

## **Comments on the 6<sup>th</sup> Draft of the Basel Technical Guidelines for the Environmentally Sound Management of Waste Consisting of Elemental Mercury and Waste Containing or Contaminated with Mercury**

Zero Mercury Working Group  
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The Zero Mercury Working Group (ZMWG) acknowledges the efforts of the drafters of the 6<sup>th</sup> Draft of the Basel Technical Guidelines for the Environmentally Sound Management of Waste Consisting of Elemental Mercury and Waste Containing or Contaminated with Mercury (Draft Basel TG) and thanks the Basel Secretariat for its work.

The various versions of the Draft Basel TG, all the way through the 6<sup>th</sup>, has received a lot of comments and undergone changes. However, ZMWG still sees the Draft Basel TG very much a work in progress. This is not to say that the drafters of the document have been remiss in their work, but this observation hinges more on the outside factors surrounding the issue of mercury.

The ongoing Intergovernmental Negotiating Committee (INC) meetings for the development of a legally-binding treaty on mercury continues to shed uncertainty over relevance and fitness of some of the techniques or processes contained in the Draft Basel TG. The INC, created under GC Decision 25/5, has been mandated to work on developing a comprehensive and suitable approach to mercury, and the negotiations will cover various key issues, among which are:

- Reducing the supply of mercury and enhance the capacity for its environmentally sound storage.
- Reducing international trade in mercury.
- Addressing mercury-containing waste and remediation of contaminated sites.

Given the prescriptive nature of the work that the INC is conducting, any efforts at drawing and finalizing the Draft Basel TG must be on notice that decisions coming out of the INC process will ultimately change or affect the Draft Basel TG.

We have suggested in our comments in the 5<sup>th</sup> Draft of the Basel TG that the document at least temporarily defer discussions related to the trade and storage of elemental mercury, among others, to the outcome of the discussions of the INC.

We still feel that this is the more prudent approach so as not to replicate and expend unnecessary efforts at developing a document that touches on a subject that is still under negotiation. However, we also recognize the need to address mercury waste issues for Basel Parties. In this regard, we view that continued work on the Draft Basel TG must acknowledge and prominently indicate the tenuous or transitory nature of the document, so as to properly inform users of the Draft Basel TG's limitations.

Similarly, we reiterate our view which we expressed in our comments to the 5<sup>th</sup> Draft that 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 Draft Basel TG. Thus the document must acknowledge this circumstance prominently as well.

### **General Comments**

1. *Include a new section entitled "Limitations" in the Introduction*

As mentioned in our opening remarks, we believe that the relevance and fitness of the information contained in the Draft Basel TG will be affected by the decisions coming out of the INC on mercury. In this regard, we suggest that the users of the document be put on notice of this fact and a new Section 2 on the limitations of the Draft Basel TG is included after the section on Scope.

We suggest the following new section:

## *2. Limitations*

*The present guidelines 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.*

*In order to address immediate needs of Parties, these guidelines were prepared before the completion of the INC. The information contained in these guidelines does not prejudice the outcome of any decisions that the INC may take. The guidelines thus, recognize that the INC may arrive at decisions that can affect the relevance and appropriateness of the information contained in these guidelines. In such a case, the appropriate steps should be taken by the Basel Convention Secretariat to correct or amend the information contained in these Guidelines*

*These guidelines only provide information on the issue of mercury waste as defined under the Basel Convention. These guidelines further recognize the jurisdiction of other laws or conventions on the issue of elemental mercury as a commodity and the storage of these materials as a commodity. In this regard, the guidelines do not cover the area of elemental mercury and its subsequent storage as a commodity.*

## *2. Relationship with the Good Practices for Management of Mercury Releases from Waste (Practices Document)*

The need for two documents governing mercury and the relationship between the Draft Basel TG and the Practices Document is unclear to us. The Practices Document provides details of mercury waste management that can be incorporated in the Draft Basel TG itself. We suggest that before using the Practices Document that its relationship with the Draft Basel TG be clarified and that Parties are clear about the document.

## *3. Section 3, Guidance on ESM of Mercury Waste*

As currently written Section 3 appears to be a mere enumeration sources and an explanation of each. The user of the document, who may not be familiar or is new to Basel, could be left wondering why a particular sub-section is included and how it relates to the others. For instance the relationship of ESM with BAT/BEP, particularly that these as being part of implementing or helping achieve ESM needs to be stated and elaborated on.

We suggest that at the introduction of the section, an explanation be given on the structure of the section and why the elements of the section are such, with a view of giving the users an idea how each element is linked and how it contributes to the other.

Also under this section, we suggest the deletion of para. 53 on the ESM criteria established by PACE. The inclusion of the enumerated ESM Criteria for electronics does not contribute greatly to the discussion of the overall ESM of mercury waste, and could add to the confusion by users.

4. *Inclusion of a caveat on incineration, landfilling, and other processes that the INC process can be affect the information and guidance*

Recognizing that the upcoming INC discussions can reasonably be expected to have a substantial impact on the extent incineration 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, and other processes in the Draft Basel TG, we suggest that at the introduction part of Section 7 Treatment of Mercury Waste and Recovery of Mercury, a note be included explaining that:

*The INC discussion can reasonably be expected to have a substantial impact on the guidance contained in this section. This section needs to be revisited after the conclusion of the INC on mercury to ensure that the provisions of Section 7 are consistent with the global agreement on mercury.*

**Specific Comments**

Please see attached document. Our specific comments are in track changes. Please note that we tried to focus our comments on the more substantive issues in the document and that the current draft still would need some work on syntax.

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