Basel Convention Global Treaty Amendments

The Basel Convention Background

- Adopted in 1989 and in force since 1992

- In response to a public outcry following the discovery of deposits of toxic wastes imported from abroad into Africa and other developing countries, and expanding to include E-waste and certain plastic, Shipbreaking trade and now Plastic.

- Multiple discoveries of the degree of Marine Pollution by Plastic has raised serious alarm and Basel Convention, as a Legally Binding Treaty, was seen as an obvious first immediate step to better control trade.

- The objective of the Basel Convention is to protect human health and the environment against the adverse effects of hazardous wastes.

- As of January 2021, there are 188 Parties to the Basel Convention

Basel Convention Treaty – Soft Law

What Does Basel Do? - Soft Law

- Calls for national self-sufficiency in waste management (Art. 4.2.b)
- Calls for minimizing all forms of transboundary movement of hazardous and other wastes (Art. 4.2.d)
- Calls for minimizing the generation of hazardous and other waste (Art. 4.2.a)
- Calls for ensuring environmentally sound management of that which is produced (Art. 4.8)

Basel Convention Treaty – Hard Law

Defines "hazardous waste" and "other wastes" (Scope of Convention, Art. 1)

"**Hazardous Waste**":

1. According to Annexes (I,III and VIII)
2. According to National Law of a Country involved in trade scenario

"**Other Waste**" (Annex II, wastes for special consideration)

1. Wastes collected from households
2. Incinerator ash from incinerating household waste,
3. Certain plastic wastes.

What Does Basel Do?

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Hard Law

Structure of the Basel Convention

- 29 Articles detailing the convention's scope, definitions, obligations, transboundary movements, agreements, illegal trafficking, and other aspects of administering the convention.

- 9 Annexes relating to categories of wastes to be controlled, wastes for consideration, hazardous characteristics, disposal operations, and other required information.

- A Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal with 33 articles including scope, different types of liability, implementation.

Article 1 - Scope of the Convention

1) The following wastes that are subject to transboundary movement shall be "hazardous wastes" for the purposes of the Basel Convention:

   a) Wastes that belong to any category contained in Annex I, <u>unless</u> they do not possess any of the characteristics contained in Annex III; and

   b) Wastes defined as hazardous by either the country of export, import, or transit.

2) Wastes that belong to any category contained in Annex II shall be "other wastes" or require special consideration.

Article 4 - General Obligations

- Parties can prohibit Hazardous Waste (HW), won't send HW that is prohibited, and won't send HW without prior consent. (4.1.a,b,c)

- Reducing and minimizing waste at source (4.2.a);

- Managing wastes within the country in which they are generated (4.2.b);

- Reducing transboundary movement of wastes to a minimum (4.2.d);

- Managing wastes in an environmentally sound manner (4.2.e,g,h); and

- Do not export wastes to or import wastes from a non-party (4.5)

- Strictly controlling transboundary movement that does occur, via a notification and consent mechanism known as "prior informed consent" (4.9)

- Prohibit transboundary movement of hazardous waste which are destined for operations according to Annex IV A to non-parties (4A)

Article 6 – Prior Informed Consent (PIC) Procedure

- The Basel Convention sets out a detailed PIC procedure with strict requirements for transboundary movements of hazardous wastes and other wastes.

  - Article 6, paragraph 1 of the Basel Convention states that the State of export shall notify, or shall require the generator or exporter to notify, in writing, of any proposed transboundary movement of hazardous wastes or other wastes.

- Parties implement the PIC procedure through extensive information exchange, priority attention to national decisions on imports, and obligations related to export controls.

Notification document for transboundary movements/shipments of waste

Annex I - Categories of Wastes to be Controlled

Waste Streams, which include, for example:

➥ Clinical wastes from medical care in hospitals, medical centers and clinics,

➥ Wastes from the manufacture, formulation and use of wood preserving chemicals,

➥ Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs),

➥ Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives.

Waste constituents, which include, for example:

➥ lead and lead compounds (used as heat stabilizer in plastic)

➥ Copper compounds (copper chloride is used as catalyst in plastic),

➥ Zinc compounds (zinc oxide is used as a catalyst in plastic),

➥ acidic solutions or acids in solid form, including basic solutions or bases in solid form, and organic solvents excluding halogenated solvents

Annex II - Categories of Wastes Requiring Special Consideration

- Waste collected from households

- Residues arising from the incineration of household wastes

- Plastic Wastes, including mixtures of such waste, with the exception of the following:

  - Plastic waste that is hazardous waste pursuant to paragraph 1 [a] of Article 1

  - Plastic waste listed below, provided it is destined for recycling in an environmentally sound manner and almost free from contamination and other types of wastes

    - Plastic waste almost exclusively consisting of one non-halogenated polymer

    - Plastic waste almost exclusively consisting of one cured resin or condensation product

    - Plastic waste almost exclusively consisting of the following fluorinated polymers (FEP, PFA, MFA, PVF, PVDF)

  - Mixtures of polyethylene (PE), polypropylene (PP) and/or polyethylene terephthalate (PET), provided they are destined for separate recycling of each material.

Annex III - List of Hazardous Characteristics

- Explosive
- Flammable liquids
- Flammable solids
- Substances or wastes liable to spontaneous combustion
- Substances or wastes which, in contact with water emit flammable gases
- Oxidizing
- Organic Peroxides
- Poisonous (Acute)
- Infectious substances

- Corrosives
- Liberation of toxic gases in contact with air or water
- Toxic (Delayed or Chronic)
- Ecotoxic
- Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

Annex IV A - Disposal Operations

Operations which **do not** lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses

- Deposit into or onto land, (e.g., landfill, etc.)

- Land treatment, (e.g., biodegradation of liquid or sludgy discards in soils, etc.)

- Deep injection, (e.g., injection of pumpable discards into wells, salt domes of naturally occurring repositories, etc.)

- Surface impoundment, (e.g., placement of liquid or sludge discards into pits, ponds or lagoons, etc.)

- Specially engineered landfill, (e.g., placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)

- Release into a water body except seas/oceans

- Release into seas/oceans including sea-bed insertion

- Biological treatment

Annex IV B - Disposal Operations (cont.)

Operations which **may** lead to resource recovery, recycling reclamation, direct re-use or alternative uses

- Use as a fuel (other than in direct incineration) or other means to generate energy
- Solvent reclamation/regeneration
- Recycling/reclamation of organic substances which are not used as solvents
- Recycling/reclamation of metals and metal compounds
- Recycling/reclamation of other inorganic materials
- Regeneration of acids or bases
- Recovery of components used for pollution abatement
- Recovery of components from catalysts
- Used oil re-refining or other reuses of previously used oil
- Land treatment resulting in benefit to agriculture or ecological improvement
- Accumulation of material

Annex V A and B - Procedures for Transboundary Movements (TBM)

- Stage 1: Notification

  - The purpose of stage 1 is for the exporter to properly inform the importer of a proposed transboundary movement of hazardous wastes or other wastes.

- Stage 2: Consent & Issuance of movement document

  - The purpose of stage 2 is to ensure that the importer agrees to the proposed transboundary movement and that the appropriate documentation accompanies the shipment of hazardous wastes or other wastes.
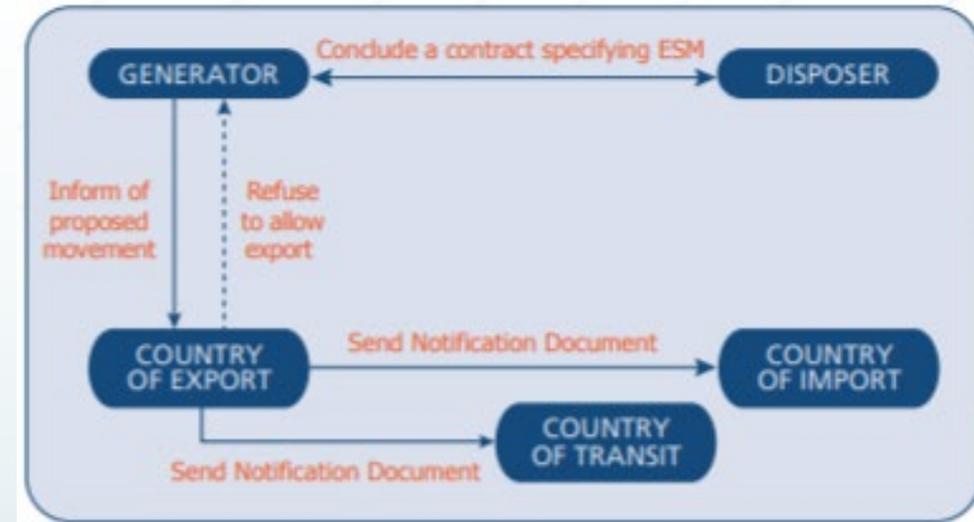
Stage 1
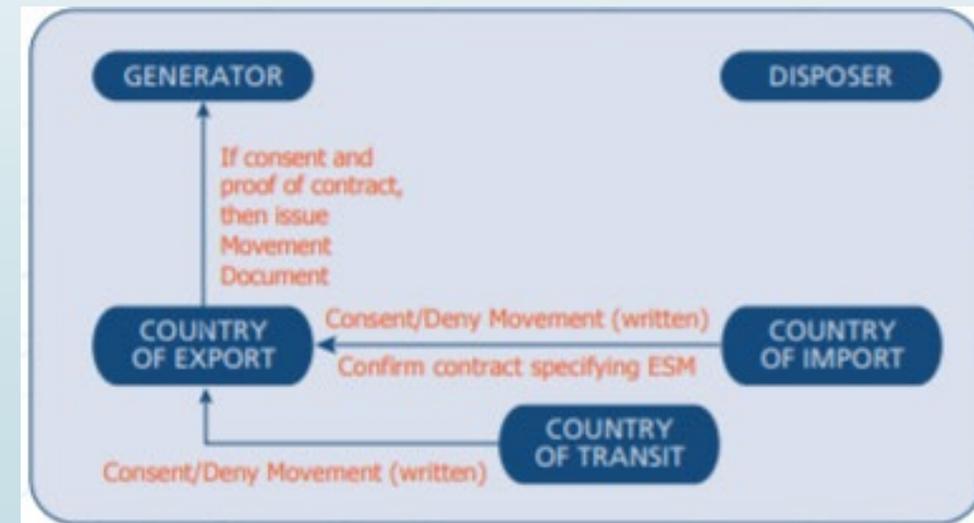
Stage 2

Annex V A and B - Procedures for TBM (cont.)
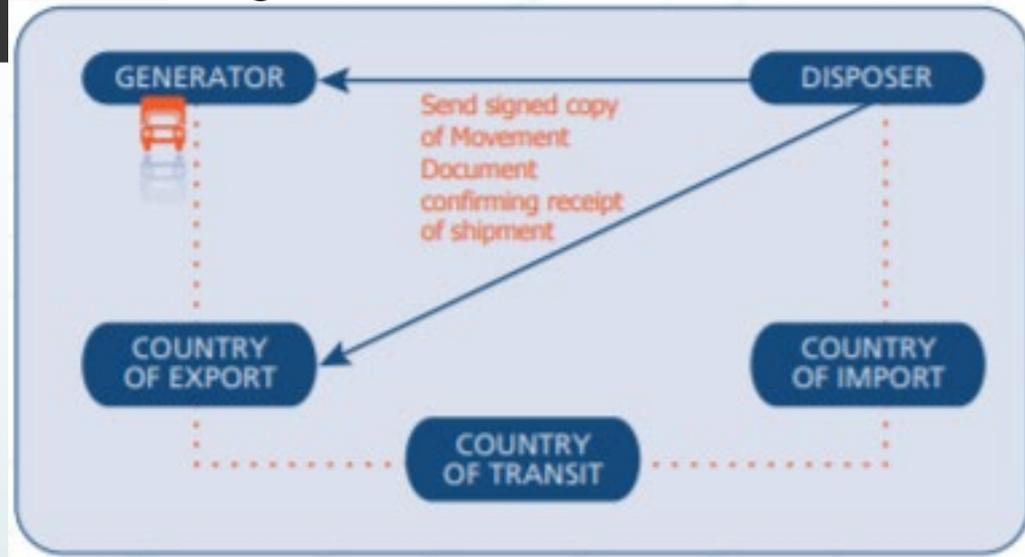
- ➥ Stage 3: Transboundary movement

  - ➥ Stage 3 illustrates the various steps that need to be followed once the transboundary movement has been initiated and until the wastes have been received by the disposer.
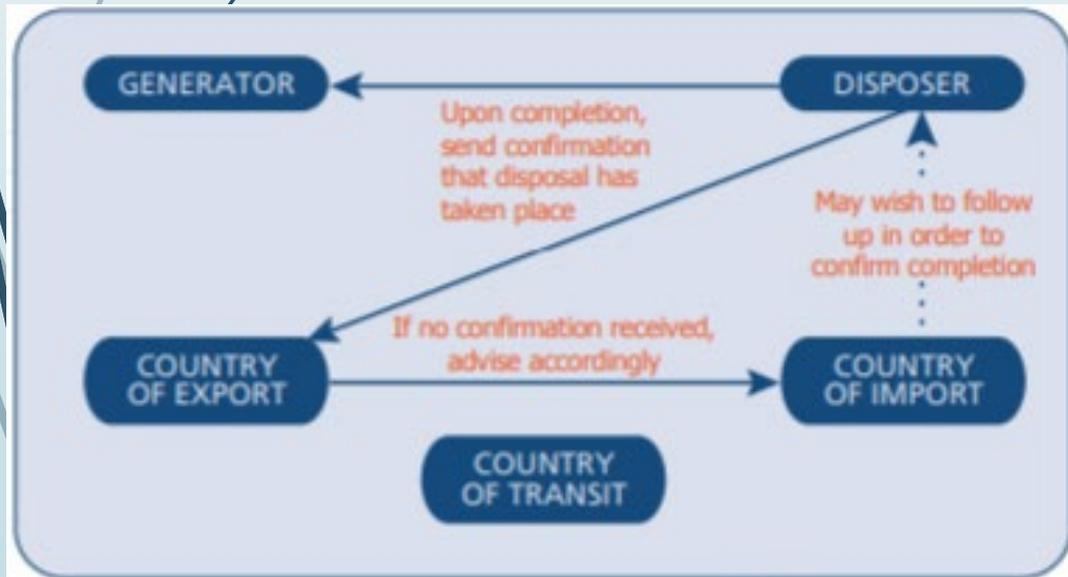
- ➥ Stage 4: Confirmation of disposal

  - ➥ The purpose of stage 4, the final stage in the TBM procedure, is for the generator and country of export to receive confirmation that the wastes moved across borders have been disposed of by the disposer as planned and in an environmentally sound manner.

Stage 4

Annex VIII – List of Wastes Characterized as Hazardous

Examples Include:

- Metal Wastes – Lead, Selenium, Cadmium

- Arsenic, Mercury, Thallium

- Incinerator Ash that includes metal residues

- Lead Acid Batteries

- Glass from cathode-ray tubes, other activated glass

- Waste gypsum and asbestos

- Plastic waste, including mixtures of such waste, containing or contaminated with Annex I constituents, to an extent that it exhibits an Annex III characteristic

- Waste packages and containers containing Annex I substances in concentrations sufficient to exhibit Annex III hazard characteristics

Annex IX – List of Wastes not Characterized as Hazardous

Wastes contained in Annex IX will not be wastes covered by Article 1, paragraph 1 (a), of the Convention unless they contain Annex I material to an extent causing them to exhibit an Annex III characteristic.

Examples Include:

- Metal Alloy Wastes – iron, copper, tin
- Clean uncontaminated Metal Scrap
- Waste batteries conforming to a specification, excluding those made with lead, cadmium or mercury
- Electronic assemblies consisting only of metals or alloys
- Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for direct reuse, and not for recycling or final disposal
- Waste end-of-life motor vehicles, containing neither liquids nor other hazardous components
- Solid Plastic Waste
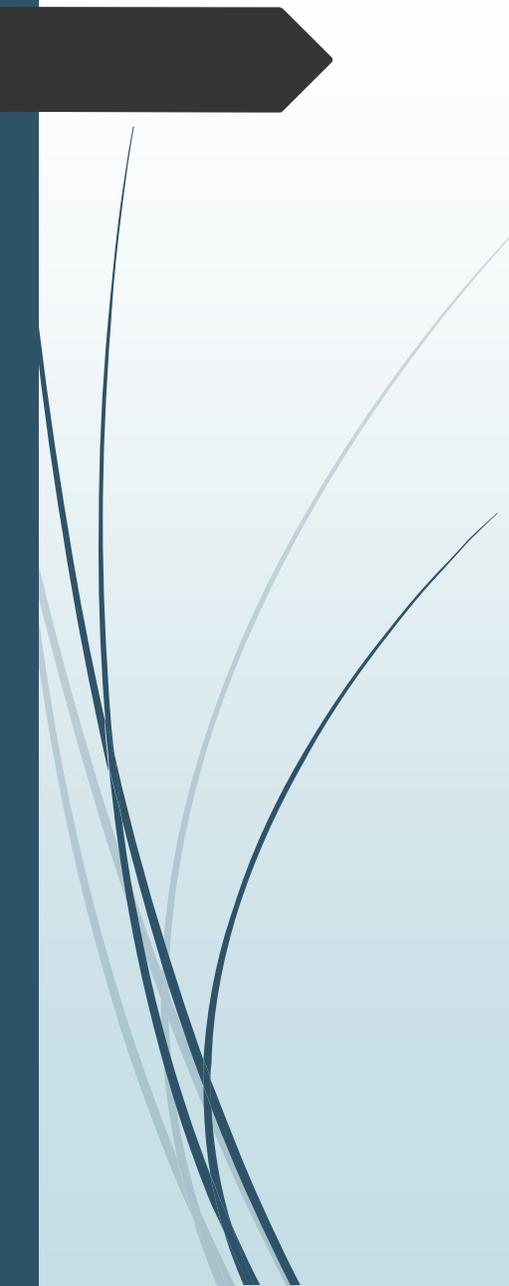
Enforcement

- International law is usually enforced by the countries involved

- Basel Convention parties are charged with enforcing the rules based on their own national legislation

- The U.S. not being a member would not have ways to enforce

What does this mean for California's International Plastic Trade?

➤ It is illegal for countries party to the Basel Convention to accept mixed and dirty plastics from the United States (U.S.) starting January 1, 2021 unless a bilateral agreement exists such as between the US, Canada and Mexico.

➤ U.S. can legally export to Other Non-Basel parties including East Timor, Grenada, Haiti, San Marino, and South Sudan.

➤ If the U.S. is party to the Convention, then it can trade with all the 188 countries party to the Basel Convention both:

1) The highly recycled materials excepted from the PIC, and

2) The unlikely recycled materials in a transparent and controlled way ensuring that they are recycled.

California Tops U.S. States Exporting Plastic Waste

Top States Exporting Plastic Waste to Countries with Poor Waste Management (through August 2020)
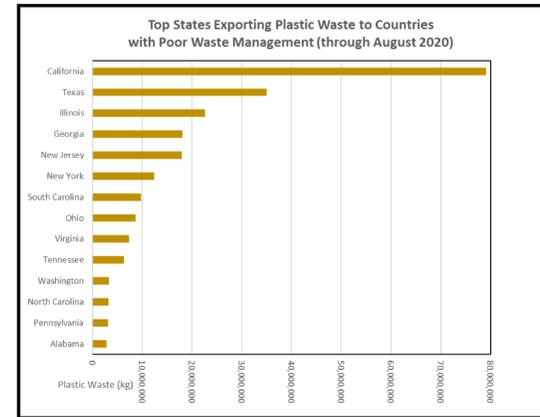
THE LAST BEACH CLEANUP

Key Messages:
• California leads in exports of plastic waste to countries with poor waste management

• California's 75% diversion goal pushing exports without proof that plastic is properly recycled

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2020 Destination of California Plastic Waste Exports

2020 California Plastic Waste Exports

Top Destinations:
• **Malaysia:** 55% Waste Mismanagement

• **Mexico:** 12% Waste Mismanagement

• **Vietnam:** 86% Waste Mismanagement
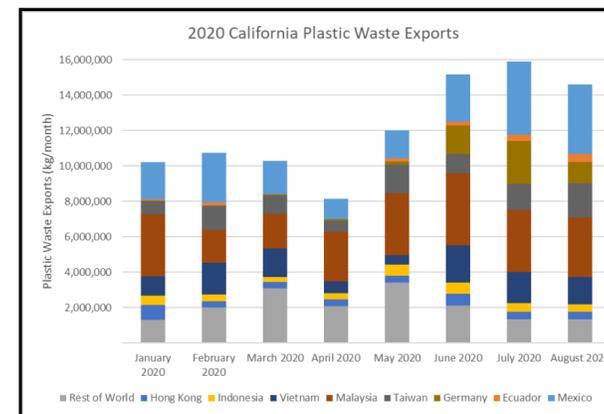
Country Waste Management Rates: Jambeck, et al, 2015

QUESTIONS

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