COMMENTS ON THE 5TH DRAFT OF TECHNICAL GUIDELINES ON THE ENVIRONMENTALLY SOUND MANAGEMENT OF MERCURY WASTES (JAN 2010, UNEP/CHW/OEWG/7/INF/10)

Zero Mercury Working Group[1]
30 April 2010

GENERAL COMMENTS:

1. We thank the Basel Secretariat for its work in developing the 5th iteration of the Technical Guidelines on the environmentally sound management of mercury wastes (TG), and acknowledge its efforts in accommodating the inputs we have been making on the drafts.

2. Between versions 4 and 5 of the draft TG it has become apparent that in order to better guide Parties in using and applying the TG there is a need to distinguish environmentally sound management (ESM) of elemental or liquid mercury and mercury-containing wastes. In order to better assist Parties in using the TG, the most efficient way to address this is to have the TG focus on mercury-containing wastes and address elemental or liquid mercury at a later time either as a supplement to the TG or through sequestration/storage guidance developed through the mercury treaty process.

   For instance, under Section 3.7 of the TG, Long Term Storage and Landfilling of Mercury Waste, there is an ambiguity or uncertainty on whether the TG applies both ESM practice to elemental or liquid mercury waste. As it is presently written, a Party can interpret that the TG allows for landfilling of elemental or liquid mercury. Whether this is acceptable will be determined by what will soon be a new legally-binding instrument on mercury.

   UNEP GC Decision 25/5 constituted an international negotiating committee (INC) with a mandate to prepare a legally binding instrument on mercury. The INC will be working on developing a comprehensive and suitable approach to mercury and negotiations will cover various key issues, such as:

   - Reduce the supply of mercury and enhance the capacity for its environmentally sound storage;
   - Reduce the demand for mercury in products and processes;

[1] The Zero Mercury Working Group (ZMWG), (www.zeromercury.org) is an international coalition of more than 80 public interest environmental and health non-governmental organizations from 42 countries from around the world formed in 2005 by the European Environmental Bureau and the Mercury Policy Project. ZMWG strives for zero supply, demand, and emissions of mercury from all anthropogenic sources, with the goal of reducing mercury in the global environment to a minimum. Our mission is to advocate and support the adoption and implementation of a legally binding instrument which contains mandatory obligations to eliminate where feasible, and otherwise minimize, the global supply and trade of mercury, the global demand for mercury, anthropogenic releases of mercury to the environment, and human and wildlife exposure to mercury.

- Reduce international trade in mercury;
- Address mercury-containing waste and remediation of contaminated sites;
- Specify arrangements for capacity-building and technical assistance.

Negotiations shall commence on June 2010 and be completed by 2013.

Decision 25/5 also urged the UNEP Executive Director to work with Governments, IGOs, stakeholders and the Global Mercury Partnership to continue, as part of the international action on mercury, ongoing work, in several areas, including enhancing capacity for mercury storage, and providing information on the sound management of mercury.

As the Basel TG is being developed, there are also parallel efforts to address mercury from an INC level as well as partnerships on the ground. Given the unique nature of elemental or liquid mercury and the confluence of international efforts, the Basel TG needs to make an allowance for the legal and policy conclusions or recommendations anticipated from the INC. In short, the Basel TG should at least temporarily defer issues related to the trade and storage of elemental mercury to the outcome of the body organized by UNEP for this purpose.

In this regard, we suggest paragraph 2 of Subsection 1.1. Scope be deleted and the following paragraphs be inserted, to clarify the scope of the TG.

2. The present guidelines likewise recognize that the United Nations Environment Programme Governing Council in its Decision 25/5 constituted an international negotiating committee (INC) with a mandate to prepare a legally binding instrument on mercury, whose work shall commence on June 2010 and be completed by 2013. The INC will be working on developing a comprehensive and suitable approach to mercury and negotiations will cover various key issues, such as:

- *To reduce the supply of mercury and enhance the capacity for its environmentally sound storage;*
- *To reduce the demand for mercury in products and processes;*
- *To reduce international trade in mercury;*
- *To Address mercury-containing waste and remediation of contaminated sites;*
- *To specify arrangements for capacity-building and technical assistance.*

3. The guidelines further recognize the unique nature and conditions surrounding elemental or liquid mercury. In addition, the mercury INC negotiations could determine whether and under what circumstances elemental mercury can be traded between Parties, and the management standards associated with the sequestration and storage of elemental mercury incidental to global mercury supply reduction effort .

4. To provide clarity and focus for Parties who will be using these guidelines, and to facilitate the INC negotiations on elemental or liquid mercury, these guidelines are intended to provide guidance for the environmentally sound management (ESM) of

mercury-containing waste only and give detailed information about mercury-containing waste, including the chemistry and toxicology of mercury, and source of mercury and mercury waste. These guidelines also present knowledge and expertise on ESM of mercury-containing waste and provisions for mercury waste under international legal instruments.

3. Considering the need for more focus on "mercury-containing wastes", we suggest that the title of the Technical Guidelines reflect this, and appropriately be amended as "Technical guidelines on the environmentally sound management of mercury-containing wastes".

4. In line with the need to re-focus we would also suggest that relevant sections of the TG be reviewed with the purpose of ensuring that there is no ambiguity on the application of ESM for mercury-containing wastes and elemental or liquid mercury.

5. Similarly, in the context of mercury product and process phase-outs, the TG should acknowledge the INC process and anticipated legal and policy directions which may emanate from that process. The upcoming INC discussions can reasonably be expected to have a substantial impact on the extent and timing of mercury product and process phase-outs, notwithstanding these Basel guidelines, thus the TG must acknowledge this circumstance prominently. The same can be said for incinerator BAT requirements, since they will be included in an important study mandated by the Governing Council and to be considered by the INC at INC 2 and beyond.

SPECIFIC COMMENTS:

1. Section 3.4 on Identification and Inventory, should precede the current Section 3.3, Mercury Waste Prevention and Minimization to reflect the logical step which Parties need to undertake, that is identifying or quantifying the mercury-containing waste sources and then proceeding to apply the necessary ESM elements, prevention, minimization, etc. We therefore suggest re-arranging current Sections 3.3 and 3.4, and make the current Section 3.4 the new Section 3.3 and re-number the Section accordingly.

2. With respect to the identification of the types and kinds of mercury wastes generated, we find the draft TG fails to provide sufficient guidance over the wastes that can be expected if certain processes are located within a Party's borders. For example, Table 3-6 identifies general categories of wastes from many of the pertinent processes and products, but the categories employed are too general to be useful (i.e., combustion ashes, process residues). This document would be more useful for Parties if the typical ashes and process residues were specifically identified, perhaps with descriptions of their physical and chemical concentrations and mercury concentrations where those data are available. We note, for example, that fly ashes will often contain much higher concentrations of contaminants than bottom ashes, which the readers should be made to understand. Similarly, process residues can include both hazardous and non-hazardous residues, therefore greater specificity in identifying the hazardous residues is

necessary to focus readers on the residues posing the greatest risk. Lastly, it is not specific enough to describe all dental wastes as either stockpiles or wastewater treatment residues. Hopefully, some of the wastes would be segregated and properly managed before they become wastewater treatment residues.

3. Once the TG reflects greater specificity regarding waste generation, the TG authors should evaluate whether more helpful guidance can be provided on how to apply ESM to specific waste streams, rather than leaving it for the readers to try and determine whether and how the applicability of general guidance on treatment or disposal relates to the management of a particular waste stream. Ideally, the document could be re-organized so that readers could locate a particular industrial process, identify the principal waste streams generated by that process, and find recommended ESM guidelines for those wastes.

4. Section 3.7 is one of the areas in the TG that highlights the dilemma over elemental or liquid mercury and mercury-containing wastes. In order to avoid confusion and still be able to provide Parties with information on the current state of thinking or practice on long-term storage, we suggest carefully reviewing the text and removing those sections applicable to elemental mercury only, and clarifying that the text remaining applies only to mercury-containing wastes.

5. We have additional detailed comments which we feel is better raised at the upcoming OEWG, where we hope to have a fruitful discussion on further refining the TG to better reflect a more focused approach to cover mercury-containing wastes.

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For more information please contact:

Richard Gutierrez, Ban Toxics!, richard@bantoxics.org , Tele Fax: +63 2 929 1635
Michael Bender, Mercury Policy Project, mercurypolicy@aol.com, T: +1 802 223 9000
Elena Lymberidi-Settimo, European Environmental Bureau, elena.lymberidi@eeb.org, T: +32 2 2891301