioactive are subject to other international control systems, including international instruments, applying specifically to radioactive materials;

“**regulated persistent organic pollutant**” means all persistent organic pollutants which are, contain or may create or emit hexachlorobenzene, polychlorinated biphenyls, dioxins or furans;

“**Rotterdam Convention**” means the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam, 1998;

“**Stockholm Convention**” means the Stockholm Convention on Persistent Organic Pollutants, Stockholm, 2001;

“**transboundary movement**” means any movement of a hazardous substance from an area under the national jurisdiction (being any land, marine area or airspace) of one State to or through an area under the national jurisdiction of another State, or to or through an area not under the national jurisdiction of any State, provided at least the area of two States is involved in the movement;

“**Waigani Convention**” means the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, Waigani, 1995; and

“**wastes**” means any substance or object which is disposed of or intended to be disposed of, or which is required to be disposed of under any law.

(2) Reference may be made to the definitions in any of the applicable Conventions to assist in determining an appropriate meaning of any term or arrangement that is not defined in sub-section (1).

3 Acts binds the Crown

This Act shall bind the Crown.

4 Application of other relevant laws

- (1) This Act does not affect the operation or any aspect of the implementation of any law relating to –
 - (a) the control of pesticides;
 - (b) the management and regulation of living modified organisms and the implementation of the Cartagena Protocol;
 - (c) the prohibition and regulation of ozone depleting substances and the implementation of the Montreal Protocol;
 - (d) labour, commerce, industry and the licensing of businesses;
 - (e) quarantine and biosecurity arrangements; and
 - (f) customs and border control arrangements.
- (2) Where the provisions of this Act and any other law of the nature stated in subsection (1) apply to any particular circumstance –
 - (a) the relevant powers, requirements and processes applying under each law shall have full effect and the person to whom they apply in the circumstances shall fully comply with all applicable requirements; and
 - (b) the respective agencies responsible for the implementation and enforcement of the respective laws shall cooperate so as to ensure that all relevant requirements are applied and all relevant powers are exercised to give full effect to the provisions of each of the laws.

5 The precautionary principle to be applied

- (1) All persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the regulation, control, management and transboundary movement of hazardous wastes and chemicals within the Kingdom, shall apply the precautionary principle when discharging their responsibilities and functions, or exercising their powers.
- (2) For the purposes of this Act, the precautionary principle is applied if, in the event of a threat of damage to the environment or a risk to human health in the Kingdom, a lack of full scientific certainty regarding the extent of adverse effects is not used as a reason for not acting to prevent or minimise the potential adverse effects or risks arising in any way from a matter or thing regulated under this Act.

PART II - PERSISTENT ORGANIC POLLUTANTS

6 Prohibitions applying to persistent organic pollutants

- (1) Notwithstanding any other provision of this Act, no person may manufacture, produce, import or use any prohibited persistent organic pollutant in the Kingdom.
- (2) No person may store any prohibited persistent organic pollutant in the Kingdom unless the persistent organic pollutants are being stored prior to their lawful disposal in accordance with this Act.
- (3) No person may export any persistent organic pollutant except for the purpose of –
 - (a) laboratory-scale research or as a reference standard in the country of import; or
 - (b) disposal in an environmentally sound manner in the country of import.
- (4) Any permissible export of a persistent organic pollutant under sub-section (3) shall be undertaken in accordance with –
 - (a) the provisions of the National Implementation Plan approved under section 7(2);
 - (b) all applicable international rules, standards and guidelines; and
 - (c) any direction given by the Competent Authority to ensure that international rules, standards and guidelines are observed.

7 Regulated persistent organic pollutants

- (1) No person may manufacture, produce, store, import or use any regulated persistent organic pollutant in the Kingdom, unless –
 - (a) the import is required under section 21; or
 - (b) the manufacture, production, storage or use is in accordance with the National Implementation Plan approved under sub-section (2) and the requirements of the Stockholm Convention, applying to the applicable management arrangements for the relevant persistent organic pollutant ; and
 - (c) all lawful directions given under this Act and any other law relating to the management of the persistent organic pollutant are complied with.
- (2) The Minister may approve a National Implementation Plan, and any amendment to it, for the control and proper management of persistent organic pollutants in the Kingdom, and the implementation of the Stockholm Convention.

- (3) Regulations made under this Act may make provision for the implementation and enforcement of the National Implementation Plan approved under sub-section (2), or any particular provision of the Plan.

PART III - PROHIBITIONS RELATING TO OTHER HAZARDOUS SUBSTANCES

8 Prohibitions related to radioactive wastes

- (1) Notwithstanding any other provision of this Act, no person shall cause or arrange –
- (a) the importation of radioactive wastes into the Kingdom; or
 - (b) the movement of radioactive wastes through the territory of the Kingdom unless approval has been given in accordance with the Waigani Convention.
- (2) Any movement of radioactive waste approved under sub-section (1)(b) shall be conducted in accordance with the requirements of all applicable Conventions.

9 Prohibitions related to certain hazardous chemicals

- (1) No person may manufacture, produce, use or import any chemical which has been –
- (a) banned by the Competent Authority in accordance with the procedures of the Rotterdam Convention; or
 - (b) severely restricted by the Competent Authority in accordance with the procedures of the Rotterdam Convention, unless the relevant restrictions are observed.
- (2) No person may export any chemical to which sub-section (1) applies unless notification of the export has been given in accordance with the provisions of Part VII of this Act and of Article 12 of the Rotterdam Convention.

10 Prohibitions relating to hazardous wastes

- (1) No person may import any hazardous wastes into the Kingdom unless that person is under an obligation to re-import the hazardous wastes under any applicable Convention, and the provisions of section 21 are complied with.
- (2) No person may export any hazardous waste –
- (a) to a Party to the Basel Convention or the Waigani Convention if that Party has banned the import of that waste in accordance with the procedures of either Convention;

- (b) to a State or group of States belonging to an economic and/or political integration unit which has banned the import of that waste;
 - (c) to a Party to the Basel Convention or the Waigani Convention if that Party has not consented to the specific import of the hazardous wastes in accordance with the procedures of both Conventions;
 - (d) to any country that is not a Party to the Basel Convention or the Waigani Convention;
 - (e) for disposal within any area covered by any of the applicable Conventions; or
 - (f) for disposal by dumping or incineration at sea.
- (3) Any permitted export of hazardous wastes shall be –
- (a) accompanied by any movement documentation required under this Act or any other applicable law;
 - (b) packaged, labelled and transported in accordance with recognised international standards, rules and practices; and
 - (c) in accordance with any direction given by the Competent Authority to ensure that international rules, standards and guidelines are observed.
- (4) Notwithstanding any approval given for the export of hazardous wastes in accordance with the Basel Convention or the Waigani Convention, no hazardous waste may be exported unless they are to be managed in the country of import in an environmentally sound manner and in accordance with any technical guidelines approved under either Convention.
- (5) Any person who transports or disposes of any hazardous waste shall comply with –
- (a) the provisions of this Act and any regulation made under this Act;
 - (b) the provisions of any other law dealing specifically with the hazardous waste;
 - (c) the provisions of the National Implementation Plan approved under section 7(2) if the wastes contain any persistent organic pollutants;
 - (d) the conditions of any licence which may be required under any law or by regulations made under this Act;
 - (e) the requirements of any plan approved under section 13(2); and
 - (f) all internationally accepted standards applying to the transport and disposal of hazardous wastes.

PART IV - MANAGEMENT OF HAZARDOUS SUBSTANCES

11 Application of this Part

- (1) This Part applies to any person who owns, manages or operates any –
 - (a) business involving the manufacture, processing, storage, handling, management or transportation of hazardous wastes;
 - (b) business involving the manufacture, processing, handling, sale, distribution, storage or stockpiling of hazardous chemicals; or
 - (c) landfill site, waste dump or waste management facility.
- (2) The Minister may give notice to any person to whom this Part applies that they are to be in compliance with the requirements of this Part by a date specified in the notice.
- (3) The Competent Authority shall be responsible for implementing, monitoring and enforcing the provisions of this Part.
- (4) The requirements of this Part are in addition to any other provision of any applicable law and nothing in this Part shall be construed as relieving any person from the obligation to comply with the provisions of any other applicable law.

12 General obligations relating to hazardous substances

All persons to whom this Part applies shall –

- (a) take all practicable steps to reduce the generation of hazardous wastes to a minimum;
- (b) ensure that all hazardous substances are stored and managed so as to prevent pollution from the wastes and chemicals, and take all necessary action to minimise the consequences of any such pollution;
- (c) dispose of hazardous substances only at approved sites and in accordance with all legal requirements applying to the disposal of wastes under any applicable law;
- (d) take all necessary measures to eliminate releases into the environment from the intentional production or use of hazardous substances;
- (e) take all necessary steps to eliminate unintentional releases of hazardous substances into the environment;
- (f) ensure that hazardous substances are managed in an environmentally sound manner;
- (g) take all necessary steps to protect the health of employees handling hazardous substances, including the provision of appropriate training;

- (h) take all necessary steps to prevent the mixing of hazardous and non-hazardous wastes;
- (i) establish and maintain records, databases and registers of the hazardous substances with which they are concerned, including records of the type, quantity, quality and origin of the substances;
- (j) cooperate in the development and implementation of environmentally sound low-waste technologies and in the improvement of existing technologies;
- (k) hold all relevant licences and obtain all necessary permits and authorisations related to hazardous substances generated, possessed or managed by that person, and observe all requirements and conditions applying to such licences, permits and authorisations;
- (l) arrange any required insurance, surety or bond applying to generators, storers, transporters and disposers of hazardous substances under regulations made under this Act; and
- (m) provide whatever assistance is required by the Competent Authority to implement this Act and the applicable Conventions.

13 Planning requirements

- (1) Persons to whom this Part applies shall prepare a plan relating to the management of the hazardous substances with which they are concerned, and the plan shall make provision for –
 - (a) all aspects of the management of the hazardous substances so as to meet the requirements of section 12;
 - (b) the observance and application of recognized required standards applying to the management of the hazardous substances;
 - (c) processes for establishing and maintaining records, databases and registers of the hazardous substances;
 - (d) processes for reporting any necessary matter to the Competent Authority, including the reporting of any matter involving the hazardous substances which may pose a threat to human health or to the environment;
 - (e) emergency responses to incidents involving hazardous substances which may pose risk to human health or to the environment;
 - (f) matters relevant to protecting the health of employees handling hazardous substances, or working in their vicinity, including the provision of appropriate training; and
 - (g) any other matters specifically required by the Competent Authority or which are a general requirement stated in any national hazardous substances management plan approved and applied by the Minister.

- (2) All plans prepared under sub-section (1) shall be submitted to the Ministry when requested by the Director, and where any amendments to the plans are required by the Director the person to whom this Part applies shall ensure that the necessary amendments are made and that appropriate action is taken to ensure that the requirements of the amended plan are effectively implemented.
- (3) The Minister may approve a National Hazardous Substances Management Plan, or sectoral management plans, prepared by or on behalf of the Ministry, which shall –
 - (a) seek to protect human health and the environment from the risks of hazardous substances;
 - (b) be in accordance with requirements of the applicable Conventions and any standards determined in accordance with and for the purpose of implementing the Conventions;
 - (c) assist in the implementation of the applicable Conventions; and
 - (d) direct and guide the preparation of plans required under sub-section (1).

14 Reporting requirements

- (1) Persons to whom this Part applies shall –
 - (a) immediately notify the Director of any incident involving hazardous substances being discharged or released into the environment or which pose any threat or risk to human health or the environment;
 - (b) provide any other information relating to hazardous substances at the request of the Director; and
 - (c) make all records, databases and registers relating to hazardous substances available for inspection by the Director and authorised officers of the Ministry.
- (2) The Ministry shall make available all relevant information to the Competent Authority to enable it to discharge its responsibilities under the applicable Conventions to submit reports, share information or provide any necessary notification.

15 Transportation requirements

Persons to whom this Part applies shall ensure that hazardous substances are transported –

- (a) in accordance with any permit or approval required for such transportation under this Act or any other law, or imposed by any Ministry or agency in accordance with lawful authority;
- (b) in an environmentally sound manner and in accordance with accepted international standards and codes;

- (c) with sufficient and appropriate labelling and packaging and in a manner to permit the identification and effective containment of the hazardous substances; and
- (d) otherwise in compliance with any requirement prescribed by regulations made under this Act.

PART V - IMPLEMENTATION OF THE APPLICABLE CONVENTIONS

16 Focal Points

- (1) The Ministry shall be the Focal Point for the purposes of the applicable Conventions.
- (2) As Focal Point the Ministry shall have the functions and responsibilities of –
 - (a) communicating with the respective Secretariats of the applicable Conventions in relation to all aspects of the observance and implementation of the applicable Conventions;
 - (b) giving and receiving notifications under the applicable Conventions;
 - (c) liaising with the competent authorities to ensure that notifications and related processes are actioned in accordance with the applicable Conventions;
 - (d) ensuring that necessary records, databases and registers are maintained; and
 - (e) promoting access to information relating to hazardous substances.

17 Competent Authority

- (1) The Ministry shall be the Competent Authority for the purposes of this Act.
- (2) The functions and responsibilities of the Competent Authority shall include but shall not be limited to the following –
 - (a) considering and determining any applications for approvals for transboundary movements of hazardous substances in accordance with the applicable Conventions;
 - (b) notifying the Focal Point of determinations made that are required to be communicated in accordance with the requirements of the applicable Conventions;
 - (c) ensuring that relevant information is obtained and that records, databases and registers are maintained to enable the procedures of the applicable Conventions to be given full effect;

- (d) authorising the exchange of information relevant to the applicable Conventions;
- (e) promoting the planning processes provided for in sections 12 and 13;
- (f) encouraging industry initiatives and promoting voluntary agreements aimed at ensuring that –
 - (i) the generation of hazardous wastes is reduced at the source;
 - (ii) all hazardous substances are managed so as to prevent pollution and to minimise the consequences of any pollution incident;
 - (iii) measures are adopted to eliminate or reduce releases of hazardous substances into the environment;
 - (iv) controls are placed over stores and stockpiles of hazardous substances;
 - (v) that there is no mixing of hazardous and non-hazardous wastes;
 - (vi) relevant information is provided and that there is reporting of incidents that pose risks to human health and the environment;
 - (vii) there is effective monitoring of hazardous substances and of the level of compliance with the applicable Conventions; and
 - (viii) the health and welfare of employees working with hazardous substances is promoted and that relevant training is provided;
- (g) approving and implementing programs of public information, education and awareness;
- (h) facilitating cooperation in the development and implementation of environmentally sound low-waste technologies and the improvement of existing technologies;
- (i) cooperating in the transfer of technology and management systems and the development of technical capacities within the Kingdom;
- (j) developing and approving strategies, technical guidelines and codes of practice relating to the management of hazardous substances;
- (k) implementing procedures related to the implementation of this Act which minimise duplication with procedures applying to the implementation of other laws affecting the proper management of hazardous substances;
- (l) ensuring that the Kingdom is adequately represented in the negotiation and enforcement of all aspects of the applicable Conventions; and
- (m) promoting and implementing regional and sub-regional initiatives aimed at giving effect to the applicable Conventions.

18 Regulated substances

- (1) Subject to section 19 and unless the context otherwise requires, the hazardous substances regulated by the provisions of Parts VI, VII and VIII are –

- (a) regulated persistent organic pollutants;
 - (b) hazardous chemicals regulated under this Act;
 - (c) hazardous wastes regulated under this Act; and
 - (d) any waste which has the characteristics of hazardous wastes as provided by an applicable Convention.
- (2) In addition to the hazardous substances referred to in sub-section (1), the Competent Authority may determine that any other hazardous substance shall be regulated under Parts V, VI and VII, and shall ensure that notification is given in accordance with the applicable Conventions.

19 Exempted substances

No hazardous substance shall be exempted from the application of this Act unless the Conference of the Parties of any of the applicable Conventions resolves to make a specific exemption.

PART VI - CONTROLS OVER IMPORTS

20 Importation of hazardous wastes prohibited

Subject to section 21 the importation into the Kingdom of all hazardous and radioactive wastes is prohibited.

21 Duty to re-import

- (1) Notwithstanding section 20, the Competent Authority may authorise the importation of any hazardous wastes which have been exported from the Kingdom and which have not been managed in the country of import in accordance with the terms of any agreement applying to the export or the provisions of the Basel or Waigani Conventions.
- (2) Prior to any authorisation given under sub-section (1), the Director shall take all necessary steps to negotiate with the competent authority of the country of import to agree on alternative arrangements for the disposal of hazardous wastes in the country of import in an environmentally sound manner.
- (3) Any alternative disposal arrangements agreed to under sub-section (2) shall result in the disposal of the hazardous wastes within 90 days of the notification given of the intention to return the hazardous wastes, but nothing shall prevent agreement being reached for an extended period of time.
- (4) Where the duty to import any hazardous waste into the Kingdom has arisen as a result of any person's action, fault or omission, the Director may recover

any costs associated with the importation from that person, as if the costs were a civil debt owed to the Crown.

22 Controls over the importation of other hazardous substances

- (1) This section applies to hazardous chemicals –
 - (a) listed from time to time in Annex III of the Rotterdam Convention; or
 - (b) prescribed in regulations made under this Act as being hazardous chemicals to which this section applies.
- (2) The importation into the Kingdom of a hazardous chemical to which this section applies may only be undertaken if the Competent Authority has given notice in accordance with the Rotterdam Convention –
 - (a) that it consents to the importation of the particular hazardous chemical; or
 - (b) that it consents to the importation of that hazardous chemical subject to conditions being met, and the importer meets those conditions.
- (3) No person may import into the Kingdom any hazardous chemical to which this section applies if the Competent Authority has given notice in accordance with the Rotterdam Convention that it does not consent to the importation of that chemical.
- (4) The Competent Authority may give consent, with or without conditions, to the importation of a hazardous chemical to which this section applies
- (5) Any hazardous chemical which is prohibited in accordance with this section may not be –
 - (a) imported by any person; and
 - (b) produced or used in the Kingdom.

23 Controls over approved imports

The Competent Authority may impose requirements on the approved importation of any hazardous chemical relating to –

- (a) movement documentation to be completed and sent to designated agencies;
- (b) the use of the chemical and the purposes to which it may be applied;
- (c) packaging, labelling and the communication of warnings;
- (d) storage and containment; and
- (e) planning for the response to any impacts on human health and the environment from the hazardous chemical.

PART VII - CONTROLS OVER EXPORTS

24 Application of this Part

- (1) This Part applies to the following hazardous substances –
 - (a) persistent organic pollutants;
 - (b) hazardous wastes; and
 - (c) any hazardous chemical listed in Annex III of the Rotterdam Convention, or prescribed by regulations made under this Act.
- (2) No approval may be given under this Part that is inconsistent with the prohibitions and requirements of Part II.

25 Notifications of exports of hazardous wastes

No hazardous waste may be exported from the Kingdom to any destination in a country which is a Party to the Basel or Waigani Conventions unless –

- (a) notification has been given to the competent authority of the country of import containing the declaration and information stated in Schedule I;
- (b) the competent authority of the country of import has informed the notifier of its consent to the export;
- (c) the notifier has agreed to comply with any conditions placed on the approval by the competent authority of the country of import; and
- (d) the notifier has arranged for the movement of the hazardous substances to be insured, or has lodged a bond or other guarantee, as required by the competent authority of the country of import.

26 Controls over exports of hazardous chemicals

- (1) The Competent Authority shall, notify all prospective exporters of hazardous chemicals in the Kingdom of all chemicals listed in Annex III of the Rotterdam Convention that have been banned or severely restricted as imports-
 - (a) into the Kingdom; and
 - (b) into those countries to whom exports of hazardous chemicals are likely to be made from the Kingdom.
- (2) No exporter of hazardous chemicals in the Kingdom shall export any hazardous chemical to a country which no notification has been given under sub-section (1) until the exporter has –
 - (a) ascertained the status of that chemical under the Rotterdam Convention in the proposed country of import; and

- (b) complied with all requirements of the Rotterdam Convention in relation to the export.
- (3) After notification has been given under sub-section (1), no exporter in the Kingdom may export a hazardous chemical listed in Annex III of the Rotterdam Convention to a country which has banned or restricted the importation of the specific hazardous chemicals.
- (4) No exporter in the Kingdom may export a hazardous chemical which is not yet listed in Annex III of the Rotterdam Convention to a country which has restricted the importation of the specific hazardous chemicals, unless –
 - (a) notification has been given to the country of import in accordance with Article 12 and Annex V of the Rotterdam Convention; and
 - (b) approval for the export has been given by the competent authority of the country of import.

27 Requirements for all exports of hazardous chemicals

- (1) No hazardous chemical may be exported from the Kingdom unless –
 - (a) the necessary approval for the export has been given;
 - (b) the applicable customs code assigned to specific chemical is used on the shipping documentation;
 - (c) there is adequate labelling to inform of the nature of the chemical and of its risks to human health and the environment, taking into account relevant international standards; and
 - (d) the chemical is accompanied by a safety data sheet according to internationally recognised formats, if the chemical is used for occupational purposes.
- (2) All exporters of hazardous wastes shall –
 - (a) obtain information from the person to whom the wastes have been exported, and the person responsible for disposing of the wastes, that the wastes have been received and duly disposed of; and
 - (b) notify the Competent Authority as soon as this information is received; or
 - (c) if no such information has been provided, give appropriate notice to the Competent Authority.
- (3) The Competent Authority shall immediately notify the relevant competent authority in the State of import of any information provided under sub-section (2).

PART VIII - CONTROLS OVER HAZARDOUS SUBSTANCES IN TRANSIT

28 Controlling transit movements

- (1) This section applies to the following hazardous substances –
 - (a) persistent organic pollutants;
 - (b) all hazardous wastes;
 - (c) any hazardous chemical which has been banned in the Kingdom in accordance with Article 5 of the Rotterdam Convention; and
 - (d) any hazardous chemical listed in Annex III of the Rotterdam Convention, or prescribed by regulations made under this Act.
- (2) No hazardous substance may be imported into the Kingdom in transit to any other destination unless –
 - (a) notification has been given to the Competent Authority containing the declaration and information stated in Schedule II;
 - (b) the Competent Authority has informed the notifier of its consent to the transit;
 - (c) the notifier has agreed to comply with any conditions placed on the approval by the Competent Authority; and
 - (d) the notifier has arranged for the movement of the hazardous substances to be insured, or has lodged a bond or other guarantee, as required by the Competent Authority.

29 Ban of transit movements of radioactive wastes

No approval may be given for the transboundary movement in transit through the Kingdom of any radioactive wastes unless the provisions of the Waigani Convention are observed.

PART IX - PROCESSES FOR ALL NOTIFICATIONS AND APPROVALS

30 Person who may give notifications

Any notification required to be given in relation to the transboundary movement into the Kingdom of any hazardous substance that is not prohibited under this Act may be given to the Competent Authority by a notifier who shall either be the –

- (a) exporter in the country of export;

- (b) importer in the Kingdom; or
- (c) competent authority in the country of export.

31 Form of notifications for hazardous wastes

- (1) All notifications relating to hazardous wastes which are required to be given under this Act shall be in the form approved by the Competent Authority and providing the information stated in Schedule I.
- (2) All notifications shall include a duly completed and signed declaration by the exporter that the information contained in the notification is true and correct.

32 Form of notifications for hazardous chemicals

- (1) All notifications relating to hazardous chemicals which are required to be given under this Act or in order to comply with the provisions of the Rotterdam Convention shall be in accordance with Annex V of the Rotterdam Convention.
- (2) All notifications shall include a duly completed and signed declaration by the exporter that the information contained in the notification is true and correct.

33 Requirements as to time

The Competent Authority and all notifiers shall comply with requirements as to time which is stated in the relevant applicable Convention for the giving of any notification, decision or request.

34 Decisions of the Competent Authority

In relation to any notification given under this Act or any of the applicable Conventions, the Competent Authority shall be empowered to make any decision prescribed under the relevant applicable Convention.

35 Movement documentation

- (1) The movement documentation requirements stated in Schedule II shall apply to all transboundary movements of hazardous wastes into and out of the Kingdom.
- (2) The Competent Authority may –
 - (a) require any additional information to be contained in the movement documentation relating to the transboundary movement of hazardous wastes; and

- (b) impose any requirement in relation to movement documentation for the transboundary movement of hazardous chemicals into or out of the Kingdom.

PART X- ENFORCEMENT

36 Obligations of ships and aircrafts

- (1) No owner, master or pilot of any vessel or aircraft within the Kingdom's jurisdiction shall knowingly carry any hazardous substance on board the vessel or aircraft in breach of any requirement of this Act.
- (2) Any person who breaches this section commits an offence and shall upon conviction be liable to a fine not exceeding \$500,000 or to a term of imprisonment not exceeding 20 years or both, and if it is a company a fine not exceeding \$1,000,000.

37 Authorised Officers

The following officers shall be deemed as authorised officers under this Act:

- (a) Police officers;
- (b) Environment Officers appointed under the Environment Management Act;
- (c) Authorised Officers under the Public Health Act;
- (d) Custom Officers;
- (e) Quarantine Officers;
- (f) Authorised Officers of any Port Authority; and
- (g) Any other environment officers authorised in writing by the Minister.

38 Powers of enforcement

- (1) For the purposes of implementing and enforcing the provisions of this Act, and monitoring and containing the effects of hazardous substance on human health and the environment, authorised officers under this Act may -
 - (a) enter upon any land;
 - (b) enter private premises at all reasonable times where it is believed on reasonable grounds that there has been a contravention of this Act, after notifying the owner of their intention to do so;
 - (c) take samples of wastes, soil and water for testing and analysis;
 - (d) require the production of records and information relevant to the management, storage, movement and disposal of hazardous substances;

- (e) seize any hazardous substance, or shipment containing a hazardous substance, that is being managed, transported or disposed of –
 - (i) in breach of a requirement of this Act;
 - (ii) in breach of a provision of any of the applicable Conventions;
 - (iii) in a manner which poses a risk to human health or the environment; and
 - (f) order that certain substances, wastes and materials apparently containing or affected by hazardous substances be contained, removed or otherwise dealt with so as to minimise their adverse effects on human health or the environment.
- (2) Any person who refuses or fails to comply with a requirement given under sub-section (1)(d) or an order given under sub-section (1)(f) commits an offence and shall upon conviction be liable to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 5 years, or both.
- (3) The costs associated with any disposal of hazardous substances which have been seized or ordered to be disposed of under this section may be recovered as a debt owed by the person or persons in breach of this section.

39 General Offences

Any person who -

- (a) hinders or obstructs any authorised officer exercising a lawful power under this Act;
- (b) fails to comply with any lawful direction given by an authorised officer in accordance with this Act; or
- (c) aids, abets, procures or counsels the commission of any offence against this Act,

commits an offence and shall be liable upon conviction to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 5 years or both.

40 Authority to prosecute offenders

Prosecutions for offences against this Act may be undertaken by police officers, environment officers or the Attorney General.

41 Immunity for authorised officers

Any person lawfully exercising a power under this Act shall not be liable for any loss or damage, or be subject to any criminal prosecution, in relation to the reasonable exercise of the power under this Act.

42 Contravention of Parts II, III, IV, VI and VII

- (1) Any person who contravenes Part II or Part III of this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding 20 years imprisonment, and if a company, shall be liable to a fine not exceeding \$1,000,000.
- (2) Any person who contravenes Parts IV, VI or VII of this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding 15 years imprisonment, and if a company, shall be liable to a fine not exceeding \$750,000.

PART XI – MISCELLANEOUS**43 Regulations**

- (1) The Minister may, with the consent of Cabinet, make regulations necessary for the effective implementation of this Act and the applicable Conventions, including regulations which provide for –
 - (a) additional or alternative hazardous wastes and hazardous chemicals to be regulated under this Act;
 - (b) planning requirements (including compliance, implementation and emergency planning) for government agencies and for companies and persons involved in the management of hazardous substances;
 - (c) the implementation of relevant international standards;
 - (d) the collection, evaluation and reporting of data;
 - (e) monitoring the effects of hazardous substances and the status of implementation of the applicable Conventions;
 - (f) responsibilities to maintain registers, and for information to be recorded in them;
 - (g) additional controls over imports and exports, including the tracking of shipments and other border control activities such as customs codes and identification measures;
 - (h) the imposition of requirements relating to containers, packaging and labelling for hazardous substances;
 - (i) additional licensing, permit and certification systems, including permits for the collection, transportation and disposal of hazardous wastes and substances;
 - (j) requirements relating to the sound management of hazardous substances, and the operation of waste management and disposal facilities;

- (k) requirements for the provision safety equipment and procedures and for the training of employees working with hazardous substances;
 - (l) specific provisions relating to managing radioactive wastes and substances in the Kingdom, including regulating or prohibiting the importation of equipment and materials which may generate or become radioactive wastes;
 - (m) obligations to minimise pollution from wastes and substances, and to minimise the consequences of any pollution incidents;
 - (n) reporting requirements in relation to pollution incidents, discharges, likely impacts on human health and the environment and other relevant matters (including protections for persons making such reports);
 - (o) all aspects of the enforcement framework by the Competent Authority and other agencies, including the promotion of inter-agency cooperation and coordination;
 - (p) promoting cooperation in the taking of legal proceedings for breaches of this Act;
 - (q) additional powers by relevant agencies to obtain information;
 - (r) the provision of powers and facilities to monitor and verify compliance, and to order remedial or preventive action;
 - (s) the promotion and enforcement of environmentally sound management practices and encouragement for the adoption of new environmentally sound technologies;
 - (t) the imposition of “user fees” and the “polluter pays” principle;
 - (u) controls over the incineration and dumping of wastes and substances at sea;
 - (v) regulating and rehabilitating areas and buildings contaminated by hazardous substances;
 - (w) the effective involvement of community and industry representatives in planning and decision making processes;
 - (x) the provision of relevant information, education and training programmes;
 - (y) facilitating the implementation of regional and sub-regional initiatives concerning the proper management of hazardous substances; and
 - (z) prescribing fees and forms.
- (2) The regulations made under this section may prescribe offences and impose penalties being fines not exceeding \$100,000 or imprisonment for a period not exceeding 10 years, or both.

Passed by the Legislative Assembly this 12th day of August 2010.

SCHEDULE I**INFORMATION TO BE PROVIDED ON NOTIFICATIONS OF
TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES**

1. Reason for waste export
2. Exporter of the waste (details as set out in Note 1)
3. Generator(s) of the waste and site of generation (details as set out in Note 1)
4. Disposer of the waste and actual site of disposal (details as set out in Note 1)
5. Intended carrier(s) of the waste or their agents, if known (details as set out in Note 1)
6. Country of export of the waste
Competent authority (details as set out in Note 2)
7. Expected countries of transit
Competent authority (details as set out in Note 2)
8. Country of import of the waste
Competent authority (details as set out in Note 2)
9. General or single notification
10. Projected date(s) of shipment(s) and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit) (details as set out in Note 3)
11. Means of transport envisaged (road, rail, sea, air, inland waters)
12. Information relating to insurance (details as set out in Note 4)
13. Designation and physical description of the waste including Y number and UN number and its composition (details as set out in Note 5) and information on any special handling requirements including emergency provisions in case of accidents
14. Type of packaging envisaged (e.g. bulk, drummed, tanker)
15. Estimated quantity in weight/volume (details as set out in Note 6)
16. Process by which the waste is generated (details as set out in Note 7)

17. For wastes listed in Annex I, classifications from Annex III: hazardous characteristic, H number, and UN class
18. Method of disposal as per Annex IV
19. Declaration by the generator and exporter that the information is correct
20. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import
21. Information concerning the contract between the exporter and disposer.

Notes

- 1 Full name and address, telephone or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.
- 2 Full name and address, telephone, telex or telefax number.
- 3 In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.
- 4 Information to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.
- 5 The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.
- 6 In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.
- 7 Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

SCHEDULE II**INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT FOR
TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES**

1. Exporter of the waste (details as set out in Note 1)
2. Generator(s) of the waste and site of generation (details as set out in Note 1)
3. Disposer of the waste and actual site of disposal (details as set out in Note 1)
4. Carrier(s) of the waste or his agent(s) (details as set out in Note 1)
5. Subject of general or single notification
6. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste
7. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated
8. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable)
9. Information on special handling requirements including emergency provision in case of accidents
10. Type and number of packages
11. Quantity in weight/volume
12. Declaration by the generator or exporter that the information is correct
13. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned which are Parties
14. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.

Notes

The information required on the movement document shall where possible be integrated in one document with that required under transport rules. Where this is not possible the information should complement rather than duplicate that required

under the transport rules. The movement document shall carry instructions as to who is to provide information and fill-out any form.

- 1 Full name and address, telephone or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.