

COMMENTS ON THE 1st DRAFT OF THE GLOSSARY OF TERMS WITH RELEVANCE TO STORAGE AND DISPOSAL OF ELEMENTAL MERCURY AND MERCURY CONTAINING WASTE

Zero Mercury Working Group
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The Zero Mercury Working Group (ZMWG) is thankful for the work done by UNEP in developing a Glossary of Terms with Relevance to Storage and Disposal of Elemental Mercury and Mercury Containing Waste (Glossary) as an important tool in fostering understanding and elicit greater participation from countries in the deliberating on the issues of storage of elemental mercury and mercury containing wastes.

ZMWG notes the rationales for the Glossary; to assist in discussions and provide information. Given these two rationales, which we support, we provide these initial comments on the Glossary.

I. Perspective of the Glossary

Without reading the methodology, a reader of the Glossary comes away with the impression that the perspective taken for this first draft is from the vantage point of the Basel Convention (BC). This may be a logical perspective and approach for some experts in the field, since the BC already has legal definitions for terms relating to waste and disposal. However, we believe that if the draft is to achieve its goal of informing INC delegates on terms used related to the storage and disposal of liquid mercury and solid mercury-containing waste, it needs to step back and approach the Glossary from a layman's perspective. The Glossary needs to be made accessible to all INC delegates, and to achieve this it needs start from the plain and usual meanings of terms and not from BC's for the following reasons:

Need to simplify understanding of terms for non-native English speakers. Most of the INC delegates are non-native English speakers. Thus, the Glossary needs to start from where most of the delegates are coming from in order to guide the delegates to better understand the terms. Instead of delving straight into legal definitions, distinctions, and qualifications (where at times distinctions between categories of materials are made that can add to the confusion) the Glossary needs to start with plain, common and usual meanings or definitions of each term. The Glossary does this in some parts, but it needs to make it consistent for all terminologies, for instance in the definition of stockpiling of commodity or product mercury. The Glossary starts with what a simple statement of what the terms are then proceed to discuss the real world issue affecting storage as it is happening in the United States.

- a) INC Delegates are not BC delegates and vice-versa.. While larger delegations have the luxury of having their BC representatives present during the discussions at INC, the reality is that most of the INC participants do not have this luxury. Most developing countries and countries with economies in transition INC representatives are from a different division, and would probably have very little to no fluency on the intricacies of BC. We cannot expect these representatives to have the opportunity to confer with their BC counterparts because the reality is that they do not. Furthermore, when BC delegates potentially revise this document, since they are not familiar with the INC mercury process, this could very well lead to confusion.
- b) INC Delegates are not all lawyers. The Glossary needs to proceed with the perspective of laymen because majority of INC representatives are not lawyers, and thus do not have the legal training to pore over legalese on the issue. Using

non-legal definitions to start off discussions would great help make the glossary accessible to most INC delegates.

If the document is to be effective, it needs to “step back” and focus its initial efforts in looking at simplifying the definitions and use plain, common, usual and non-legal definitions of the terms as a starting point.

II. Structure

The structure of the Glossary must be in a form that is easily accessible to the INC representatives. First, the definitions are not ordered in a way which facilitates understanding of the subject matter. Second, the present version of the Glossary has elements that could be confusing at times, for instance, under the column heading “Definition (source)” there are items with the sub-heading “Proposal”, and some of our members did not understand what the “Proposal” was about in relation to the main heading.

In this regard, we suggest the following structural changes:

1. Re-arrange the order of the categories as follows:
 - a. Mercury – we need to start with defining mercury, and arrive at a common understanding of the terms mercury, its compounds, etc.
 - b. Waste – we then proceed with a variant of mercury, which is waste. And then look at the various terms coming out of the issue of waste.
 - c. Waste Management – we think it unnecessary to break treatment from management, as management, taken in its plain meaning is broad enough to cover treatment. This is also helpful to minimize the number of categories that the reader needs to familiarize himself or herself with.
 - d. Disposal (in liquid or solid form)
 - e. Storage – this will cover both commodity mercury and what other jurisdictions consider as waste. We will discuss this in detail in the following section.
2. Column Headings

We would suggest that the 3rd column “Similar Terms” be removed as it is redundant given that the first heading already contains the synonymous terms. It may be more helpful to keep the first column with its heading, change the second column to “Existing (relevant) definition (and source)” and move the “Description / Commentary” to the third column and designate a 4th column for “Proposed Term/s and/or Definitions for the INC debate”. The 4th column will now contain proposals together with accompanying explanations if need be.

By arranging the columns in this manner, the readers will see the flow of how the terms are being discussed starting from what the term is, to the plain and ordinary meanings of the terms, explanations, and then proposals.

We suggest that the structure of the document should be written this way, so it’s easy to follow.

III. Managing Definitions

We acknowledge the challenge facing the Secretariat in arriving at definitions, and can appreciate the initial approach taken by looking at existing legal definitions provided for by other Conventions, such as Basel and other documents.

What we found most helpful in the present draft is when the Glossary goes into a discussion of the “real world” situation in relation to a term. Discussions of management options, short and long-term, for instance were far more instrumental in helping understand a specific term rather than the legal definitions.

Thus, in creating definitions, aside from keeping it simple and plain, we need to look at it from the practical view as to what we all are discussing at the INC and base definitional discussions on the “real world” – describe the types of mercury-containing materials involved, identify operations, etc.

By rooting our discussions on simple, plain, and practical concepts we can make the Glossary easier for delegates to understand. Lets leave the legal definitions to a lawyers group as needed down the road.

IV. Proposal for Defining Storage

One of the most confusing issues on the palette is that of storage. The Glossary’s discussion of storage in the context of commodities and products was helpful in shedding light to the confusion.

As the Glossary discussed, practically there are two methodologies on storage in practice at this point - the EU and the US models. The former followed the BC structure, where the mercury from specific sources which needs to be stored is considered waste, while the US model of storage follows the non-waste or commodity Hg structure.

Instead of stumbling over new words or terminologies, perhaps the solution lies in not looking for new terms or words to describe one model from the other, particularly to describe the US methodology, but to create room in the current term "storage" that equally recognizes both BC and US scenarios. After all, the proposed Hg treaty is bigger than Basel and the treaty must also be adaptive to recognize the present realities.

By creating space to allow for this two scenarios under one term, we create a room for Parties to discuss the merits on how to best achieve and arrive at permanent storage for mercury - the waste route or the non-waste route. The objective here is to ensure that mercury – no matter if it is called commodity or waste – is taken out of the market circulation in one form or the other.

To arrive at two scenarios for storage, the definition must be based on the methodology taken, not the substance. We refer to the US non-waste method and the EU-waste methodology. For instance, the term Permanent Storage can be given under ‘Existing definitions’ the Basel definition D12 and the US storage definition. In the Description/Commentary portion, it can then discuss that the use of "the term "storage" has been confusing as it has a Basel context (referred to waste) and a common and ordinary meaning for non-Basel experts. Adding to the confusion is that "storage" is presently applied to both non-waste elemental mercury and wastes consisting of and containing mercury..."

By defining the methodologies under storage, we help the Glossary provide a more objective definition that is based on the current practice.

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