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Waste Management Policy Group

FINAL GUIDANCE DOCUMENT FOR DISTINGUISHING WASTE FROM NON-
WASTE

Paris, 23-24 April 1998

This paper was submitted to the Delegates of the WMPG at the April 1998 meeting for consideration.

The paper provides guidance for distinguishing wastes from non-wastes and outlines the remaining unresolved contentious issues.

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FOREWORD

At the Waste Management Policy Group (WMPG) meeting held in March 1997, the WMPG considered the Draft Guidance Document on Distinguishing Wastes from Non-waste [ENV/EPOC/WMP(97)2]. The WMPG encouraged the Secretariat to continue the project and emphasised the need for a meeting of the extended co-ordinating group. The extended co-ordinating group met on two occasions, May 1997 in London and September 1997 in The Hague.

The extended co-ordinating group agreed, at the September 1997 meeting, to circulate a revised document to Member countries for trial use. Member countries were invited to provide the OECD Secretariat with their experiences and observations before 31 January 1998. This document, modified by the Secretariat, takes account of comments received.

It was also agreed, at the September 1997 meeting, that the Secretariat would outline any unresolved contentious issues and present them at the WMPG meeting in April 1998. These unresolved issues were the following:

- i) The development of guidance, in the OECD context, is compounded by two issues. The first issue is the fact that many Member countries have enacted a different definition of waste than the one set out in OECD Council Decision C(88)90(Final). The main difference between these definitions concerns the intended destination of a material; the intended destination of a material is the decisive factor in the OECD definition. However, it is not the decisive factor in many of the definitions enacted by many OECD Member countries. Secondly, formal implementation of OECD Council Decision C(92)39/FINAL can only be achieved through national legislation that has to be promulgated within each Member country. In particular, Member countries have different views regarding the status of processes that utilise certain waste materials as feedstocks.
- ii) Consequently, a number of divergent views and opinions have been expressed during the development of the guidance document. The following paragraphs outline some of the issues on which it was not possible to reach a consensus view. Some Member countries expressed the view that Table 2 of C(88)90(Final) should be reviewed and, if necessary, revised in order to better distinguish between “final disposal” (Table 2.A) and “recovery” (Table 2.B) operations. However, other Member countries pointed out that such a review was outside the terms of reference of this exercise.
- iii) Member countries have different views regarding the status of processes that utilise certain waste materials as feedstocks. Divergent views also exist as regards the existence of commercial specifications for such waste materials.
- iv) Divergent views also exist regarding the terms “direct re-use” and “alternative use” in the context of Table 2.B. Therefore, this Guidance Document can only provide limited general guidance on the question of whether a material falls within the scope of OECD Council Decision C(92)39/FINAL.

Delegates to the Waste Management Policy Group have had the opportunity to review this document and have agreed that it should be de-classified. This document is published under the authority of the Secretary-General of the OECD.

FINAL GUIDANCE DOCUMENT FOR DISTINGUISHING WASTE FROM NON-WASTE

PURPOSE

1. The need to develop guidance for Member countries of the Organisation for Economic Co-operation and Development (OECD) so that wastes can be more easily characterised in comparison with other materials (non-wastes) has been recognised by the Waste Management Policy Group (WMPG). This paper seeks to identify common factors which can be evaluated to indicate whether or not a material may be regarded as waste, in the context of OECD Council Decision on the Control of Transfrontier Movements of Waste Destined for Recovery Operations (OECD Decision C(92)39/FINAL). Nevertheless it should be noted that ultimately, in cases of dispute, interpretation of the definition of the term waste, in the context of OECD Decision C(92)39/FINAL, is a matter for the Courts.

BACKGROUND

2. In OECD Council Decision on the Transfrontier Movements of Hazardous Wastes, OECD Council Decision C(88)90(Final), wastes are defined as:

“materials other than radioactive materials intended for disposal for reasons specified in Table 1.”

Table 1 specifies reasons why materials are intended for disposal by virtue of their condition; "disposal" means any of the operations specified in Table 2.

3. The definition set out in the OECD Decision C(88)90(Final) is implemented within the context of national laws and regulations. The different implementation of this definition can lead to further difficulties in achieving consistent application, particularly when materials are subjected to transfrontier movements for recovery in the context of OECD Decision C(92)39/FINAL, since different decisions are reached in different countries about the status of the same material.

4. Many OECD Member countries have enacted a different definition of waste than the one set out in OECD Decision C(88)90(Final). The notion of discarding (which is often not defined) is inherent to the definition of waste in the majority of Member countries. At least one Member country has experienced a history of litigation arising from the interpretation of the word “discard”. The definitions of waste enacted by OECD Member countries are contained in the Appendix.

CONSIDERATIONS

Definition set out in OECD Decision C(88)90(Final)

5. For the purposes of OECD Decision C(92)39/FINAL, wastes are defined in the OECD Decision C(88)90(Final) as:

“materials other than radioactive materials intended for disposal for reasons specified in Table 1.”

"Disposal" means any of the operations specified in Table 2 of the Decision. Table 2 is divided into two sections; Table 2.A - the "D" List (Final Disposal Operations) and Table 2.B - the "R" List (Recovery Operations).

6. Prima facie, Tables 1 (the "Q" List) and 2 (the "D" and "R" Lists), constitute a set of criteria to determine whether a material satisfies the waste definition as set out in OECD Decision C(88)90(Final). It should be noted that Tables 1 and 2 are interdependent; neither table should be used in isolation to determine the status of a material. The reasons set out in Table 1 are only relevant to a material intended for a Table 2 operation. Similarly a material destined for a Table 2 operation may not be a waste; the material must be destined for a Table 2 operation for one of the reasons set out in Table 1. In essence, a material intended for any operation specified in Table 2, for one or more of the reasons specified in Table 1 is a waste.

7. Table 1 consists of 16 reasons why materials are intended for disposal. This Table appears to be comprehensive and exhaustive by virtue of two reasons (Q1 - Production residues not otherwise specified below; and Q16 - Any materials, substances or products which the generator or exporter declares to be waste and which are not contained in the above categories). In view of the comprehensive character of Table 1 it appears that any material (other than radioactive material) is a potential waste.

8. Consequently, the definition of the term "waste", in the context of OECD Decisions hinges on the definition of "disposal" as set out in Table 2 of OECD Decision C(88)90(Final). This table consists of two sections: Table 2.A (the "D" List - final disposal operations) and Table 2.B (the "R" List - recovery operations). In other words the definition of waste as set out in OECD Decision C(88)90(Final) hinges on the intended destination of a material. It should be noted that, in the context of OECD Decisions, the term "disposal" used to define "waste" includes its consignment to a recovery operation (cf. Table 2.B).

Implementation by Member Countries

9. As previously stated many OECD Member countries have enacted a different definition of waste than the one set out in OECD Decision C(88)90(Final) (cf. Appendix A). For example, OECD Member countries which are also members of the European Community (EC) are required to comply with the relevant EC legislation on waste. In the EC waste is defined in Article 1(a) of Council Directive 75/442/EEC on waste as:

"any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard."

10. Many of these definitions appear not to directly refer to either Table 1 (Reasons Why a Material is Intended for Disposal or Table 2 (Disposal Operations) of OECD Council Decision C(88)90(Final)). In most cases the different definitions of waste, enacted by Member countries, appear not to hinge on the intended destination of a material. The notion of discarding appears to be the decisive factor in determining whether a material is a waste in the majority of these different definitions.

11. Presently, except for case law, there is little guidance concerning the notion of discarding. Some Member countries are of the opinion that the OECD should consider the notion of discarding as a first step in providing guidance. Others contend that the notion of discarding is not an issue that should be considered in this guidance paper, since the term does not directly feature in the OECD definition of waste.

12. Notwithstanding the different opinions expressed regarding the issue of providing guidance on the notion of discarding, it appears that the notion of discarding includes the consignment of a material to a waste management process, including processes in which materials are recovered. Therefore, whilst the notion of discarding may differ from the OECD notion of disposing, both notions encompass the consignment of a material/waste to a waste recovery/recycling/reclamation process.

Table 2 to OECD Decision C(88)90(Final)

13. The introductory notes to Table 2 suggest that the “D” and “R” Lists are merely illustrative - Table 2 does not establish an exhaustive definition of the term “disposal”. For the purposes of providing guidance on the definition of waste in the context of OECD Decision C(92)39/FINAL, this paper is primarily concerned with Table 2.B of OECD Decision C(88)90(Final).

14. Table 2.B (the “R” List) is an illustrative list of 13 generic types of recovery operations. Whilst Table 2.B may not exhaustively define “recovery operations”, it does illustrate that a “recovery operation” entails a process by which materials, which are no longer fit for their originally intended purpose, are transformed into a usable state or by which materials are extracted in usable form.

15. Although Table 2.B merely provides illustrations of “recovery operations”, some concerns have been expressed regarding potential areas of overlap between the “R” List (recovery operations) and the “D” List (final disposal operations - Table 2.A). A number of Member countries wish to see a review and revision of Table 2 in order to better distinguish between final disposal and recovery and to provide a more comprehensive definition. A revision of either Table 1 or Table 2 is beyond the scope of this guidance document. However, many Member countries have clearly indicated that it would be desirable to more clearly distinguish between operations listed in Table 2.A and Table 2.B.

16. Table 2.B seems to have two major potential areas of overlap with Table 2.A. The first of these relates to the distinction between incineration (D10 and D11) and use as a fuel in an energy recovery system (R 1). The other potential area of overlap relates to the distinction between land treatment resulting in benefit to agriculture or ecological improvement (R10) and land treatment (D2). At least one Member country prohibits the importation of wastes destined for R1 and R10 operations.

17. In addition, some Member countries believe that there is a need to better distinguish between Table 2.B and the processing of other materials. Attempts to distinguish between recovery operations and other operations clearly indicate that the reason for disposal (or the notion of discarding) and the description of the operation are interdependent and must be examined at the same time to determine if the material is a waste and if the operation is a recovery operation.

18. Furthermore in assessing the validity of a recovery operation many Member countries, when considering a proposed transfrontier movement, take account of various factors on a case-by-case basis. The factors include, but are not limited to, the ratio of recoverable to non-recoverable waste, the estimated value of the materials finally recovered and the cost of disposal of the non-recoverable fraction. (cf. Annex 2 to OECD Decision C(92)39/FINAL).

General Provisions of OECD Decision C(92)39/FINAL

19. Section II of Annex I to OECD Decision C(92)39/FINAL sets out the general provisions of the Decision. Sub-paragraph (1)(a) requires that, in order for a transfrontier movement of waste to fall within the scope of OECD Decision C(92)39/FINAL, the waste must be destined for a recovery operation within a facility which, under applicable domestic law, is operating or is authorised to operate in the importing country. This requirement appears to take account of the fact that some operations, although not primarily waste management operations, utilise certain waste materials as feedstocks.

20. However, in the context of OECD Decision C(92)39/FINAL, Member countries have diverging views regarding the status of processes which utilise certain waste materials as feedstocks. These diverging views, and the additional considerations set out below, are based on national legislation, not on OECD Council Decision C(92)39/FINAL. Therefore, it is not only the different enactment of the OECD definition of waste that can cause difficulties in achieving consistent application of OECD Decision C(92)39/FINAL. At least one Member country takes the view that consent from the importing Member country should be adequate to establish that a particular operation is a valid recovery process. This view is consistent with the requirements set out in Section II of OECD Decision C(92)39/FINAL.

21. Moreover formal implementation of OECD Decision C(92)39/FINAL can only be through national legislation which has to be promulgated in Member countries. Therefore, it is possible that the scope of the legislation, in some Member countries, enacting OECD Decision C(92)39/FINAL is broader than the general requirements set out in OECD Decision C(92)39/FINAL. As a consequence some Member countries may control the transfrontier movements of any waste irrespective of its intended destination or use.

Additional Considerations Applied

22. In order to evaluate the status of a material, many Member countries apply various considerations on a case by case basis. The following is a summary of those considerations used by Members countries in the form of questions. It should be noted that some of these questions are included in the forms for application made to the OECD Review Mechanism.

General Considerations.

- a) Is the material produced intentionally?
- b) Is the material made in response to market demand?
- c) Is the overall economic value of the material negative?
- d) Is the material no longer part of the normal commercial cycle or chain of utility?

Characteristics and Specification.

- e) Is the production of the material subject to quality control?
- f) Does the material meet well developed nationally and internationally recognised specifications/standards?

Environmental Impact.

- g) Do these standards include environmental considerations, in addition to technical or economic considerations?
- h) Is the use of the material as environmentally sound as that of a primary product?
- i) Does the use of the material in a production process cause any increased risks to human health or the environment greater than the use of the corresponding raw material?

Use and Destination of the Material.

- j) Is further processing required before the material can be directly used in a manufacturing/commercial application?
- k) Is this processing limited to minor repair?
- l) Is the material still suitable for its originally intended purpose?
- m) Can the material be used for another purpose as a substitute material?
- n) Will the material actually be used in a production process?
- o) Does the material have an identified use?
- p) Can the material be used in its present form or in the same way as a raw material without being subjected to a recovery operation (Table 2B)?
- q) Can the material be used only after it has been subjected to a recovery operation (Table 2B)?

23. It should be noted that no particular weighting can be assigned to any of the above considerations. In order to evaluate the status of a material, comprehensively, all of the above considerations may be applied on a case-by-case basis. The fact that a material may have an identified use may be a valid consideration but it should not be used in isolation to indicate the status of a material.

24. Attempts to incorporate the various considerations, used by Member countries on a case by case basis, into a universal flow chart have not been successful. Although many Member countries supported the concept of a flow chart as a means of providing guidance, others did not support this concept. Moreover, efforts to incorporate all the possible scenarios into one flow chart merely illustrated the inherent circularity of the waste definition.

25. As already stated Member countries have enacted different definitions and requirements than those set out in OECD Decisions. Presently, as a consequence, divergent views and approaches exist within the OECD area. Therefore, this guidance paper can only provide some general principles based on the considerations listed in paragraph 22 above. In order to facilitate this provision the paper discusses transfrontier movements of wastes (materials) for their continued use and direct re-use or alternative uses.

TRANSFRONTIER MOVEMENTS OF MATERIALS FOR THEIR ORIGINALLY INTENDED USE

26. Consider a material, which can still be legally used for its original purpose in one Member country, exported to another Member country. The imported material is legally used for its original purpose in the importing Member country. In these circumstances, the material has not been destined for a recovery operation which is operating or is authorised to operate in the importing Member country (cf. OECD Council Decision C(92)39/FINAL). Therefore transfrontier movements of such materials are unlikely to fall within the scope of OECD Council Decision C(92)39/FINAL. Examples include: a second-hand motor vehicle sold to another person (in another Member country) for continued use as a motor vehicle; and the exportation of used computers to another country for continued use as computers.

27. Both of the above are examples of materials which can be continually and lawfully used in both the exporting and importing Member countries. It is generally accepted that the transfrontier movement of a material between two Member countries does not fall within the scope of OECD Decision C(92)39/FINAL when the material, which could still be legally used in the country of export, is exported for its continued use for its original purpose and that such use is legally allowed in the country of import. In these circumstances it is unlikely that the material satisfies the waste definition in either Member country.

28. However, consider the transfrontier movement of a material, no longer fit for its intended purpose in one Member country (e.g., out of date, no longer conforms to minimum legal standards for appropriate use in the exporting Member country) to another Member country, where the material can and will be used for its originally intended purpose. The continued use of the material in this other Member country is legitimate because the relevant minimum standards are less stringent than those applied in Member country in which the material is located. Although the material is no longer fit for its original purpose in one Member country, the definition of waste set out in OECD Decision C(88)90(Final) is unlikely to be satisfied since the material appears not to be intended for a Table 2 operation.

29. The material (waste) is transported to another Member country where it will continue to be used for its originally intended purpose. Therefore, the material is not destined for a recovery operation within a facility which, under applicable domestic law, is operating or is authorised to operate in importing Member country. Consequently, it is difficult to envisage how such a movement could fall within the scope of OECD Decision C(92)39/FINAL. (cf. Annex 1, Section II of OECD Decision C(92)39/FINAL). However, since many Member countries have enacted different definitions of waste, the first issue to be addressed is whether the material satisfies the definition of waste as set out in the exporting Member country. In addition, some Member countries may require movements of such wastes to be controlled.

30. A practical example of the above is the exportation of part-worn (used) tyres. Used tyres are commercially traded and exported from one Member country to another Member country for continued use. The tyres are exported because they no longer meet the legal requirements in the country of export. However, the legal requirements in the importing country are different (i.e., less stringent) and the used tyres are considered to be fit for their originally intended purpose.

TRANSFRONTIER MOVEMENTS OF MATERIALS FOR DIRECT RE-USE OR ALTERNATIVE USES.

31. In the context of OECD Decision C(92)39/FINAL the concepts of “direct re-use” and “alternative uses” were first considered during the OECD Workshop on Waste Destined for Recovery Operations, held in Vienna in June 1991. The Background Document for the Workshop contained an Annex 1; which set out a suggested glossary of terms pertaining to recovery operations. The terms “direct re-use” and “alternative uses” were dealt with in paragraphs 10 and 11 respectively.

32. In this glossary “Direct Re-Use” is described, in paragraph 10, as the act of reclaiming some portion of a waste stream which would otherwise have been sent to final disposal and using the reclaimed fraction without physical and/or chemical transformations for the same purpose as would be served if comparable virgin materials were employed. “Alternative Uses” are described, in paragraph 11, as the same as direct re-use except that the reclaimed portion of the waste stream is not used for the same purpose as would be served if comparable virgin materials were employed, but rather as a substitute for other virgin materials.

33. The above paragraphs illustrate that the concepts of “direct re-use” and “alternative uses” were intended, in the context of OECD Decision C(92)39/FINAL, to be applied to materials which have already been fully recovered by a Table 2.B operation and not to materials (substances/objects) that are not destined for a Table 2.B operation. The heading to Table 2.B. (Operations Which May Lead to Resource Recovery, Recycling, Reclamation, Direct Re-use or Alternative Uses) of OECD Council Decision C(88)90(Final) clearly reinforces this illustration.

34. However, as previously stated many Member countries have enacted a different definition of waste than the one set out in OECD Decision C(88)90(Final). In these [broader] different definitions the destination of a material (substance/object) is not the decisive factor. Consequently, Member countries have different understandings of the concepts of “direct re-use” and “alternative uses”. Moreover, divergent views and approaches to the concepts of “direct re-use” and “alternative use” exist within the OECD area.

35. Many Member countries are of the opinion that materials (substances/objects), which may or may not satisfy their national definition of waste, can be put to either a “direct re-use” or an “alternative use” in another Member country. Such materials (substances/objects) are used as such or inputted into processes, which are neither operating nor authorised to operate as waste recovery operations in the importing Member country. The definition of waste set out in OECD Decision C(88)90(Final) is unlikely to be satisfied if the material is not destined for a Table 2 operation. However, the material could satisfy the national definition of waste in either the exporting or importing Member country. Consequently, some Member countries might require such movements to be controlled under their national legislation.

36. Notwithstanding all the different perceptions regarding terminology, the notion of discarding or the distinction between recovery operations and the processing of other materials there appears to be a view emerging that a specific waste may not be subjected to waste controls in exceptional circumstances. At least one Member country has established a national system of conditional exemption from waste controls. In this national system a waste is not subjected to controls normally applied to a waste in the following circumstances:

The material must be transported directly from the producer to the process in which it is to be used;

AND

The material must be directly and completely used as an ingredient in the process;

AND

The process must not be classified as (or comparable to) a waste management process.

37. The above national system of conditional exemptions is applied on a case by case basis. The facts of each individual case are taken into account when considering an application for a conditional exemption. It appears that the granting of a conditional exemption to a particular waste does not remove that waste from the scope of the waste definition. A number of Member countries have expressed interest in this approach, however, it is likely that the implementation of a system of conditional exemptions may vary significantly between Member countries. Moreover one Member country has indicated that their legal system precludes them from adopting a similar approach.

CRITERIA FOR DETERMINING WHEN A WASTE CEASES TO BE A WASTE

38. It would be inconsistent with the purpose of OECD Council Decision C(92)39/FINAL if waste ceased to be as soon as it was transferred to a recovery operation specified in Table 2B. A material which falls within the scope of the definition of waste set out in OECD Decision C(88)90(Final) should be considered to be waste when it is destined for an operation specified in Table 2A or until it has been fully recovered by an operation specified in Table 2B (i.e. a recovery operation within a facility which, under applicable domestic law, is operating or is authorised to operate in the importing Member country).

39. As already stated Table 2B illustrates that a recovery operation entails a process by which materials, which are no longer fit for their original intended purpose, are transformed into a usable state or by which certain materials are extracted in a usable form. Many of the considerations identified, in paragraph 22, used to evaluate whether a material is a waste can also be applied when evaluating when a waste may no longer be considered to be a waste. However, in the context of when a waste ceases to be a waste there are additional factors that may need to be taken into account.

40. When a waste is subjected to a recovery process more than one material can be produced at the end of the process. It is likely that at least one of the materials produced at the end of the process could be a waste. The fact that a material meets a recognised national/international standard/specification when it is derived from an environmentally sound recovery operation may provide evidence that it has ceased to be a waste. However, the existence of a specification is not in itself sufficient.

41. The purpose to which a “recovered material” is to be subjected to can also assist in determining whether the recovery operation has been sufficient (or full enough) to render a particular material a non-waste. For example the draining of lead acid batteries could be said to meet a specification (i.e. that the batteries be transported dry). Merely draining a used lead acid battery, for transportation purpose, does not alter the status of the lead acid battery.

42. The above paragraphs attempt to identify areas of concern that need to be addressed in developing a set of criteria and/or a flow chart for this purpose. It appears that the degree of processing and indeed the type of processing are major concerns of many Member countries; for example, the simple sorting of a waste to meet an industrial specification is not considered, by many Member countries, to constitute an adequate means of recovery/recycling/reclamation.

43. A waste ceases to be a waste when a recovery, or another comparable, process eliminates or sufficiently diminishes the threat posed to the environment by the original material(waste) and yields a material of sufficient beneficial use. In general the recovery of a material (waste) will have taken place when:

(a) it requires no further processing by a Table 2.B operation;

AND

(b) the recovered material can and will be used in the same way as a material which has not been defined as waste;

AND

(c) the recovered material meets all relevant health and environmental requirements.

APPENDIX

DEFINITIONS OF WASTE IN OECD MEMBER COUNTRIES

Australia

Wastes are defined under Australia's Hazardous Waste (Regulation of Exports and Imports) Act 1989 as follows:

“Waste means a substance or object that:

- is proposed to be disposed of; or
- is disposed of; or
- is required by a law of the Commonwealth, a State or a Territory, to be disposed of”.

Austria

Wastes are objects, which the owner or holder wishes to dispose of or has disposed of or where their collection and treatment as waste is required by the public interest.

It shall be in the public interest to collect, store, transport and treat waste if otherwise the results may be:

- hazard to human health or intolerable nuisances
- hazards to the natural living conditions of animals and plants
- more than inevitable pollution of the environment
- fire or explosion risks
- sound and noise in excessive amounts
- disturbances of public order and safety
- the appearance and multiplication of harmful animals and plants as well as the encouragement of pathogenic substances.

Belgium (Wallonia)

The definition of waste is laid down in Article 2 of the Decree of 27 June 1996:

“Waste shall mean any substance or object in the categories set out in Annex 1 (identical to Annex 1 under the Council Directive 91/156/EEC) which the holder discards or intends or is required to discard.”

Canada

The official definition of hazardous waste for the purposes of controlling transboundary movements for recovery or final disposal is given in section 43(3) of the Canadian Environmental Protection Act, 1988 (CEPA):

“Hazardous waste” means:

- (a) any dangerous goods, within the meaning of the Transportation of Dangerous Goods Act, 1992, that are a waste, within the meaning of the regulations made under that Act: or
- (b) any substance specified in the List of Hazardous Wastes Requiring Export and Import Notification in Part III of Schedule II.

In order to meet part (a) of this definition, a waste must contain one or more of the 3000 listed substances, or be a mixture, that meet one of the hazard class characteristics equivalent to those (H1 to H12) specified in OECD Decision C(88)90(Final).

In addition, a material can be defined as waste if it is included in a specified list of hazardous wastes, as stipulated in condition (b) above. These wastes are listed in the Export and Import of Hazardous Waste Regulations, 1992 (EIHWR) issued under CEPA. These wastes correspond to the “Amber” and “Red” wastes described in OECD Decision C(92)39/FINAL. In essence, if a substance is not sited specifically in the amber or red lists (i.e. not otherwise specified), but meets one of the hazard classes, it is still controlled under part (a) of the above definition. For example, spent caustic solution or spent pickle liquor.

Czech Republic

The definition of waste is laid down in Section 2 of the Waste Management Act (No. 125/1997 Coll.) as follows:

“Waste is a movable object which has become dispensable to its owner and is discarded with the intention of disposal, or which is discarded according to a particular legal requirement. The objects which are considered wastes under further determined conditions are listed in Appendix 1 to the Act.”

Denmark

The definition of waste set out in the European Council Directive 91/156/EEC, amending Council Directive 75/442/EEC on waste is used in Denmark.

Finland

The definition of waste is laid down in section 3, subparagraph 1 of the Waste Act (1072/1993):

“Waste shall mean any substance or object which the holder discards or intends, or is required to discard”.

France

The definition is laid down in article 1 of the Waste Act of 15 July 1975:

“Waste in the sense of the present Act shall be any residue of a production, transformation or utilisation process, any substance, material product or more generally any moveable good, which is abandoned or which its holder intends to abandon”.

Germany

The definition of waste is laid down in Article 3 of the Waste Avoidance, Recovery and Disposal Act of 27 September 1994:

“For the purposes of this Act, waste shall mean all movable property in the categories set out in Annex 1 (identical to Annex 1 under the Council Directive 91/156/EEC) which the holder discards, or intends or is required to discard. “Waste for recovery” is waste that is recovered; waste that is not recovered is “waste for disposal”.

- i) Discarding within the meaning of Paragraph 1 above occurs when the holder presents movable property for recovery within the meaning of Annex IIB (recovery operations of 91/156/EEC), or for disposal within the meaning of Annex IIA (disposal operations of 91/156/EEC), or when the holder gives up actual physical authority over the property and it no longer serves any purpose.
- ii) A desire to discard waste within the meaning of the paragraph above must be assumed for any movable property
 - a) occurring in connection with energy conversion, or with production, treatment or use of substances or products, or of services without such occurrence being the purpose of the relevant actions, or
 - b) property whose original purpose no longer exists, or is given up, without being directly replaced by a new purpose.

The producer’s or holder’s opinion is to be used as a basis for evaluating the purpose, taking into account the consensus on the market situation.

- iii) The holder must discard movable property within the meaning of Paragraph 1 when such property is no longer used in keeping with its original purpose, and when, due to its specific state, it could endanger, either in the present or the future, the public interest, especially the environment; and when its potential danger can be ruled out only through proper and safe recovery, or disposal that is compatible with the public interest, pursuant to the provisions of this Act and to the statutory ordinances issued on the basis of this Act.

Ireland

The definition of waste set out in the European Council Directive 91/156/EEC, amending Council Directive 75/442/EEC on waste is used in Ireland.

Italy

The definition of waste is:

“any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard”.

Japan

Materials which are subject to the Basel Convention and/or OECD Council Decision C(92)39/FINAL. These materials are referred to as “specified hazardous wastes and other wastes”, which are subject to the law for the Control of export, Import and Others of Specified Hazardous Wastes and Other Wastes.

The general definition of waste is laid down in Article 2, Clause 1 of the Waste Management and Public Cleansing Law as:

“wastes refers to refuse, bulky refuse, ashes, sludge, human excreta, waste oil, waste acid and alkali, carcasses and other filthy and unnecessary matter, which are in solid or liquid state (excluding radioactive wastes and wastes polluted by radioactivity)”.

Korea (Republic of)

Waste Management Act: the term “waste” means any matter, such as garbage, rubbish, ashes, sludge, waste oil, waste acids, waste alkali, dead bodies of animals, etc., which becomes unnecessary for the human living or business activities.

Act Relating to Transboundary Movements of Wastes and their Disposal: the term “waste” means hazardous and other wastes as prescribed in the Annex to the Basel Convention, and determined by the Presidential Decree.

Wastes determined by the Presidential Decree:

1. wastes which have HAZARDOUS CHARACTERISTICS set out in Annex III to the Basel Convention as prescribed in Annex I to the Basel Convention and wastes provided in Annex II to the Basel Convention;
2. wastes which Korean Government notified the Secretariat of Basel Convention or was notified from the Secretariat according to Article 3,1 to 3,3;
3. the detailed items of wastes which provided in paragraph 1 and 2 above are announced by the Ministry of Environment.

Luxembourg

The definition of waste set out in the European Council Directive 91/156/EEC, amending Council Directive 75/442/EEC on waste is used in Luxembourg.

Mexico

Waste is defined as: any material that has been generated in an extraction benefit, transformation, production, consumption, utilisation control or treatment process, whose quality does not permit its use again in the same process that generated it.

Netherlands

The definition of waste is set out in Article 1.1.1 of the Environment Management Act.

Waste substances: all substances, preparations or other products, which the holder thereof discards, intends to discard or must discard with a view to their disposal.

Poland

Waste is defined in a new Act of 27 June 1997, due to enter into force on 1 January 1998.

Wastes are defined as: all objects and solid substances, as well as liquid substances which are not sewerage. These objects and substances have arisen as a result of economic activity or human existence and are useless in the place and also in the time they arise. Sewer residues are considered as waste.

Sweden

The definition of waste set out in the European Council Directive 91/156/EEC, amending Council Directive 75/442/EEC on waste is used in Sweden.

Switzerland

Wastes are defined in the Federal Law relating to the protection of the environment:

“wastes are movable things which the owner discards or whose disposal is in the public interest”.

Turkey

Hazardous waste definition is in accordance with Annex I and II of the Basel Convention. also national hazardous waste legislation contains categories of waste requiring special consideration in addition to those listed in Annex I and II of the Basel Convention.

United Kingdom

The definition of waste in force in the United Kingdom is the definition of waste in Article 1 of the amended EC Framework Directive on waste. for the purpose of implementing waste management controls the United Kingdom's legislation provides that “waste” means “Directive waste” and the relevant definitions are as follows:-

“Directive waste means any substance or object in the categories set out in Part II of Schedule 4 [to the Regulations] which the producer or the person in possession of it discards or intends or is required to discard”.

“discard” has the same meaning as in the [Framework] Directive.

“producer” means anyone whose activities produce Directive waste or who carries out pre-processing, mixing or other operations resulting in a change in its nature or composition.

“The categories” referred to are those in Annex I to the amended EC Framework Directive on waste and are equivalent to the reasons why materials are intended for disposal specified in Table 1 to OECD Decision C(88)90(Final).

United States of America

Solid waste is defined in general terms. This definition includes a few specific types of materials (including but not limited to garbage, refuse, and sludge from a waste treatment plant) and indicates that “other discarded materials” are also solid wastes.