



turn back the toxic tide

A Project of Earth Economics
122 S. Jackson St., Suite 320
Seattle, Washington 98104
Telephone 206 652-5555 Web: www.ban.org

6 September 2006

Hon. Ian Campbell
Minister of Environment and Heritage
Parliament House
Canberra, ACT 2600
Fax: (02) 6273 6101
E-mail: senator.ian.campbell@aph.gov.au

Dear Hon. Ian Campbell:

The Basel Action Network (BAN) writes today to raise serious questions and concerns over the legality and propriety of approving an application by the Orica company to export 22,000 tonnes of toxic persistent organic waste hexachlorobenzene from Australia for disposal in Germany or elsewhere.

BAN, a watchdog organization that works on matters of toxic trade and implementation of the Basel Convention is concerned that such exports contravene Australia's obligations under the Basel Convention and indeed the spirit of the Australian Hazardous Waste Management Act, that implements that Convention.

Contrary to what many believe, the Basel Convention is far more than a set of prior informed consent rules and mechanics for exporting waste. Rather the Basel Convention's Article 4 has obligations that are legally binding on Parties, and on Australia since it became a Party in 1992. These obligations include:

2. *Each Party shall take the appropriate measures to:*

(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

9. *Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:*

(a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or

(b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or

(c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.

While BAN is primarily concerned with protecting developing countries from the “waste colonialism” of developed countries, we are also intent on ensuring that member states of the Organization for Economic Cooperation and Development, (OECD) fulfill their obligations for waste minimization, minimization of transboundary movement and national self-sufficiency. The underlined text above found in the Basel Convention raises alarm for our network.

According to the Convention, Australia is required to ensure the availability of adequate disposal facilities -- that is to achieve the goal of minimizing transboundary movements by national self-sufficiency in waste management. This requirement for Australia has been in place now for 14 years, since ratification by Australia. During that time Australia has had significant stockpiles of persistent organic pollutant (POPs) wastes and yet appears to have made very little effort to create the adequate disposal capacity required in particular for this problematic (POPs) waste or other intractable wastes.

Shortly after Australia ratified the Basel Convention they exported 18 tons of PCBs to France on board the ship, *Maria Laura*, and by doing so, became embroiled in a global scandal when it was revealed that they had neither properly notified the transit states (South Africa, UK, Belgium) of the export nor had they created their own capacity for dealing with PCB wastes at home. While it can be understood that perhaps the building of the capacity as required under the Convention takes some amount of time, and thus the *Maria Laura* export might have been excused had it been properly notified, it is not possible to understand how today this excuse can be made. Indeed, how is it possible that after 14 years a rich developed country like Australia has still failed to fulfill its Basel obligation to develop a capacity to manage POPs wastes at home?

Does Australia believe it is within its rights to continue to ignore its Basel obligations, specifically the obligation to develop domestic capacity and minimize transboundary movement? BAN cannot accept that Australia has such rights to continue to defer a proper POPs waste management strategy domestically.

Indeed the Hazardous Waste Act of 1989 as amended, which aims to give effect to the Basel Convention, notes in Section 17, 4 (a), that the Minister may decide not to grant the permit “*if the Minister thinks that there is another way in which the hazardous waste could be dealt with.*” Indeed in Section 17, 5, (b) the Act notes the desirability of using facilities in Australia. The act makes this national self-sufficiency obligation even more decisive when recycling is not involved in the export but rather final disposal. In Section 18A it is noted that “*the Minister must not grant a Basel export permit authorizing the export of hazardous waste if the applicant proposes that the hazardous waste will be disposed of by a method that is within the scope of Section A of Annex IV of the Basel Convention* (final disposal destinations). The exception to this prohibition of export for disposal is if two conditions are met: *(a) at the time of the decision to grant the permit, the particulars of the export are specified in the regulations; and (b) the Minister is satisfied that there are exceptional circumstances.*

With respect to the matter of (b) we would argue very strongly that the fact that Australia has a stockpile of HCB waste is not exceptional. Many countries all over the world have POPs

stockpiles that need to be dealt with. Nor is the requirement for export linked to an acute emergency. Many countries faced with POPs wastes in the environment choose to mitigate any emergency or acute environmental risks by removing the wastes from the environment and properly storing them in safe, monitored, retrievable storage facilities pending later destruction. The situation Australia faces is not exceptional nor is it an emergency when the acute risk can be minimized by removal and storage. What is exceptional is the fact that a member state of the OECD as large, as rich and as isolated geographically as Australia is, has not made any progress in finding the necessary disposal capacity for POPs wastes since it was required to do so 14 years ago. Australia cannot keep claiming this fact as an exceptional rationale to breach the intent of the Hazardous Waste Management Act.

If this is a crisis then it is, as the Chinese proverb indicates, also an opportunity. In this case, Australia has the opportunity to create a versatile facility for destroying POPs wastes in a manner compliant with the requirements of the Stockholm Convention, not only for Australia, but in the context of the Waigani Treaty to solve the POPs waste problem for all of the South Pacific countries as well, in a viable, and much needed regional solution.

Finally, it is our duty to remind you that, as the *Maria Laura* case reminded Australia in a very harsh manner in 1992, and as the export of PCB laden ships from the USA to UK reminded those two nations two years ago, the export of such massive quantities of toxic waste over the high seas to other countries even developed countries, will almost certainly create a global furor. That furor will cost Australia in very real terms in the arenas of diplomacy and public opinion if not actual dollars. The outrage at Australia in 1992 in not being responsible for its own waste is all the more justified today, 14 years after it has had an obligation to manage such wastes at home. Compared to the prospect of quickly and safely containing and storing the waste while construction of an appropriate destruction facility takes place, combined with the prospect of serving the greater Pacific community of developing countries in grappling with their acute POPs waste difficulties – export, scandal, deferred responsibility, and possibly a return of the containers, seems rather the poorer option. Australia should solve its problems, not export them each time they arise.

We sincerely hope, consistent with the Hazardous Waste Management Act of Australia, which implements the Basel Convention, that the Minister will take the far wiser and legally correct approach to this crisis and will deny in this case, the export of hazardous waste for disposal and rather move to solve the problem at home.

Sincerely yours,



Jim Puckett, Coordinator
Basel Action Network

cc. Mr. Greg Rippon, Australian Basel Convention Competent Authority, Ministry of Environment and Heritage

cc. Dr. Mariann Lloyd-Smith PhD (Law), Senior Advisor, National Toxics Network Inc. CoChair, International POPs Elimination Network