



Imports and Exports (Restrictions) Prohibition Order (No 2) 2004

Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 28th day of June 2004

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to sections 3(1) and 3A(1) of the Imports and Exports (Restrictions) Act 1988, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following order.

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Order

1 Title

This order is the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Revocation

- (1) The Imports and Exports (Restrictions) Prohibition Order 2004 (SR 2004/12) is revoked.
- (2) Clause 7 and Schedule 1 of the Customs Export Prohibition Order 2002 (SR 2002/256) are revoked.
- (3) The Import Control (Wastes) Conditional Prohibition Order 1994 (SR 1994/289) is revoked.

4 Interpretation

In this order, unless the context otherwise requires,—

annual certification means a certificate provided annually to New Zealand by an importing State that—

- (a) specifies the intended use of the chemicals; and
- (b) includes a statement of the matters referred to in Article 3(2)(b)(iii) of the Stockholm Convention

banned chemical means a chemical—

- (a) within the meaning of that term as defined by Article 2 of the Rotterdam Convention; and
- (b) to which the Rotterdam Convention applies

Basel Convention means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, done at Basel on 22 March 1989; and includes the Annexes to the Convention, and any amendments to, or substitutions of, those documents that are or will become binding on New Zealand

Basel Party means a Party to the Basel Convention

exportation has the meaning set out in clause 5

hazardous waste means any waste that—

- (a) either—
 - (i) falls into 1 of the categories of waste specified in Part 1 of Schedule 3; or
 - (ii) has as a constituent any substance specified in Part 2 of Schedule 3; and
- (b) has any of the hazardous characteristics specified in Part 3 of Schedule 3

household waste means any waste collected from households; and includes any residue from the incineration of that waste

importation means the arrival in New Zealand in any manner, whether lawfully or unlawfully, from a point outside New Zealand, and **import** and **imported** have corresponding meanings

Minister means,—

- (a) in clauses 7, 9, and 10, the Minister for the Environment; and
- (b) in clauses 11 and 13, the Minister of Commerce

Rotterdam chemical means a chemical to which the Rotterdam Convention applies and which is listed in Schedule 2

Rotterdam Convention means the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, done at Rotterdam on 10 September 1998; and includes the Annexes to the Convention, and any amendments to, or substitutions of, those documents that are or will become binding on New Zealand

Rotterdam Party means a Party to the Rotterdam Convention as defined by Article 2 of that Convention

severely restricted chemical means a chemical—

- (a) within the meaning of that term as defined by Article 2 of the Rotterdam Convention; and
- (b) to which the Rotterdam Convention applies

Stockholm chemical means a chemical to which the Stockholm Convention applies and which is listed in Schedule 1

Stockholm Convention means the Convention on Persistent Organic Pollutants, done at Stockholm on 23 May 2001; and includes the Annexes to the Convention, and any amendments to, or substitutions of, those documents that are or will become binding on New Zealand

Stockholm Party means a Party to the Stockholm Convention as defined by Article 2 of that Convention

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, done at Waigani on 16 September 1995; and includes the Annexes to the Convention, and any amendments to, or substitutions of, those documents that are or will become binding on New Zealand

Waigani Party means a Party to the Waigani Convention

waste means any substance or object that is—

- (a) intended to be disposed of by any of the methods specified in Part 4 of Schedule 3; or
- (b) required, by any law of New Zealand, to be disposed of by any of the methods specified in Part 4 of Schedule 3.

Exportation of chemicals and wastes

5 Meaning of exportation

- (1) In this order, unless the context otherwise requires, **exportation** means any shipment in any craft for transportation to a point outside New Zealand, and **export** and **exported** have corresponding meanings.
- (2) However, the following chemicals are not exported to a State if they are transported to that State in transit only:
 - (a) a Rotterdam chemical:
 - (b) a banned chemical:
 - (c) a severely restricted chemical.

6 Exports of certain chemicals prohibited

The exportation of Stockholm chemicals, Rotterdam chemicals, banned chemicals, severely restricted chemicals, and wastes is prohibited, except as provided in clauses 7 to 11.

7 When Stockholm chemical may be exported

- (1) A Stockholm chemical may be exported from New Zealand if the Minister has consented to the exportation.
- (2) Subject to subclause (3), the Minister may consent to the exportation of a Stockholm chemical if—

- (a) it is exported to—
 - (i) a State that is a Stockholm Party and that is permitted to use that chemical under Annex A or Annex B of the Stockholm Convention; or
 - (ii) a State that is not a Stockholm Party and that has provided an annual certification to New Zealand; and
 - (b) it is exported otherwise in conformity with New Zealand's obligations under the Stockholm Convention.
- (3) A Stockholm chemical that is a waste may only be exported in accordance with consent given under clause 11(3).

8 Exception for exportation of unintentional trace contaminants and for research

The prohibition in clause 6 does not apply to the exportation of quantities of a Stockholm chemical that—

- (a) are present as unintentional trace contaminants in products and articles; or
- (b) are to be used for laboratory-scale research or as a reference standard.

9 When Rotterdam chemical may be exported

- (1) A Rotterdam chemical may be exported to a Rotterdam Party that has given notification of a final or interim decision to consent to import the chemical, if the Minister has consented to its exportation.
- (2) The Minister may consent to the exportation of a chemical referred to in subclause (1) if—
- (a) the exporter has complied with any conditions imposed by the importing party; and
 - (b) the chemical has been labelled with information that advises of the risks or hazards that the chemical poses to human health or the environment or states where information about those risks or hazards can be obtained; and
 - (c) the export is otherwise in conformity with New Zealand's obligations under the Rotterdam Convention.
- (3) A Rotterdam chemical may be exported to a Rotterdam Party that has not given notification of a final or interim decision

concerning the importation of the chemical if the Minister has consented to the exportation.

- (4) The Minister may consent to the exportation of a chemical referred to in subclause (3) if—
- (a) any of the following applies:
 - (i) the chemical, at the time of importation, is registered as a chemical in the importing Rotterdam Party; or
 - (ii) evidence exists that it has previously been used in, or imported into, the importing Rotterdam Party and no regulatory action to prohibit its use has been taken; or
 - (iii) explicit consent to the import has been sought and received by the exporter through a designated national authority of the importing Rotterdam Party; and
 - (b) the chemical has been labelled with information that advises of the risks or hazards that the chemical poses to human health or the environment or states where information about those risks or hazards can be obtained; and
 - (c) the export is otherwise in conformity with New Zealand's obligations under the Rotterdam Convention.

10 When banned chemical or severely restricted chemical may be exported

- (1) A banned chemical or severely restricted chemical may be exported to a Rotterdam Party if the Minister has consented to the exportation.
- (2) The Minister may consent to the exportation of a chemical referred to in subclause (1) if—
- (a) an export notification for that chemical has been provided to, and acknowledged by, the importing Rotterdam Party in accordance with Article 12 of the Rotterdam Convention; and
 - (b) the exporter has provided all information necessary for New Zealand to comply with the information requirements for export notification under Article 12 and Annexes I and V of the Rotterdam Convention; and
 - (c) the chemical has been labelled with information that advises of the risks or hazards that the chemical poses to

- human health or the environment or states where information about those risks or hazards can be obtained; and
- (d) the export is otherwise in conformity with New Zealand's obligations under the Rotterdam Convention.

11 When waste may be exported

- (1) A hazardous waste or household waste may be exported if the Minister has consented to the exportation.
- (2) Subject to subclause (3), the Minister may consent to the exportation of any hazardous waste or household waste if—
- (a) the waste will be exported to a qualifying destination; and
- (b) any of the following applies:
- (i) New Zealand does not have the technical capacity and the necessary facilities, capacity, or suitable disposal sites to dispose of the waste in an environmentally sound and efficient manner; or
- (ii) the waste is required as a raw material for any recycling or recovery industry in the importing State; or
- (iii) the exportation of the waste is in accordance with any criteria decided by the Basel Parties; and
- (c) the waste can be disposed of or managed in an environmentally sound and efficient manner in the importing State; and
- (d) exportation of the waste is otherwise in conformity with New Zealand's obligations under the Basel Convention and, if relevant, the Waigani Convention.
- (3) The Minister may consent to the exportation of any hazardous waste or household waste that comprises or contains a Stockholm chemical if—
- (a) the requirements set out in subclause (2) are met; and
- (b) the exportation is in accordance with Article 6(1)(d) of the Stockholm Convention.
- (4) In subclause (2), **qualifying destination** means a Basel Party that—
- (a) has not prohibited the importation of the waste; and
- (b) has consented in writing to the specific import in question.

*Importation of wastes***12 Importation of wastes prohibited**

The importation of wastes is prohibited, except as provided in clause 13.

13 When waste may be imported

- (1) A hazardous waste or household waste may be imported if the Minister has consented to the importation.
- (2) The Minister may consent to the importation of a hazardous waste or household waste if—
 - (a) the waste—
 - (i) is imported from a Basel Party or a Waigani Party that does not have the technical capacity and the necessary facilities, capacity, or suitable disposal sites to dispose of the waste in an environmentally sound and efficient manner; or
 - (ii) is required as a raw material for any recycling or recovery industry in New Zealand; or
 - (iii) is imported in accordance with any criteria decided by the Basel Parties; and
 - (b) the importation of the waste is otherwise in conformity with New Zealand's obligations under the Basel Convention and, if relevant, the Waigani Convention.

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**Schedule 1
Stockholm chemicals**

Aldrin
Chlordane
DDT
Dieldrin
Endrin
Heptachlor
Hexachlorobenzene
Mirex
Polychlorinated biphenyls (PCB)
Polychlorinated dibenzo-p-dioxins (PCDD)
Polychlorinated dibenzofurans (PCDF)
Toxaphene

Schedule 2

Rotterdam chemicals

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- 1,2-dibromoethane (EDB)
 - 2,4,5-T
 - Captafol
 - Chlordimeform
 - Chlorobenzilate
 - Crocidolite
 - Dinoseb and dinoseb salts
 - Fluoroacetamide
 - HCH (mixed isomers)
 - Lindane
 - Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds, and alkyloxyalkyl and aryl mercury compounds
 - Methamidophos (soluble liquid formulations of the substance that exceed 600 g active ingredient/l)
 - Methyl-parathion (emulsifiable concentrates (EC) with 19.5%, 40%, 50%, and 60% active ingredient and dusts containing 1.5%, 2%, and 3% active ingredient)
 - Monocrotophos (soluble liquid formulations of the substance that exceed 600 g active ingredient/l)
 - Parathion (all formulations—aerosols, dustable powder (DP), emulsifiable concentrate (EC), granules (GR), and wettable powders (WP)—of this substance are included, except capsule suspensions (CS))
 - Pentachlorophenol
 - Phosphamidon (soluble liquid formulations of the substance that exceed 1 000 g active ingredient/l)
 - Polybrominated biphenyls (PBB)
 - Polychlorinated terphenyls (PCT)
 - Tris (2,3-dibromopropyl) phosphate
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Schedule 3

Waste exports prohibited under Basel Convention

Part 1

Categories of waste

- 1 Clinical waste from medical care in hospitals, medical centres, or clinics.
- 2 Waste from the production or preparation of pharmaceutical products.
- 3 Waste pharmaceuticals, drugs, and medicines.
- 4 Waste from the production, formulation, or use of biocides or phytopharmaceuticals.
- 5 Waste from the manufacture, formulation, or use of wood-preserving chemicals.
- 6 Waste from the production, formulation, or use of organic solvents.
- 7 Waste from heat treatment or tempering operations and containing cyanides.
- 8 Waste mineral oils unfit for their originally intended use.
- 9 Waste mixtures of—
 - (a) oil and water:
 - (b) hydrocarbons and water.
- 10 Waste substances or articles containing, or contaminated with, 1 or more of the following substances:
 - (a) polychlorinated biphenyls (PCBs):
 - (b) polychlorinated terphenyls (PCTs):
 - (c) polybrominated biphenyls (PBBs).

Part 1—*continued*

- 11 Waste tarry residues arising from refining or distillation, or any pyrolytic treatment.
- 12 Waste from the production, formulation, or use of inks, dyes, pigments, paints, lacquers, or varnish.
- 13 Waste from the production, formulation, or use of resins, latex, plasticisers, or glues or other adhesives.
- 14 Waste chemical substances—
 - (a) that arise from research and development or teaching activities; and
 - (b) that are not identified or are new, or both; and
 - (c) whose effects on humans or the environment, or both, are not known.
- 15 Waste from the production, formulation, or use of photographic chemicals or photographic processing materials.
- 16 Waste resulting from the surface treatment of metals or plastics.
- 17 Waste arising from industrial waste disposal operations.

Part 2

Hazardous constituents

Acidic solutions and acids in solid form
Antimony and antimony compounds
Any congener of polychlorinated dibenzofuran
Any congener of polychlorinated dibenzo-p-dioxin
Arsenic and arsenic compounds
Asbestos (dust or fibres)
Basic solutions and bases in solid form
Beryllium and beryllium compounds
Cadmium and cadmium compounds
Copper compounds
Ethers
Halogenated organic solvents
Hexavalent chromium compounds

Part 2—*continued*

Inorganic cyanides
Inorganic fluorine compounds (excluding calcium fluoride)
Lead and lead compounds
Mercury and mercury compounds
Metal carbonyls
Organic cyanides
Organic phosphorous compounds
Organic solvents (excluding halogenated solvents)
Organohalogen compounds (other than any substance referred to elsewhere in this Part)
Phenols and phenol compounds (including chlorophenols)
Selenium and selenium compounds
Tellurium and tellurium compounds
Thallium and thallium compounds
Zinc compounds

Part 3

Hazardous characteristics

1 References to flammable

In this Part, **flammable** means inflammable.

2 Explosive characteristic

A waste has an explosive characteristic if—

- (a) that waste is solid or liquid, or contains or is mixed with substances that are solid or liquid; and
- (b) that waste, or any solid or liquid that it contains or that it is mixed with, is capable, by chemical reaction, of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.

3 Liquid wastes that have flammable characteristic

A liquid waste has a flammable characteristic if that waste—

- (a) is in liquid form, or is a liquid that contains solids in solution or suspension (including, for example, paints, varnishes, and lacquers); and
- (b) gives off a flammable vapour at temperatures of not more than 60.5°C (using the closed-cup test), or not more than 65.6°C (using the open-cup test).

Part 3—*continued***4 Solid wastes that have flammable characteristic**

A solid waste has a flammable characteristic if that waste (not being a waste to which clause 2 applies), under conditions encountered in transport, is readily combustible, or may cause or contribute to fire through friction.

5 Characteristic of being liable to spontaneous combustion

A waste has a characteristic of being liable to spontaneous combustion if that waste—

- (a) is liable to spontaneous heating under normal conditions encountered in transport; or
- (b) is liable to heating up on contact with air, and, as a result, is liable to catch fire.

6 Characteristic of emitting flammable gases by interaction with water

A waste has the characteristic of emitting flammable gases if that waste, by interaction with water,—

- (a) is liable to become spontaneously flammable; or
- (b) is liable to give off flammable gases in dangerous quantities.

7 Oxidising characteristic

A waste has an oxidising characteristic if that waste, while in itself not necessarily combustible, may, generally by yielding oxygen, cause, or contribute to, the combustion of other materials.

8 Characteristic of being organic peroxide

- (1) A waste that falls into one of the categories of waste specified in Part 1 has the characteristic of being an organic peroxide if that waste—
 - (a) contains the bivalent -O-O- structure; and
 - (b) is thermally unstable and may undergo exothermic self-accelerating decomposition.
- (2) A waste that has as a constituent any substance specified in Part 2 has the characteristic of being an organic peroxide if that waste is thermally unstable and may undergo exothermic self-accelerating decomposition.

Part 3—*continued***9 Characteristic of being acutely poisonous**

A waste has the characteristic of being acutely poisonous if that waste is, if it is swallowed or inhaled, or if it has been in contact with skin,—

- (a) liable to cause death or serious injury; or
- (b) liable to harm human health.

10 Characteristic of being infectious

A waste has the characteristic of being infectious if—

- (a) that waste contains viable micro-organisms, or toxins of such micro-organisms; and
- (b) those micro-organisms or those toxins are known to cause, or are suspected of causing, disease in animals or humans.

11 Corrosive characteristics

A waste has a corrosive characteristic if that waste, by chemical action,—

- (a) causes severe damage when in contact with living tissue; or
- (b) in the case of leakage, materially damages or destroys its means of transport or other goods.

12 Characteristic that results in liberation of toxic gases on contact with air or water

A waste has the characteristic of resulting in the liberation of toxic gases if that waste, on contact with air or water and by interaction with air or water, is liable to give off toxic gases in dangerous quantities.

13 Toxic characteristic (delayed or chronic)

A waste has a toxic characteristic if that waste, through inhalation, ingestion, or penetration of the skin, may involve delayed or chronic effects, including carcinogenicity.

14 Ecotoxic characteristics

A waste has ecotoxic characteristics if that waste, if released, would or may present immediate or delayed adverse impacts

Part 3—*continued*

to the environment by means of bioaccumulation, or toxic effects upon biotic systems, or both.

15 Other hazardous characteristics

A waste has other hazardous characteristics if it is capable by any means, after disposal by any of the methods specified in Part 4, of yielding another material (including, for example, leachate) that has any of the characteristics specified in clauses 2 to 14 of this Part.

Part 4

Methods of disposal of wastes

- 1 Methods of disposal that do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use, or alternative uses—
 - (a) deposit into or onto land (including, by way of example only, landfill):
 - (b) land treatment (including, by way of example only, biodegradation of liquid or sludgy discards in soils):
 - (c) deep injection (including, by way of example only, injection of pumpable discards into wells, salt domes, or naturally occurring repositories):
 - (d) surface impoundment (including, by way of example only, placement of liquid or sludge discards into pits, ponds, or lagoons):
 - (e) specially engineered landfill (including, by way of example only, placement into lined discrete cells that are capped and isolated from one another and the environment):
 - (f) release into a water body (not being sea or an ocean):
 - (g) release into a sea or an ocean (including sea-bed insertion):
 - (h) incineration on land:
 - (i) incineration at sea:
 - (j) permanent storage (including, by way of example only, emplacement of containers in a mine):
 - (k) any biological treatment that results in final compounds of mixtures that are discarded by means of any of the

Part 4—*continued*

methods specified in any of paragraphs (a) to (j) or in paragraph (l):

- (l) physico-chemical treatment that results in final compounds or mixtures that are discarded by means of any of the methods specified in any of paragraphs (a) to (k) (including, by way of example only, evaporation, drying, calcination, neutralisation, or precipitation):
 - (m) blending or mixing prior to disposal by any of the methods specified in any of paragraphs (a) to (l):
 - (n) repackaging before disposal by any of the methods specified in any of paragraphs (a) to (l):
 - (o) storage pending disposal by any of the methods specified in any of paragraphs (a) to (l).
- 2 Methods of disposal that may lead to resource recovery, recycling, reclamation, direct re-use, or alternative uses, where the waste being disposed of would otherwise have been destined for disposal by any of the methods specified in clause 1, are—
- (a) use as a fuel (other than in direct incineration) or other means to generate energy:
 - (b) solvent reclamation or regeneration:
 - (c) recycling or reclamation of organic substances not used as solvents:
 - (d) recycling or reclamation of metals and metal compounds:
 - (e) recycling or reclamation of other inorganic materials:
 - (f) regeneration of acids or bases:
 - (g) recovery of components used for pollution abatement:
 - (h) recovery of components from catalysts:
 - (i) re-refining of used oil, or other re-uses of previously used oil:
 - (j) land treatment resulting in a benefit to agriculture or in ecological improvement:
 - (k) uses of residual materials obtained from any of the methods specified in any of paragraphs (a) to (j):
 - (l) exchange of wastes for disposal by any of the methods specified in any of paragraphs (a) to (k):
 - (m) accumulation of material intended for disposal by any of the methods specified in any of paragraphs (a) to (l).

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order comes into force on the 28th day after the date of its notification in the *Gazette*. Broadly, the order—

- subsumes the Import and Exports (Restrictions) Prohibition Order 2004 (the **first 2004 order**), which it revokes; and
- subsumes a part (clause 7 and Schedule 1) of the Customs Export Prohibition Order 2002 (the **2002 customs order**), and revokes that part of that order; and
- subsumes the Import Control (Wastes) Conditional Prohibition Order 1994 (the **1994 wastes order**), which it revokes; and
- creates new provisions for controlling the export of 12 pesticides and industrial chemicals characterised as Persistent Organic Pollutants (**POPs**).

The outcome of these changes is that in this single order there are now assembled the following controls over the movement of certain chemicals and wastes that New Zealand is obliged to impose in fulfilment of its obligations under a number of international conventions:

- controls over the export of POPs (in accordance with the 2001 Stockholm Convention on Persistent Organic Pollutants);
- controls over the export of certain hazardous chemicals (in accordance with the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade). These provisions are carried over from the first 2004 order;
- controls over the export and import of certain wastes (in accordance with the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal). These provisions are carried over, with changes,

from the 1994 wastes order in relation to the import of wastes, and from the 2002 customs order in relation to the export of wastes.

Copies of the conventions mentioned above are available for inspection free of charge at the head offices, and on or through the websites, of the following departments:

- Ministry of Economic Development (www.med.govt.nz):
- Ministry for the Environment (www.mfe.govt.nz).

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 1 July 2004.
This order is administered in the Ministry of Economic Development.
