

Orica [SEC=UNCLASSIFIED]

Side 1 af 1

From: Hall, Damien [mailto:Damien.Hall@environment.gov.au]
Sent: Friday, September 11, 2009 3:34 AM
To: Hermansen, Dorte
Cc: Reville, Barry; Rothenfluh, Daniel; Schou, Lone
Subject: Orica [SEC=UNCLASSIFIED]
Importance: High

Dear Dorte,

As we discussed last week.

Please find attached to this email an outline of the legal process to be followed by the Australian Government Minister for the Environment, Heritage and the Arts (the Minister) before he can grant a permit to Orica for export of the hexachlorobenzene (HCB) waste to Denmark.

As mentioned in the attachment we believe there may be several other possibilities that might be worth discussing by teleconference.

Should you, however have any questions please feel free to contact me by return email or by phone. I think you have my numbers but just in case they are:

(work) +65 2 6274 1411
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Warm Regards
Damien

<<Outline of Legal Process in Australlia (Final110909).doc>>

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OUTLINE OF THE LEGAL PROCESS IN AUSTRALIA FOR THE ASSESSMENT OF APPLICATIONS FOR EXPORT

The following provides an overview of the legal process which is to be followed by the Australian Government Minister for the Environment, Heritage and the Arts (the Minister) before he can grant a permit to Orica for export of the hexachlorobenzene (HCB) waste to Denmark.

It is important to state from the outset that, consistent with the Basel Convention's general obligations (Article 4), Australia's *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Act) does not allow for the export of hazardous wastes if the importing country has not provided **written consent** to the proposed import.

THE HAZARDOUS WASTE (REGULATION OF EXPORTS AND IMPORTS) ACT 1989¹

1. Object and aims

Object:

The object of the Act is to regulate the export, import and transit of hazardous waste to ensure that exported, imported or transited waste is managed in an environmentally sound manner.

Aim:

The Act aims to give effect to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

2. Grant of Basel import permits and Basel export permits (Section 17 of the Act)

Our Minister must grant Orica a permit if he is satisfied:

- (a) that dealing with the HCB in accordance with the export proposal would be consistent with the environmentally sound management² of the hazardous waste; and
- (b) that the competent authority of the country has given written consent³ to the grant of the permit; and
- (c) that the consent was given in accordance with Article 6 of the Basel Convention; and
- (d) that the HCB waste will be allowed to be transported through any foreign country through which the waste is proposed to be transported⁴; and

¹ The Act can be found at [http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/CBCAE9AC22A9B70BCA256F71004E3EE1/\\$file/HazWasteRegExImp89.rtf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/CBCAE9AC22A9B70BCA256F71004E3EE1/$file/HazWasteRegExImp89.rtf)

² A reference in the Act to the *environmentally sound management* of hazardous waste is a reference to taking all practicable steps to ensure that the waste is managed in a manner that will protect human health, and the environment, against the adverse effects that may result from the waste.

³ A reference in the Act to a consent given by the competent authority of the country is a reference to a consent given in accordance with Article 6 of the Basel Convention.

⁴ South Africa has agreed to and provided its written consent to the transit.

(e) having regard to:

- (i) Orica's financial viability; and
- (ii) Orica's previous record in relation to environmental matters; and
- (iii) any other relevant matters;

the applicant is a suitable person to be granted a Basel permit; and

(f) that Orica has appropriate insurance.

The Act allows the Minister to refuse to grant a permit, although these preconditions are met, on a number of grounds including that there is another way of dealing with the hazardous waste which would not pose a significant risk of injury or damage to human beings or the environment, or that the waste could be disposed of in an environmentally sound way within Australia. As discussed further below it is the Department's assessment that there is not an appropriate alternative means of disposal available in Australia.

3. Export permits for final disposal may be granted only in exceptional circumstances (Section 18A of the Act)

Our Minister may only grant a Basel export permit authorising the export of Orica's HCB waste if it will be disposed of by a method that is within the scope of Section A of Annex IV to the Basel Convention⁵ if:

- (a) at the time of the decision to grant the permit, particulars of the export are specified in the regulations; and
- (b) our Minister is satisfied that there are exceptional circumstances.

In deciding whether there are exceptional circumstances our Minister must have regard *inter alia* to:

- (a) whether there will be a significant risk of injury or damage to human beings or the environment if he decides not to grant the permit.

As recently confirmed.

We undertook a thorough assessment consistent with the Act prior to sending you the SIA report and the Duly Reasoned Request (DRR).

As advised, by email on 2 September 2009, we also have confirmed that our Minister read the SIA report and the DRR and at the time agreed that the Department should send the SIA report and the DRR to you.

We also have confirmed that no new information has appeared which changes the Department's view from that expressed in the DRR. As a result, we expect to be briefing our Minister that Australia does not have the capacity to deal with the waste and that the export of the waste provides the only feasible means for its environmentally sound management and disposal.

The timing of this briefing is however, subject to us reaching an agreement on the timing of your decision to accept the import as the lack of **written consent** from

⁵ Section A of Annex IV of the Basel Convention deals with operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct-re-use or alternative uses – D1 – D15.

Denmark prevents our Minister from making his decision, as required in Section 17 (1) (b) (i) and (ii) of the Act.

Timing of the decision

(a) The usual practice under our Act (as discussed above) is that once we receive **written notification of consent** from the importing country, our Minister will then decide whether to grant the permit and approve the export. This would normally take between two to three weeks.

(b) Given the circumstances of the Orica application, it may be possible to arrange for our Minister to make his decision within one or two hours of receiving written consent from the Danish Competent Authority to allow the import. This would then allow any public release of the decision to be made at a mutually convenient time for both governments. We would need to discuss the arrangements beforehand to ensure that this proceeded smoothly.

There are several other possibilities that might be worth discussing by teleconference next week.