

## COMMENTS ON THE DRAFT GOOD PRACTICES FOR MANAGEMENT OF MERCURY RELEASES FROM WASTES

Zero Mercury Working Group  
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The Zero Mercury Working Group (ZMWG) would like to acknowledge the hard work and effort of the drafters in putting the Good Practices for Management of Mercury Releases from Waste Draft (Draft) together. The Draft contains rich and varied information on the various aspects of mercury waste management collected from various countries and regions. For this reason alone, the Draft provides informational value to countries in the midst of negotiating an international treaty on mercury.

We understand the time constraints imposed in order to collect all comments for inclusion for the upcoming INC2 in Japan. However, the allotted time and the amount of information that needs to be reviewed require sometime and careful attention.

The ZMWG further understands that the Draft is still much an ongoing work, and we look forward to contributing in more detail on the succeeding iterations of the Draft.

The ZMWG would like to help enrich the value of the Draft to the Parties and in order not to delay its preparation for INC2; the ZMWG is submitting its preliminary comments below on the overall structure of the document and some specific comments in places within the Draft.

### GENERAL COMMENTS

#### *I. What are Good Practices?*

The Draft's title uses the phrase "Good Practices" when it describes the various management cases contained in the document. The use of the phrase "Good Practices" immediately presents two critical questions: a) what are good practices, and b) who determines which are good practices.

The draft does not define what constitutes "Good Practices" nor does it provide or explain the criteria for determining what would constitute "Good Practices" in mercury waste management and how these criteria were arrived at by the Draft.

The question of "Who" makes the determination of what is good from bad practice adds confusion to the issue of what are "good practices" because it goes into the qualification of the entities or individuals making the determination. This also raises a critical question of who or which body ought to make this determination of "Good Practice". Can the Waste Partnership make a determination of what is a "Good Practice" without usurping or prejudging the Intergovernmental Negotiating Committee (INC) or even the Parties to the Basel Convention?

As can be seen, this is a sensitive and critical issue when the Draft ascribes the phrase "Good Practices" to a group of management options for mercury waste.

We believe that there is value in providing information to countries, and the Draft is helping in this endeavor. To avoid the issues we have highlighted above, we suggest that the Draft change the phrase "Good Practices" and rename it as "Current Practices on the Management of Mercury Releases from Waste".

By using the phrase "Current Practices" the Draft does not put value on the practices contained in it, but accurately provides a description of the prevailing practices it has collected. Whether these are "good" or "bad" is not being discussed, which we believe

needs to be done elsewhere. What is important is that the document in consideration provides information that will not be easily accessible to most countries.

## ***II. Relationship of the Draft to the Draft Basel Technical Guidelines and the Basel Convention***

The relationship of the Draft to the Draft Basel Technical Guidelines (Basel TG) is confusing in two areas: a) stated objective of the project creating the Draft which is to “develop specific mercury technical documents for implementation of several parts of the Basel TG”<sup>1</sup> and b) that “the Basel TG provides principles while this document [Draft] provides information about practical cases.”<sup>2</sup>

The issue of the objective of creating specific mercury technical documents for implementation of parts of the Basel TG raises jurisdictional and procedural issues. Firstly, there could be possible conflict for the Waste Partnership to create separate technical guidelines outside of the Basel Convention.

Under Art. 10 of the Basel Convention, Parties to the Convention are required to cooperate with each other to develop appropriate technical guidelines and/or codes of practice. This obligation pre-supposes that the development of these technical guidelines occur within the jurisdiction of the Basel Convention since these technical guidelines must go through the approval of the Conference of Parties (COP).

It would run counter to efforts in arriving at synergies for the Waste Partnership to institute the Draft as a technical guideline, which could be within the jurisdiction and context of Basel.

Secondly, assuming that there is no conflict with the Basel Convention in preparing technical guidelines, there is a process issue involved since what the Draft is attempting to implement is yet a Draft version of the Basel TG because the Basel TG is not yet approved by the Basel COP.

The explanation that the Basel TG only provides principles while the Draft provides practical cases is inaccurate at best.

According to the Basel Convention Guidance Document on the Preparation of Technical Guidelines for the Environmentally Sound Management of Wastes Subject to the Basel Convention (Guidance), which was adopted by the Basel Parties under Decision II/13, technical guidelines for the management of specific waste streams shall have the following elements as appropriate:

- (a) Preamble;*
- (b) A preamble describing the waste and industry that generates the waste;*
- (c) A description of environmental hazards;*
- (d) The identification of opportunities for waste avoidance;*
- (e) The identification of opportunities for recovery;*
- (f) A description of treatment and disposal technologies;*
- (g) A comment on the economic aspects of suitable waste management options;*
- (h) A description of criteria for the sound operation of technology and related safety aspects;*
- (i) A glossary of terms.*

Note that the suggested content above contains elements that extend beyond the realm of mere “principles”. The Guidance developed for creating and fashioning Technical Guidelines under the Basel Convention envisioned a document that would provide information that is practical and technical to the Parties to assist them in implementing their obligations under the Basel Convention.

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<sup>1</sup> Para. 5, page 1, Good Practices for Management of Mercury Releases from Waste (Draft).

<sup>2</sup> *Id.* at para. 6, page 1.

Describing that the Basel TG merely provides principles is inaccurate.

Given the above points it is important that the current Draft clarify the above issues in order to avoid possible conflict with Basel and create more confusion between the two documents.

A solution to this dilemma is to simplify the objectives of the Draft, and that is to provide practical and current practices in the area of managing mercury releases in waste management. By keeping a simple and straightforward objective, the Draft avoids overreaching jurisdictions and at the same clearly dovetails to the Basel TG.

### **III. Scope - Life-Cycle Approach**

The definition of what the life-cycle approach within the context of the Draft is not very clear and would suggest the use of the Basel defined term of “environmentally sound management” if the focus is on waste only.

In page 2, para 11, the Draft cites UNEP/SETAC 2009, as a definitional source of what the term “life-cycle approach”, which is the framework to analyze and manage the sustainability performance of goods and services. In the following sentence, however, the Draft looks at the “narrow sense” of the “life-cycle approach” focusing on waste management stating it covers material procurement, production, product use, and waste collection, treatment, and disposal.

Instead of coming up with new definitions and struggling with descriptions of the terms, in the context of waste management it would be advisable to use the commonly and legally accepted term “environmentally sound management” or ESM if the “life-cycle approach” will be narrowly focuses on waste management.

Art. 2(8) of the Basel Convention defines ESM as:

*“...taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.”*

The definition of ESM covers the various options including areas in procurement and production, as these fall within the requirement of “taking all practicable steps”, which the narrow sense of the life-cycle approach covers.

In sum, we suggest that instead of using a new term to cover a similar area, that the legally accepted terminology, environmental sound management or ESM, be used under the Draft.

### **IV. Scope – Ensure that there is NO overlap with the work being done by the Products and other relevant Partnerships.**

We understand that the Draft is attempting to cover all areas envisioned under ESM. In this regard we would like ensure that the Draft does not replicate work already being conducted by other partnerships and that whatever information is indeed mentioned in the Draft that it be consistent with results of the work of the other partnerships.

For instance, under the Storage Partnership, there is a growing recognition that mercury as a commodity can be subject to long-term storage without being considered a waste, needs to be reflected in discussions on the issue of Storage in the Draft.

By ensuring that the Draft does not repeat work already conducted and is kept consistent with what has been taking place in other Partnerships the value of the Draft for the users will be enhanced.

### **V. Consistency of the Template for all the Cases in the Draft**

One of the things that stood out for the draft was with the use of a template in discussing the cases. The template starts out with the column for General Information, followed by target area/product, etc. The template presents the data in a manageable size and format allowing the target user to immediately zero in on specific information.

However, the real value of the template is to make it consistent for all the cases presented in the Draft particularly, the need to add an item on “Major Challenges faced in implementing the system and ways to overcome those challenges”.

Another interesting issue that would be useful to make consistent are the “Cost of Implementation or Cost of Project and ways of financing or solutions taken.

We have noticed that these were not consistently applied or indicated in all the cases. At a practical and implementation level these would be the first things that the users will look at. Ensuring that these items are mentioned and answered in all of the cases in the Draft will certainly add value for the target users.

It is also not particularly helpful to simply indicate “NOT APPLICABLE” to a certain item. A short explanation would be helpful in guiding the users since it begs the question of why isn't it applicable.

#### ***VI. Inclusion/Exclusion of management options***

One of the main challenges in providing a list of current practices is that at some point a practice or a management option will be left out. Thus it is important to explain to the target users the process, which the Draft undertook in determining what practices are mentioned and those, which are not.

In addition to providing an explanation why a practice was not included it is also critical that the Draft be as objective as it can be in presenting the data or cases, in order to ensure that a practice or methodology is not seen as favored over another.

One of the practices that were not mentioned, but of great importance is the non-incineration of mercury wastes and how was this applied. The Philippines passed a law Republic Act 8749 or what is called the Clean Air Act of 1998, which prohibits incineration or open burning of wastes. At practical level this is a concrete waste management option and it is valuable to the target users who may be contemplating non-burn methodologies as an ESM option for mercury waste. This practice needs to be included in the Draft.

Other missing current practices are that of the EU Restriction on Hazardous Substances Directive and Waste Electrical and Electronic Equipment Directive. It would be useful to include these in the discussion on mercury-phase outs and EPR.

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