



## SUMMARY OF THE NINTH MEETING OF THE OPEN-ENDED WORKING GROUP OF THE BASEL CONVENTION: 16-19 SEPTEMBER 2014

The ninth meeting of the Open-Ended Working Group (OEWG-9) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal took place from 16-19 September 2014 in Geneva, Switzerland. In total, 267 participants attended the meeting, including 103 parties, nine representatives of intergovernmental organizations, and 37 representatives of non-governmental organizations and industry.

OEWG-9 adopted decisions on, *inter alia*: technical guidelines for persistent organic pollutants (POP) and mercury wastes, as well as electrical and electronic waste; a glossary of terms to provide legal clarity; and national reporting. Many of the decisions taken have implications for intersessional work leading to the twelfth meeting of the Basel Convention's Conference of the Parties (COP-12) in May 2015.

In preparation for COP-12, the OEWG-9 advanced work on technical guidelines, legal matters and other issues to facilitate progress at COP-12. OEWG-9 was also asked to consider its own future working arrangements.

### A BRIEF HISTORY OF THE BASEL CONVENTION

The Basel Convention was adopted in 1989 and entered into force on 5 May 1992. The Convention addresses concerns over the management, disposal and transboundary movements of hazardous wastes produced worldwide, currently estimated at 400 million tonnes per year. The guiding principles of the Convention are that transboundary movements of hazardous wastes should be: reduced to a minimum; managed in an environmentally sound manner; treated and disposed of as close as possible to the source of generation; and minimized at the source. There are currently 181 parties to the Convention.

At the sixth meeting of the Conference of the Parties to the Basel Convention (COP-6) in 2002, parties created the Open-ended Working Group (OEWG) as a subsidiary body to the Convention. The OEWG assists the COP in developing and continuously reviewing the implementation of the Convention's workplan and specific operational policies and decisions for the implementation of the Convention. The OEWG considers and

advises the COP on issues relating to policy, technical, scientific, legal, institutional, administrative, financial, budgetary and other aspects of the Convention's implementation, including the training and technology transfer needs of regions and the functioning of the Basel Convention Regional Centres (BCRCs). Beyond these tasks, the OEWG prepares its workplan for the COP's consideration and reports to the COP on the activities carried out between COP meetings.

**COPs 1-6:** The first meeting of the COP to the Basel Convention (COP-1) was held 3-4 December 1992. COP-1 adopted a decision requesting industrialized countries to prohibit transboundary movements of hazardous wastes for final disposal to developing countries and noting that transboundary movements of wastes for recovery or recycling should be handled in an environmentally sound manner. In 1995, at COP-3, this decision was translated into an amendment to the Convention, known as the Ban Amendment, which bans the export of hazardous wastes for final disposal and recycling from Annex VII countries (the European Union, the Organization of Economic Cooperation and Development and Lichtenstein) to non-Annex VII countries. To date, there are 80 ratifications of the Ban Amendment and it has not yet entered into force.

Regarding the wastes subject to the Ban Amendment, in 1998 COP-4 adopted lists of hazardous and non-hazardous wastes as Annexes VIII and IX, respectively, to the Convention. COP-5

### IN THIS ISSUE

A Brief History of the Basel Convention .....	1
OEWG-9 Report .....	3
Matters Related to the Work Programme of the OEWG for 2014-2015 .....	3
Work Programme for the OEWG for 2016-2017 .....	11
Other Matters .....	11
Closing Plenary .....	11
A Brief Analysis of OEWG-9 .....	12
Upcoming Meetings .....	13
Glossary .....	14

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convened in 1999 and adopted the Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, which currently has 11 of the 20 ratifications required for it to enter into force. At COP-6, held in 2002, parties established the OEWG and adopted decisions on issues relating to the implementation of the Convention, amendments of the Convention and its annexes and institutional, financial and procedural arrangements. Delegates at COP-6 agreed to promote further cooperation between the Basel Secretariat and other organizations and secretariats involved in chemicals management.

**OEWG-1:** At its first meeting (28 April to 2 May 2003), the OEWG agreed to prepare general and specific technical guidelines on the environmentally-sound management (ESM) of persistent organic pollutants (POPs) wastes, including for: polychlorinated biphenyls (PCBs); dioxins and furans; dichloro-diphenyl-trichloroethane (DDT); hexachlorobenzene (HCB); and pesticides aldrin, chlordane, dieldrin, endrin, HCB, heptachlor, mirex and toxaphene. The OEWG also approved its first work programme, which included, *inter alia*, initiating work on other hazardous characteristics in addition to those listed in Annex III to the Convention and preparing technical guidelines on the ESM of metals and metal compounds and wastes resulting from surface treatment of metals and plastics.

**OEWG-2:** At its second meeting (20-24 October 2003) the OEWG considered, *inter alia*: the draft instruction manual for the implementation of the Protocol on Liability and Compensation; national definitions of hazardous wastes; and preparation of technical guidelines on the ESM of POP wastes, including wastes with low-POP content. The Working Group established an intersessional working group on legal aspects of the full and partial dismantling of ships.

**OEWG-3:** At its third meeting (26-30 October 2004), the OEWG considered the legal aspects of the full and partial dismantling of ships, including cooperation with the International Labour Organization (ILO) and International Maritime Organization (IMO). A final report was forwarded to COP-7 on issues related to Annex VII countries, including the costs and benefits of ratifying the Ban Amendment and a work programme for the Basel Convention Partnership Programme, launched at COP-6, was adopted. OEWG-3 also continued to consider definitions of low-POP content and environmentally-sound methods of destruction and irreversible transformation methods for POP wastes. The Working Group considered a draft training manual to combat illegal traffic of hazardous and other waste.

**COP-7:** At the seventh meeting of the COP (25-29 October 2004), delegates considered decisions on a range of issues relating to the BCRCs, the Basel Convention Partnership Programme, institutional arrangements, the Ban Amendment and the Basel Protocol on Liability and Compensation. COP-7 also adopted decisions on definitions of hazardous wastes, hazardous waste characteristics and a number of technical guidelines.

**OEWG-4:** At its fourth meeting (4-8 July 2005), the OEWG encouraged pilot projects and workshops to support the Mobile Phone Partnership initiative launched in 2002. On ships, the OEWG: initiated a process to gather information on the abandonment of ships on land or in ports and continued its work on ship dismantling. It approved an instruction manual on the

Basel Protocol on Liability and Compensation and agreed to establish a relationship with the UN Subcommittee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals to further work on hazard characteristics.

**OEWG-5:** At its fifth meeting (3-7 April 2006, Geneva), the OEWG discussed several areas of ongoing work, including abandonment of ships and ship dismantling. It forwarded to the COP draft technical guidelines for the ESM of wastes containing or contaminated with a number of POPs as well as amendments to the general technical guidelines on POP waste. The OEWG also approved the training manual on illegal waste and clarified the procedure for reviewing and adjusting the lists of wastes contained in Annexes VIII and IX to the Convention.

**COP-8:** At eighth meeting of the COP (27 November-1 December 2006, Nairobi, Kenya), delegates adopted a declaration on electrical and electronic waste (e-waste) and more than 30 decisions on, *inter alia*: the implementation of the Strategic Plan, including consideration of the work and operation of the BCRCs and of the Basel Convention Partnership Programme; synergies and cooperation; e-waste and end-of-life equipment; ship dismantling; legal matters; amendments to the general technical guidelines for the ESM of POP wastes; and guidelines for the ESM of wastes.

**OEWG-6:** At its sixth meeting (3-7 September 2007), the OEWG discussed a review of the BCRCs and established a workplan to guide its consideration of e-waste and interim group arrangements for a Partnership for Action on Computing Equipment (PACE), which was subsequently launched in 2008. On ships, the OEWG approved guidance on the abandonment of ships on land or in ports. The OEWG also began consideration of the ESM of mercury wastes and continued work on POP wastes.

**COP-9:** At the ninth meeting of the COP (23-27 June 2008, Bali, Indonesia), delegates adopted more than 30 decisions on, *inter alia*: cooperation and coordination; budget; legal matters; review of the BCRCs; the Partnership Programme; the Strategic Plan; and technical matters. Switzerland and Indonesia announced a country-led initiative inviting key players to discuss in an informal, dynamic and non-dogmatic manner issues related to transboundary movements of hazardous wastes, especially to developing countries.

**ExCOPs-1:** At the first simultaneous extraordinary meeting of the Conferences of the Parties (ExCOPs-1) to the Basel, Rotterdam and Stockholm Conventions (22-24 February 2010, Bali) delegates adopted an omnibus synergies decision on joint services, joint activities, synchronization of budget cycles, joint audits, joint managerial functions, and review arrangements.

**OEWG-7:** At the seventh meeting of the OEWG (10-14 May 2010, Geneva), parties considered technical guidelines on the transboundary movements of e-waste and revised the guidelines previously submitted to COP-10 on the Mobile Phone Partnership Initiative. The OEWG agreed to draft technical guidelines on the co-processing of hazardous waste in cement kilns and to launch intersessional work to revise the technical guidelines for mercury wastes. It also considered the Indonesian-Swiss Country-led Initiative (CLI) and PACE.

**OEWG-8:** At its eighth meeting (25-28 September 2010, Geneva), the OEWG continued work on the technical guidelines on e-waste, in particular the distinction between waste and

non-waste, and POP wastes. The OEWG agreed to include in the Basel Convention guidelines for the new POPs added to the Stockholm Convention in 2009. As a follow-up to the Indonesian-Swiss CLI, the Working Group agreed to develop a glossary of terms to provide further legal clarity about the interpretation of key terms, such as waste and non-waste, hazardous and non-hazardous waste, reuse, direct reuse, refurbishment and end-of-life goods and thereby enhance implementation.

**COP-10:** At the tenth meeting of the COP (17-21 October 2011, Cartagena, Colombia), parties adopted a decision on the Indonesian-Swiss CLI, clarifying the interpretation of Article 17(5) of the Convention (entry into force of amendments) that the Ban Amendment will enter into force once three-fourths, that is 66 of the 87 parties that were parties when the Amendment was adopted at COP-3, will need to ratify the Amendment for it to enter into force. COP-10 also adopted 25 decisions on, *inter alia*: synergies; budget; legal matters; BCRCs; capacity building; the Partnership Programme; and technical matters.

**COP-11 and ExCOPs-2:** The eleventh meeting of the COP was held back-to-back with the sixth meetings of the Stockholm and Rotterdam COPs and in conjunction with the second simultaneous extraordinary meetings of the COPs to the three conventions (28 April-10 May 2013, Geneva, Switzerland). COP-11 took decisions on, *inter alia*: the CLI; environmentally-sound dismantling of ships; and illegal traffic. The COP also identified areas of work for the OEWG on technical guidelines for POP waste and e-waste. ExCOPs-2 agreed to an omnibus decision that included enhancing cooperation between the technical bodies of the three conventions and facilitating financial resources for chemicals and wastes.

### OEWG-9 REPORT

OEWG-9 opened on Tuesday morning, 16 September 2014 and was co-chaired by Magda Gosk (Poland) and Prakash Kowlessar (Mauritius). Kerstin Stendahl, Executive Secretary *ad interim* of the Basel, Rotterdam and Stockholm Conventions, outlined key OEWG-9 agenda items, including technical guidelines on mercury and POP wastes as well as electrical and electronic waste (e-waste), on which she urged participants to show flexibility to reach agreement.

Parties then adopted the agenda (UNEP/CHW/OEWG.9/1 and Add.1) and agreed to the proposed organization of work (UNEP/CHW/OEWG.9/INF/1 and INF/2/Rev.1).

Latvia, for the European Union (EU), said it was important that OEWG-9 reach agreement on the legal glossary and the technical guidelines on POPs, mercury and e-waste for adoption by COP-12, and offered to share EU member states' experience in waste prevention to help formulate a roadmap under the Cartagena Declaration on the Prevention, Minimization and Recovery of Hazardous and Other Wastes.

Paraguay, for the Latin American and Caribbean Group (GRULAC), urged financial support for the participation of delegates and experts from all countries in OEWG meetings, highlighted the need to update the guidelines on disposing acid-lead batteries and noted the link between the legal glossary and the e-waste guidelines.

### MATTERS RELATED TO THE WORK PROGRAMME OF THE OEWG FOR 2014-2015

**STRATEGIC ISSUES: Strategic Framework:** On Tuesday, the Secretariat introduced reports on the progress on the implementation of the strategic framework (UNEP/CHW/OEWG.9/2) and a baseline for the framework's evaluation (UNEP/CHW/OEWG.9/INF/3). Welcoming progress, the EU, with Switzerland, objected to including additional information in national reports, saying it would increase the burden on parties and would not be in line with decision BC-10/2 (Strategic Framework, 2012-2021).

The OEWG took note of the progress report.

**Cartagena Declaration on the Prevention, Minimization and Recovery of Hazardous Wastes and Other Wastes:** On Tuesday, the Secretariat introduced the proposed action on reviewing the progress on the implementation of the Cartagena Declaration and suggested elements of a roadmap for action (UNEP/CHW/OEWG.9/3).

The EU stressed the need for a more efficient strategy to measure and record progress on waste reduction and, with Japan, offered to share national experiences on waste minimization and prevention. GRULAC suggested establishing an intersessional working group to develop the roadmap to implement the Cartagena Declaration.

China, Liberia and Mexico called for adequate financial and technical assistance to developing countries to implement the Declaration. Egypt suggested the development of a timeframe for the roadmap aligned with the Convention's strategic framework. Kenya suggested best practices and successful technologies from other fora be considered for effective implementation of the roadmap.

Delegates agreed to establish a Friends of the Co-Chairs group on a roadmap for action in the implementation of the Cartagena Declaration chaired by Angela Rivera (Colombia).

In the Friends of the Co-Chairs group, participants from all regional groups agreed to prioritize waste prevention and minimization in the roadmap for action. Views differed on the best approach to develop the roadmap, particularly whether to prioritize implementation or information collection to inform action. Some suggested asking expert working group on ESM to work on the roadmap.

In plenary on Friday, the Secretariat introduced a draft decision on the follow-up to the Cartagena Declaration and delegates adopted it without amendment.

**Final Decision:** In the decision (UNEP/CHW/OEWG.9/CRP.7), the OEWG: takes note of the COP-11 request that the OEWG prepare a roadmap for action and review the progress that parties have made in the implementation of the Cartagena Declaration; recommends that COP-12 adopt the roadmap for action on the implementation of the Declaration set out in the annex to the decision; and recommends that COP-12 designate the ESM expert working group or a new intersessional group to develop guidance to assist parties in developing efficient strategies to achieve prevention and minimization of generation of hazardous and other wastes, and to invite a lead country within the group to develop such guidance. The annex outlines



a roadmap for action for the implementation of the Declaration, including areas for actions, activities, timelines and responsible actors to implement the Declaration.

**Developing Guidelines for Environmentally-Sound Management (ESM):** This item was taken up in plenary on Tuesday, when the Secretariat introduced a note on the work of the expert working group on ESM (UNEP/CHW/OEWG.9/4) and a report on the group's activities and draft work programme (UNEP/CHW/OEWG.9/INF/4).

ESM expert working group Co-Chair Alberto Santos Capra (Argentina) said the group had made considerable progress on key activities, such as pilot projects, and the development of waste streams fact sheets and practical manuals on issues such as terminology, noting the draft work programme includes the development of an ESM toolkit as a possible priority.

The EU, Mexico, Switzerland, Colombia, Japan and an observer from the US welcomed progress made by the expert group. The EU and Canada requested more detailed information on the group's activities, with Canada cautioning against duplication of work on issues such as terminology, and suggested further elaboration of the draft work programme be made available to parties in time for comment prior to COP-12.

Japan said lessons learned from the pilot projects should be included in the group's reports. Switzerland proposed adopting a step-by-step approach to the priorities contained in the draft work programme.

Responding to comments, the Secretariat said the expert group was liaising with other groups under the Convention to avoid duplication and planned to finalize its draft work programme in January 2015.

The OEWG agreed to request the Secretariat to transmit the comments provided to the expert working group for consideration and action.

**Options for Operations of the OEWG:** On Tuesday, the Secretariat introduced a note on options for the operations of the OEWG (UNEP/CHW/OEWG.9/5) and a compilation of comments (UNEP/CHW/OEWG.9/INF/5). She said the three proposed options are to: maintain the current mandate and open-ended membership and hold daily plenary sessions with interpretation (Option A); maintain the current mandate and membership and hold plenary sessions on two days with interpretation (Option B); and dissolve the OEWG and establish a Scientific and Technical Committee (Option C).

Japan expressed support for Option B but, calling OEWG-9 a "test case" for this arrangement, he suggested revisiting the issue later in the week. The EU expressed preference for Option B, noting the need to consider work undertaken by other subsidiary bodies.

Norway stated that the OEWG should focus on scientific and technical issues and said Option B is "on the right track." South Africa supported Option B as the most cost-effective institutional arrangement that would enable a transparent and inclusive decision making process.

Paraguay, for GRULAC, expressed support for Option A to ensure effective participation by all countries and suggested a contact group discuss the issue. Colombia called two days of plenary "insufficient" for parties to discuss all issues. Egypt, for

the African Group, expressed preference for the "status quo" to ensure the full participation of all parties.

China stated that Option C could hinder participation by all countries and would neglect the legal aspects of the mandate. Argentina recalled that the OEWG considers both technical and legal issues as per decision VII/36 (institutional arrangements). Canada expressed support for maintaining the open-ended membership and emphasized the need for intersessional work on non-technical issues.

Switzerland highlighted the importance of ensuring complementarity with the work of the Implementation and Compliance Committee (ICC) and expressed a preference to concentrate on technical and scientific issues, saying that there may be an option that meets these goals and "lies between" Options B and C.

An observer from the US suggested as another option the establishment of an *ad hoc* subsidiary body that would focus on technical guidelines and the ESM framework and would not routinely review past COP decisions.

The Secretariat was asked to prepare a draft decision on this item in consultation with interested parties.

In plenary on Friday, the Secretariat introduced a draft decision (UNEP/CHW/OEWG.9/CRP.10), noting that it recommended that the COP adopt a decision on future institutional arrangements taking into account, *inter alia*, OEWG-9 discussions, and highlighting that text referencing the importance of interpretation remained in brackets.

Switzerland, supported by Norway and Bangladesh, said that reference to interpretation may pre-empt the decision of the COP on this matter, and preferred that the text be deleted.

Yemen, with Argentina, China, Egypt, Colombia and Paraguay, opposed this, stressing the importance of interpretation to non-English speaking delegations. Yemen, supported by Argentina, described difficulties by non-native English speakers in fully participating at OEWG-9. Noting that 75% of countries represented at the meeting do not use English as a first language, Argentina proposed that the Secretariat continue to compile comments on this issue to inform an analysis to be submitted to COP-12. Egypt called for more efficient use of interpretation services.

The OEWG agreed to text inviting parties and others to submit comments on the arrangements for OEWG-9 and requesting the Secretariat to compile and submit them to COP-12 as a basis for a COP decision on options for future institutional arrangements for the OEWG.

Argentina, supported by Uruguay, Yemen, and Mexico, suggested amending the bracketed text from "such as the importance of interpretation," to "including the importance of interpretation." Co-Chair Kowlessor proposed deleting the brackets around this text, and delegates agreed. Delegates then adopted the draft decision, with these amendments.

**Final Decision:** In the final decision (UNEP/CHW/OEWG.9/CRP.10), noting the desire by parties to ensure a transparent, inclusive and efficient decision-making process in the OEWG allowing for all regions to participate effectively in discussions, and recognizing the broad scope of the mandate of the OEWG, covering technical, legal and strategic issues in preparation for COP discussions, the OEWG, *inter alia*:

- invites parties and others to submit comments on OEWG-9 arrangements to the Secretariat by 30 November 2014;
- requests the Secretariat to compile and submit the comments received to COP-12 for its consideration as a basis for a decision on options for future institutional arrangements on the OEWG's operations;
- agrees that the experiences with the arrangements for OEWG-9 should be taken into account before a decision is made on future institutional arrangements; and
- recommends that COP-12 adopt a decision on future institutional arrangements for the operations of the OEWG, taking into account, *inter alia*, views expressed by parties at OEWG-9, including the importance of interpretation for non-English-speaking countries.

**SCIENTIFIC AND TECHNICAL MATTERS: Technical Guidelines for ESM of wastes consisting of, containing or contaminated with POPs:** On Tuesday, the Secretariat introduced the relevant documents (UNEP/CHW/OEWG.9/6, INF/9, INF/9/Add.1, INF/10-13, 23 and 30). Canada, lead country of the small intersessional working group (SIWG) on POPs, presented a progress report, noting the preparation of six draft technical guidelines on ESM of POP waste during the intersessional period.

Japan welcomed further discussions on the development of the polychlorinated biphenyls (PCB) guidelines. The EU called for consistency and avoiding duplication of work in the development of the guidelines, and highlighted EU legislation on waste with low POP content.

Switzerland said that the work of the SIWG showcased the importance of complementary work among the Basel and Stockholm Conventions. Norway, supported by Kenya, suggested that the draft guidelines be reviewed by the Stockholm Convention's POPs Review Committee (POPRC) to encourage co-ownership and Canada said that this should be decided by the Basel Convention COP.

The OEWG forwarded discussion of this issue to a contact group on technical matters, co-chaired by Jane Stratford (UK) and Francis Kihumba (Kenya).

On Wednesday and Thursday, the contact group on technical matters reviewed the technical guidelines on POP wastes. In the discussions, delegates were able to agree to the draft updated technical guidelines on polychlorinated dibenzop-dioxins (PCDD), polychlorinated dibenzofurans (PCDF), hexachlorobenzene (HCB), PCBs or pentachlorobenzene (PeCB) (UNEP/CHW/OEWG.9/INF/13) and hexabromocyclododecane (HBCD) (UNEP/CHW/OEWG.9/INF/23) with little debate on substantive matters. They also agreed to the work done on the review of waste-related aspects of certain guidance documents on POPs under the Stockholm Convention (UNEP/CHW/OEWG.9/INF/30).

On the draft updated general technical guidelines (UNEP/CHW/OEWG.9/INF/9), discussion focused on the methodology for establishing low-POP content, with consideration of a proposal put forward by a developed country that took into account criteria for establishing limit values for low-POP content from a range of possible values, including lower and upper boundaries. An NGO expressed concern that the proposed upper boundaries were too high to establish low-POP content

for some POPs and cautioned that, if implemented, these values could compromise the elimination of POPs as envisioned in the Stockholm Convention. Delegates agreed to include a reference to the proposed values in the draft decision on the general guidelines in square brackets to be further considered in the intersessional period and at COP-12.

On the draft updated technical guidelines for PCBs, polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBB), including hexabromobiphenyl (HBB) (UNEP/CHW/OEWG.9/INF/12), discussion centered on avoiding duplication and enhancing consistency between the general technical guidelines and this specific guideline. Delegates also discussed destruction and irreversible transformation methods, including alkali metal reduction and dechlorination of PCBs and their byproducts in contaminated transformer oil below the low-POP content. An NGO suggested, and delegates agreed, to add a reference to ships and paints used in building and construction as a possible source of PCBs and PCTs.

On the technical guidelines on perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOSF) (UNEP/CHW/OEWG.9/INF/10), discussions focused on the scope, waste characterization and low-POP content threshold values for PFOS.

A developed country delegate suggested clarifying what is listed in the technical guidelines in relation to the PFOS listing in the Stockholm Convention.

Delegates agreed to apply a lifecycle approach in identifying waste streams, and to give more prominence to the guidelines' section on the health and safety risks of PFOS and PFOSF.

On the draft technical guidelines on hexa-, hepta-, tetra- and penta-bromodiphenyl ether (PBDEs) (UNEP/CHW/OEWG.9/INF/11), delegates agreed to a number of edits, including changes to ensure consistency between each guideline and the text of the Stockholm Convention, as well as other Basel Convention POP waste technical guidelines. One delegate proposed removing one of the analytical methods referenced, stating that it was not strictly a method, and urged including relatively simple analytical and screening methods in both the PBDE guidelines and the general POP waste guidelines in order to ensure that they were useful to developing countries. Regarding storage, one industry representative urged making a distinction between different kinds of PBDE matrices, or sources, noting that it might not be practical to consider household items containing PBDEs, such as sofas, as hazardous waste. Several participants agreed on the need to differentiate between different matrices but urged industry to provide concrete suggestions on how to ensure ESM, including storage and disposal, of PBDE-containing items that might be functional but could leak PBDEs if not properly managed.

In plenary on Friday, delegates considered the a draft decision on the technical guidelines for the ESM of wastes consisting of, containing or contaminated with POPs and the methodology for establishing low POP content and its application in the EU. Both draft decisions were adopted without amendment.

**Final Decision:** In the final decision on the technical guidelines for the ESM of wastes consisting of, containing or contaminated with POPs (UNEP/CHW/OEWG.9/CRP.13/Rev.1), the OEWG, *inter alia*:

- takes note of the draft technical guidelines for the ESM of wastes consisting of, containing or contaminated with POPs prepared by the lead countries and lead organizations;
- takes note of the concentration levels to define low-POP content discussed at OEWG-9 and invites parties and others to provide comments to the Secretariat on the levels by 31 October 2014. These include levels proposed for endosulfan: 50 mg/kg; PCB: 50 mg/kg; hexabromobiphenyl: 50 mg/kg; hexa-BDE, hepta-BDE, tetra-BDE and penta-BDE: 1000 mg/kg as a sum; PFOS and its salts, and PFOSF: 50 mg/kg; and HBCD: 100 mg/kg and 1000 mg/kg;
- invites the UN Food and Agriculture Organization to prepare updated draft technical guidelines on the ESM of wastes consisting of, containing or contaminated with pesticides;
- invites parties and others to provide comments on the further draft technical guidelines to be made available on the website of the Basel Convention by 10 April 2015;
- recognizes the significance of deca-BDE as a precursor to penta-BDE and octa-BDE and recommends that COP-12 consider specifying and including work related to deca-BDE in the OEWG work programme for 2016-2017, taking into account ongoing work under the Stockholm Convention, and inviting parties to consider serving as lead country for such work; and
- recognizes the need to clarify the applicability of the Basel Convention to waste consisting of, containing or contaminated with polybromo-BDE and recommends COP-12 consider including work on the interpretation of entry A3180 in Annex VIII to the Basel Convention in the OEWG work programme for 2016-2017.

The methodology for establishing low POP content and its application in the EU (UNEP/CHW/OEWG.9/CRP.14) sets out the EU's methodology in this regard, and its application for both old and new POPs. It lays out the rationale for deviating from the low POP content proposed by earlier studies, and explained that to detect the presence of hexa-, hepta-, tetra- and penta-BDE, screening methods usually detect the presence of BDEs but do not allow distinguishing among types of diphenyl ethers.

**Technical Guidelines for ESM of wastes consisting of elemental mercury and wastes containing or contaminated with mercury:** On Tuesday, the Secretariat introduced the relevant documents (UNEP/CHW/OEWG.9/6 and UNEP/CHW/OEWG.9/INF/8). Japan, lead country of the SIWG on mercury, noted that an earlier version of the guidelines posted on the Basel Convention website in December 2013 was revised to address comments from Canada and New Zealand. The EU supported the draft guidelines as revised and, with Switzerland, stressed the need to align them further with the Minamata Convention on Mercury.

Further discussion of the guidelines was entrusted to the contact group on technical matters.

The group met Wednesday afternoon and evening to discuss the mercury waste guidelines. Delegates discussed sources of mercury waste, as represented in a figure in the section on life-cycle management of mercury, with Japan suggesting that the sources of mercury waste to be managed could be highlighted as being from natural sources, from primary mercury mining, or both. Several parties favored including both these sources

and some suggested including a reference to elemental mercury in the figure as well. One developed country said that as the Minamata Convention does not deal with permanent storage, and all references to storage should be consistent with that Convention's language. Japan was tasked with revising the figure to reflect the discussion. In a brief discussion on the section of the guidelines on sulphur polymer stabilization/solidification (SPSS), one developed country proposed text reflecting the need for developing national and regional legislation on this emerging issue.

On Friday in plenary, delegates considered a draft decision on the mercury waste guidelines. Argentina, supported by Egypt, Switzerland and Mexico, but opposed by an observer from the US, requested the addition of text calling for cooperation and coordination with the Minamata Convention on the issue of mercury waste. After informal consultations, Canada proposed, and delegates agreed, to include text requesting the Secretariat to inform the appropriate bodies of the Minamata Convention of the OEWG's work on this issue. The decision was adopted with this and other minor textual amendments.

**Final Decision:** In the decision (UNEP/CHW/OEWG.9/CRP.9), the OEWG, *inter alia*:

- invites parties and others to submit further comments on the draft updated technical guidelines on mercury wastes to the Secretariat and the lead country by 30 September 2014;
- requests the lead country, in consultation with the SIWG, to prepare a final draft of the updated technical guidelines, taking into account the comments received, by 21 March 2015; and
- requests the Secretariat to submit the final draft updated technical guidelines to COP-12.

**Technical guidelines for transboundary movements of electronic and electrical waste (e-waste) and used electrical and electronic equipment:** On Tuesday morning, the Secretariat introduced a note on the technical guidelines on e-waste and used electrical and electronic equipment (UNEP/CHW/OEWG.9/6); draft technical guidelines on e-waste and electrical and electronic equipment (UNEP/CHW/OEWG.9/INF/6) and a compilation of comments (Add.1); a non-paper on the status of discussions regarding the guidelines (UNEP/CHW/OEWG.9/INF/7); and a report on the responses to a survey on remaining issues under paragraph 26(b) of the draft guidelines (UNEP/CHW/OEWG.9/INF/14).

Togo and Ghana underscored that e-waste management was a significant problem for African countries. Togo supported achieving consensus on the definitions of waste and non-waste in the legal glossary of terms, which could then apply to the technical guidelines on e-waste. Ghana and Egypt said that under the Bamako Convention untested and non-functional electronics were considered to be waste. Kenya, with Liberia, said the guidelines should focus on the informal recycling sector, and Liberia suggested targeting educational institutions as well.

Inviting others to do the same, Japan reported that they had developed criteria to prevent the export of e-waste disguised as used electrical and electronic equipment and expressed willingness to provide financial resources to conduct further work on the guidelines in the lead up to COP-12.

The EU, Norway, Switzerland and Chile said OEWG-9 should clear the way for adoption of the guidelines at COP-12. The



EU, with China, suggested that progress could be achieved by focusing on general principles, rather than specific provisions, regarding when used equipment should be considered waste.

Stating that its position at COP-11 had been misinterpreted, Norway said exemptions should be limited to electronic goods destined neither for direct reuse nor for disposal and include requirements for testing and full functionality with solid proof and documentation.

Switzerland announced it would present a proposal to explore the possibility, after the adoption of the technical guidelines on e-waste, of listing “used electronic and electrical equipment destined for repair, refurbishment and root analysis” as a new entry under Annex II of the Basel Convention (categories of waste requiring special consideration), which would apply to equipment considered waste under the guidelines. He said the proposal would serve to control unwanted imports of both hazardous and non-hazardous equipment and would not affect the Ban Amendment.

Calling e-waste the “most trafficked” hazardous waste, the Basel Action Network (BAN) urged parties to adopt the basic rule that untested or non-functional used electronic and electrical equipment was waste and thus was subject to Basel Convention control procedures, and to scrutinize exemptions to avoid loopholes that “unscrupulous” exporters could exploit.

An observer from the US said a “workable solution” would be possible if the two main views on paragraph 26(b) were considered, namely, the view that impeding the export of certain used electronic goods could hinder the economic viability of certain industries that extended the life of such equipment, and the fact that e-waste might be disguised as used equipment and prevent ESM.

The OEWG agreed to request the contact group on technical matters to discuss the technical guidelines on e-waste, with the exception of paragraph 26(b), and to task a Friends of the Co-Chairs group, to be chaired by John Pwamang (Ghana), and composed of two representatives of each region, two representatives of industry and two representatives of environmental NGOs, to discuss paragraph 26(b) and report back to the contact group on technical matters.

The contact group on technical matters discussed the e-waste guidelines on Tuesday evening and Thursday afternoon and the Friends of the Co-Chairs group on paragraph 26(b) met on Wednesday and Thursday. The contact group discussions focused on general principles, and defining the mandate of, and reviewing the proposals from, the Friends of the Co-Chairs group.

Regarding general principles, delegates agreed to the principle that if used electronic equipment was tested and found to be fully functional, and if documentation substantiated it was intended for direct reuse, the equipment would not be considered waste. They also agreed that, in the absence of such proof and appropriate packaging, it would be assumed that the equipment was waste and customs officials would have the authority to stop shipments of such equipment. One representative suggested requiring information on the destination of equipment intended for direct reuse, stating that functional equipment was sometimes treated as waste, and therefore destroyed in a non-environmentally sound manner, in importing developing countries.

Regarding the mandate of the Friends of the Co-Chairs group on paragraph 26(b), the contact group agreed to mandate the Friends of the Co-Chairs group to: look at conditions under which used electronic and electrical equipment would be considered waste; identify areas of agreement and any other issues that could help advance the discussion on paragraph 26(b); and, if appropriate, prepare a table summarizing the key conditions under which used equipment would be considered waste for consideration by the contact group.

Regarding the proposals received based on this mandate, the Friends of the Co-Chairs group produced two alternative proposals for consideration by the contact group on Thursday afternoon. The first, “preferred option,” proposed a set of specific conditions under which non-functional used electrical and electronic equipment would normally not be considered waste that could replace all existing proposals on paragraph 26(b) of the draft technical guidelines on e-waste (INF/6). Under the second proposal, intended as a “fallback option” in case no agreement could be reached on paragraph 26(b) at COP-12 and as a temporary solution until parties could agree on the text in that paragraph, parties would be able to define the conditions under which non-functional used electrical and electronic equipment would not be considered waste and should inform the Secretariat about any such conditions. The second proposal also required documentation be provided to substantiate that the referred conditions were met and, in the absence of such documentation, the transboundary transport of the used equipment should be considered as transboundary movement of waste.

The contact group agreed to insert both proposals, left in brackets, in the draft technical guidelines on e-waste for consideration by COP-12. It then reviewed a draft decision proposed by a developed country on the way forward on the two proposals, including intersessional work in the run up to the COP and beyond. One environmental NGO proposed, and the group agreed, to a reference clarifying that the second option was meant to be a temporary or interim solution. The contact group agreed to forward the draft decision containing text for a COP decision in square brackets, subject to change resulting from work in the intersessional period.

On Friday, the Secretariat introduced a draft decision on the e-waste technical guidelines (UNEP/CHW/OEWG.9/CRP.8) and the draft technical guidelines (UNEP/CHW/OEWG.9/CRP.11) to plenary.

Co-Chair Stratford said the decision sets out the next steps leading to COP-12 and observed the continued need for a lead country for intersessional work. She also drew attention to the two options proposed by the Friends of the Co-Chairs group, noting they were reflected in the elements of a draft COP decision. On the technical guidelines, she highlighted the new text on paragraph 26(b) developed at OEWG-9 as an area where comments would be particularly useful.

Japan welcomed the progress achieved at this meeting and stated that further discussion is required on the details of the conditions of paragraph 26(b) and their implications for countries in the Asian region.

Saying that “bridging the digital divide cannot create a digital dump,” BAN expressed concern that there were already

suggestions to “water down” the conditions under which non-functional equipment could be exported as non-waste in the new text in paragraph 26(b) of the guidelines.

Mexico stated that, as an importer of equipment destined for refurbishment and repair, they have no evidence that these shipments led to an excess of e-waste. Switzerland invited parties to comment on their proposed way forward presented in plenary on Tuesday to list “used electronic and electrical equipment destined for repair, refurbishment and root analysis” as a new entry under Annex II after adoption of the technical guidelines. Norway, supported by Switzerland, suggested that references in the draft COP decision that reflect the fallback option be moved to the OEWG-9 meeting report or to an annex. Stressing that the two options represent a “delicate compromise,” the EU said it could not agree to this suggestion and Norway and Switzerland agreed to leave both options in the draft decision as presented.

The OEWG adopted the draft decision without amendment.

**Final Decision:** In the decision on e-waste technical guidelines (UNEP/CHW/OEWG.9/CRP.8), the OEWG:

- takes note with appreciation the progress made during OEWG-9, particularly on paragraph 26(b) whereby two options were developed: either to reach agreement through further intersessional work before COP-12, or, in case no agreement can be reached before or after COP-12, to include agreed text in general terms in the draft guidelines as an interim solution, as reflected in the new paragraph 26 of the revised draft technical guidelines, with the engagement to further work on the guidelines in accordance with any relevant decisions adopted by COP-12;
- requests the Secretariat to prepare, in consultation with the SIWG, a further revised version of the draft technical guidelines by 20 November 2014;
- invites parties to provide comments to the Secretariat on the further revised draft technical guidelines by 28 February 2015, in particular on options relating to paragraph 26(b);
- requests the SIWG to continue efforts to make progress on seeking agreement before COP-12 on the provisions in paragraph 26(b) of the draft technical guidelines;
- requests the Secretariat to revise the draft technical guidelines, taking into account comments received by 28 February 2015 and the outcome of efforts to find agreement on paragraph 26(b), before COP-12; and
- requests the Secretariat to prepare a draft decision for consideration of COP-12 that adopts the technical guidelines, or agrees to further work on this issue.

**National Reporting:** On Tuesday, the Secretariat introduced the relevant documents (UNEP/CHW/OEWG.9/7 and INF/15 and 26). Germany, lead country of the SIWG on reporting, presented the work of the SIWG in revising the reporting format, highlighting a new table on reporting illegal traffic cases.

Canada said that the new format would help encourage more parties to submit annual reports. Egypt welcomed the new table on illegal trafficking as a step towards enhancing compliance with the Convention. Characterizing annual national reporting obligations as a “major undertaking” for developing countries, Argentina proposed that national reports be restricted to essential information and only be submitted when needed. Germany noted the Basel Convention requires annual national reporting.

Senegal highlighted the need to translate the reporting forms and, with Togo, noted that further work was required to enable all countries to collect the necessary information for reporting. Mexico called for webinars to help raise understanding of the new format.

Delegates agreed to return to this issue on Friday to provide time to incorporate comments from Argentina.

On Friday, the Secretariat introduced the draft decision on national reporting (UNEP/CHW/OEWG.9/CRP.4) and the revised draft reporting format (UNEP/CHW/OEWG.9/CRP.5).

Germany outlined the changes to the draft decision and draft format, highlighting text specifying that the ICC should review only some questions, indicated in the revised reporting format with an asterisk, when reviewing the annual national reports.

Egypt, with China, underscored the challenges developing countries face when trying to complete their national reports and called for support to help disseminate the reporting format to key actors, including customs officers.

China also expressed concern that asking a country to report cases of illegal trafficking could cause problems between countries. He cited the example of e-waste, saying that a unilateral declaration of a country that a given shipment of e-waste constituted illegal trafficking may cause problems with the country where the e-waste originated.

Argentina, supported by South Africa, suggested amending the draft decision to ensure that the COP will consider the draft reporting format as revised at OEWG-9.

Norway, with Canada, raised concerns over whether the OEWG should approve the revised draft reporting format for consideration by the COP, saying that the format was not revised by a contact or drafting group, and further expressed concern that the some information should be prioritized over other information.

Canada suggested that the SIWG be asked to continue its work, based on comments provided by the OEWG, and then report to the COP.

Argentina reminded parties that GRULAC was asked to collaborate on the draft and characterized the changes as a “fine tuning” to clarify which questions on the national reporting format are compulsory.

Co-Chair Gosk recalled that on Tuesday the plenary had asked Germany, as lead country, to work with Argentina to address their concerns and revise the text. She asked interested parties to consult informally and report back to plenary.

After a brief suspension of the plenary, Germany reported that the group agreed to an amended decision that includes inviting the additional parties to nominate experts to participate in intersessional work and to request the SIWG to work intersessionally to present a revised draft reporting format to COP-12.

The Secretariat presented the revisions to the draft decision orally. Parties agreed the amended draft decision with these amendments.

**Final Decision:** In its decision (UNEP/CHW/OEWG.9/CRP.4), the OEWG: invites additional parties to nominate experts to participate in the SIWG by 10 October 2014; invites parties to submit comments on the draft reporting format and on the outcome of the OEWG-9 discussion to the Secretariat by



31 October 2014; and requests the SIWG to prepare a revised format for national reporting, taking into account the discussions and comments received, for consideration by COP-12.

**Amendments to the Annexes of the Basel Convention:**

On Tuesday, the Secretariat introduced a note on applications for new entries to Annex IX (UNEP/CHW/OEWG.9/8) and a compilation of comments (UNEP/CHW/OEWG.9/INF/25) and reported that the new entries to the annexes agreed to by COP-11 had entered into force on 26 May 2014 for all parties except those that notified the Secretariat that they could not accept the amendments. Co-Chair Kowlessar recalled that the COP had tasked the OEWG with discussing entry B3025 (composite packaging waste) in Annex IX of the Convention (non-hazardous wastes).

The EU drew attention to the inclusion of composite packaging waste including aluminum. China stated that used aluminum composite paper packaging is a household waste and, therefore, should be included in Annex II (waste requiring special consideration) and not Annex IX. BAN agreed with this statement, noting the lack of capacity to deal with the material.

In response to a request for clarification by Co-Chair Kowlessar, the EU suggested that further work on this item could be suspended. OEWG-9 agreed that this would be reflected in the report of the meeting.

**Classification and Hazardous Characterization of Wastes:**

On Tuesday, the Secretariat introduced a review of cooperation with the World Customs Organization and its Harmonized System Committee (UNEP/CHW/OEWG.9/9) and Co-Chair Kowlessar noted that this work is in its early stages.

The OEWG took note of the document.

**LEGAL, GOVERNANCE AND ENFORCEMENT**

**MATTERS: Consultation with the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Convention:**

On Tuesday, the Secretariat introduced a report on the consultation with the ICC (UNEP/CHW/OEWG.9/10) and four draft guidance documents developed by the ICC on: the development of inventories of hazardous and other wastes under the Basel Convention (UNEP/CHW/OEWG.9/INF/16); the implementation of the Basel Convention illegal traffic take-back provision (Article 9(2)) (UNEP/CHW/OEWG.9/INF/17); the Basel Convention control system (UNEP/CHW/OEWG.9/INF/18); and an updated manual for the implementation of the Basel Convention (UNEP/CHW/OEWG.9/INF/19).

Egypt expressed full support for the guidance documents and suggested they should be adopted at COP-12. Noting remaining comments, the EU also supported adopting the draft documents at COP-12.

Canada suggested expanding the draft guidance on illegal trafficking (INF/17) in order to cover the full spectrum of illegal shipments listed in Article 9 of the Convention (illegal traffic). Stressing many developing countries do not have elimination facilities, Argentina suggested further elaboration of the take-back provision in the draft guidance on illegal trafficking.

The OEWG agreed that the Secretariat and ICC would work with Canada, the EU and Argentina and submit the revised draft guidance documents to COP-12 for possible adoption.

On Friday, the Secretariat introduced the draft decision on consultation with the ICC, which delegates adopted without amendment.

**Final Decision:** In the decision (UNEP/CHW/OEWG.9/CRP.6), the OEWG invites the ICC, when finalizing the guidance documents on the development of inventories, illegal traffic take-back provision, and the Convention control system for consideration and possible adoption by COP-12, to take into account the outcome of OEWG-9 consultations. The OEWG also invites the ICC to consider preparing a revised version of the manual for the implementation of the Convention, taking into account comments received at OEWG-9, and invites comments from parties and others on the revised version for consideration and possible adoption at COP-12.

**Providing Further Legal Clarity:** On Tuesday, the Secretariat introduced a note on providing legal clarity (UNEP/CHW/OEWG.9/11), a draft glossary of terms and recommendations from the SIWG on legal clarity (UNEP/CHW/OEWG.9/INF/20), and comments (UNEP/CHW/OEWG.9/INF/21).

The UK, for the Chair of the SIWG on legal clarity, introduced the draft legal glossary and recommendations on options for further steps towards the consistent interpretation of terminology for the consideration of OEWG-9. He said the legal glossary focuses on defining key overarching terms instead of specific waste streams, and provides a comparison between definitions used in previously adopted guidelines and guidance documents and those used in the glossary of terms.

Namibia urged harmonizing definitions used in previously adopted guidelines with those included in the draft legal glossary, cautioning that without appropriate definitions wastes could be disguised as goods destined for direct reuse. Switzerland noted the opportunity to streamline the glossary to make it a practical tool and also suggested comparing the definitions in the glossary with terms adopted in technical guidelines.

China stressed the need to set up criteria and methodology for identifying waste under the Convention and suggested incorporating “transitional definitions” that could be used as a reference point for national legislation.

Canada suggested that parties could advise the SIWG how to make the document more useful and expressed concerns with some terminology in the glossary.

Norway stressed that there is a need to assess the policy implications of Annex III of the document, which outlines options for further work.

Liberia noted the inconsistency between the definitions in the glossary and the request for countries to provide their own definition of hazardous waste in their national reports.

BAN expressed support for the glossary, but noted a “few, but fundamental flaws,” including the definition of “goods” and “recovery,” and noted that few countries, particularly developing countries, had participated in developing the text.

A contact group was established on legal issues, co-chaired by Joost Meijer (Chile) and Peter Wessman (EU).

The contact group met Wednesday evening and Thursday afternoon to work on the draft glossary of terms and recommendations from the SIWG on legal clarity. Discussions centered on the inclusion of definitions of terms currently not

included in the Convention or technical guidelines, the clarity of the definitions and explanations provided, and the general purpose of the glossary.

Regarding the inclusion of terms not in the Convention or guidelines, a number of developing countries and one NGO group cautioned against including concepts such as “good” and “by-product” not found in the Convention or technical guidelines. Other delegates suggested additional definitions are relevant to the implementation of the Convention and therefore should be included in the glossary. One developed country suggested that to provide clarity around the definition of “key” terms required defining other terms not included in the Convention. An NGO, along with some parties, stated that economic value should not be introduced as an explanation relevant to distinguish between waste and non-waste.

On the clarity of definitions and explanations, some parties noted that not all terms as currently defined were compatible with their national context and legislation. Some countries queried the references or sources of some of the definitions, inquired if the proposed definitions were based on particular national legislation and suggested the group consider definitions that are more applicable to developing countries. A number of delegates suggested broader participation in refining the draft glossary of terms. A few countries observed that some definitions put forward could be inconsistent with the use of terms in other convention bodies.

On the general purpose of the glossary, some developing countries suggested that the glossary should stick to terms found in the Basel Convention. An NGO agreed with this and suggested focusing on clarifying the distinction between waste and non-waste, citing the example of ships, which could be both working equipment and waste. Saying the glossary should be considered a voluntary guidance to help parties implement the Convention, a developed country suggested retaining the “relevant explanations” and the options for further steps towards the consistent interpretation of terminology, including possible voluntary and legally binding options in Annex III in the draft glossary. A few developed countries proposed the glossary could serve as a reference tool to illustrate the different interpretations among parties on problematic terms.

Participants then discussed each definition, deciding which to retain as definitions, and which should be used as explanations to support specific definitions in the glossary. Some new terms were added, including reduction and prevention as definitions. When discussing the draft decision, one developing country delegate objected to text forwarding the revised glossary to COP-12 for possible adoption. After extended discussion, delegates agreed to include the wording “for possible adoption” in square brackets in the meeting report.

In plenary on Friday, the Secretariat introduced the draft decisions on legal matters, including the draft decision on providing further legal clarity (UNEP/CHW/OEWG.9/CRP.12) and the report of the Co-Chairs (UNEP/CHW/OEWG.9/CRP.15). Co-Chair Meijer reported progress had been achieved on terms to be defined, including those to be added or deleted from the glossary, as well as explanatory terms to be used in the glossary.

The EU observed that the group had agreed to define: direct reuse, disposal, final disposal, hazardousness, hazardous wastes, intent to dispose, non-hazardous wastes, non-waste, prevention, recovery, recycling, reduction, refurbishment, repair, reuse and wastes; and to include nine terms as explanations of the definitions, including: by-product, charitable donation, end-of-waste status, fully functional, good/product, preparing waste for reuse, upgrading, use, and used good/product.

Highlighting the need for consistent interpretation of terminology, Brazil suggested the SIWG work to clarify terms in their original technical context and encouraged all participants to engage in the process of revising the draft glossary.

Parties adopted the draft decision without amendment.

**Final Decision:** In its decision (UNEP/CHW/OEWG.9/CRP.12), the OEWG invites additional parties to nominate experts to participate in the SIWG, and invites comments from all parties by 31 October 2014 on the definitions and explanations and on the options for further steps toward the consistent interpretation of terminology, including possible voluntary and legal options. The OEWG invites the SIWG to:

- prepare a revised version of the draft glossary, including explanations, and coordinate with the ESM expert working group;
- develop recommendations on where further guidance would be useful, whether any terms defined in previously adopted guidelines or guidance documents, as well as the ESM framework, need to be updated and options for further steps towards consistent interpretation of terminology; and
- submit a revised glossary of terms, including explanations, recommendations on further guidance, terms to be updated, and options on further steps to COP-12 for its consideration and possible adoption.

#### **INTERNATIONAL COOPERATION AND COORDINATION: Basel Convention Partnership Programme:**

On Tuesday, the Secretariat introduced a note on the Partnership on Action and Computing Equipment (PACE) including a draft decision (UNEP/CHW/OEWG.9/12) and a progress report by the Co-Chairs of the Partnership Working Group (UNEP/CHW/OEWG.9/INF/22).

Switzerland and Nigeria, PACE Working Group Co-Chairs, reported on the Partnership’s progress to assist countries in managing used and end-of-life computing equipment in an environmentally-sound manner. They highlighted pilot projects in Jordan and Serbia, and awareness-raising and training activities carried out by various BCRCs.

Delegates adopted the draft decision.

**Final Decision:** In the decision (UNEP/CHW/OEWG.9/12), the OEWG, *inter alia*:

- welcomes the progress made in PACE implementation and the report and recommendations submitted by the Co-Chairs of the Partnership Working Group;
- acknowledges with appreciation the financial and in-kind contributions made to the Partnership by parties, signatories, industry bodies, non-governmental organizations and other stakeholders; and
- requests the Secretariat to continue facilitating and providing expertise to the Partnership and report on progress in the

activities undertaken by the Partnership and the discussions during OEWG-9 to COP-12.

**Environmentally-Sound Dismantling of Ships:** On Friday, the Secretariat introduced the document on the environmentally-sound dismantling of ships (UNEP/CHW/OEWG.9/13) and an update on the activities being implemented under the Global Programme for Sustainable Ship Recycling (UNEP/CHW/OEWG.9/INF/24).

Expressing gratitude to the EU for financing projects on ship dismantling, Pakistan asserted his country's commitment to creating a safer environment for workers in the industry. Bangladesh noted the importance of the ship dismantling sector and called for assistance to improve safety in this sector.

China highlighted the Hong Kong International Convention for the Safe and Environmentally-sound Recycling of Ships, and expressed support for the Basel Convention's efforts to promote sustainable ship dismantling. Mexico called for clear procedures for dismantling ships where the end goal is reuse of some elements. BAN noted that all proposals, including beaching ships as a method of dismantling, should be discouraged.

The OEWG took note of the information contained in the documents.

**Other International Cooperation and Coordination:** On Friday, the Secretariat introduced the report on international cooperation and coordination (UNEP/CHW/OEWG.9/INF/27) and the report on the status and methodology for an assessment of how far the Basel Convention technical guidelines address wastes covered by the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as further amended by the Protocol of 1997 (MARPOL) (UNEP/CHW/OEWG.9/INF/28).

Encouraging further collaboration among international organizations and governments, China called for strengthening regional control of waste pollution, in particular secondary pollution from recycled ships.

Japan highlighted ongoing international cooperation activities on mercury, the Global Partnership on Waste Management and the Global Waste Management Outlook.

Egypt called for a mechanism to facilitate cooperation between the Basel Convention and the Bamako Convention.

The OEWG took note of the report on international cooperation and coordination and the assessment of the Basel Convention's technical guidelines vis-à-vis those of MARPOL.

**FINANCIAL MATTERS:** On Friday, the Secretariat introduced the report on financial matters from January 2013 to June 2014 (UNEP/CHW/OEWG.9/INF/29) and the report on the status of implementation of activities related to the programme budget for 2014-2015 (Add.1), noting unpaid contributions totaled US\$2 million.

Argentina underscored the need for the presence of developing country delegations at the OEWG and requested greater support from donor countries for regional preparatory meetings.

The EU expressed concern over unpaid contributions and called for additional incentives and measures to be discussed at the next COP. Switzerland expressed concern over the "high amount" of arrears and encouraged an options paper on ways to address them.

The Secretariat took note of these comments.

## **WORK PROGRAMME FOR THE OEWG FOR 2016-2017**

On Friday, the Secretariat introduced the work programme of the OEWG for 2016-2017 (UNEP/CHW/OEWG.9/14), noting the need to revise it in light of the decisions adopted on the technical POP wastes guidelines. Guatemala, with BCRC China and BCRC Central America, called for including as an activity in the programme the updating of the technical guidelines and handbook on the ESM of lead acid batteries. Switzerland suggested removing the "strategic issues" items from the draft programme, and identifying priorities to enhance the effectiveness of OEWG meetings.

Delegates agreed to forward a revised draft work programme to COP-12 for possible adoption.

## **OTHER MATTERS**

The Secretariat introduced document UNEP/CHW/OEWG.9/INF/32 on a proposed science fair at the Basel, Rotterdam and Stockholm COPs to be held in May 2015 under the theme "Science to Action: Working for a Safer Tomorrow," and requested interested parties and others to contact the Secretariat to assist in the organization of the fair. The OEWG took note of the information contained in the document.

The Secretariat then introduced the report of the first meeting of the Environmental Network for Optimizing Regulatory Compliance on Illegal Traffic (ENFORCE) (UNEP/CHW/OEWG.9/INF/31). Chair of ENFORCE, Leila Devia, BCRC South America, highlighted adoption of a roadmap of activities and stressed the need for further information exchange on illegal traffic. Egypt suggested using available resources including the ICC guidelines and stressed the need to establish tracking systems on vessels carrying hazardous and other wastes. The OEWG took note of the report.

## **CLOSING PLENARY**

On Friday afternoon, the OEWG reviewed and approved the report of the meeting (UNEP/CHW/OEWG.9/L.1), noting that the EU and Canada would provide written comments that better reflect some of their comments made in plenary.

Latvia, for the EU, expressed satisfaction for the progress achieved at OEWG-9 on the technical guidelines for POP and mercury wastes as well as the progress on the roadmap for action on the Cartagena Declaration, calling information gathering a "key element."

Paraguay, for GRULAC, underscored the importance of interpretation for transparency and full participation and said the progress on the e-waste guidelines showed the OEWG is the "most fruitful platform" for addressing challenging issues before COP meetings. Calling the Cartagena Declaration "extremely important for the region," he said work must continue in the ESM expert group to facilitate capacity building.

Zimbabwe, for the African Group, reiterated the Group's concern that work on the legal glossary be in line with ESM principles and urged a "realistic" approach to the Cartagena Declaration that ensures waste minimization efforts do not introduce new hazards. She drew attention to the lack of protection for workers dismantling ships and called for support to ensure adherence to applicable ILO standards for this sector.



COP-12 President Andrzej Jagusiewicz, Poland, characterized OEWG-9's success as a prerequisite to success at COP-12, citing decisions such as technical guidelines, the Cartagena Declaration and legal clarity. He observed that OEWG-9 had further strengthened synergies with the Stockholm Convention and that work on mercury waste has already started forging synergies with the Minamata Convention.

In closing, Co-Chair Kowlesser observed that after 25 years, the Basel Convention is a "mature Convention" yielding wisdom in its deliberations, trust among delegates and inspiration to lead the way forward.

Co-Chair Kowlesser gavelled the meeting to a close at 6:09 pm.

## A BRIEF ANALYSIS OF OEWG-9

With the twelfth meeting of the Basel Convention's Conference of the Parties (COP-12) less than eight months away, it was up to delegates at OEWG-9 to make meaningful progress on key technical and legal issues to help advance the implementation of the Convention. As the only open-ended subsidiary body of the Basel Convention, the OEWG plays a key role in reviewing intersessional work and pre-negotiating technical, legal and other decisions for adoption by the COP. Despite these functions, the OEWG was also asked to reflect on its own future arrangements in view of the need to make more efficient use of available resources, but was unable to reach agreement on this issue.

Focusing on two key technical and legal matters before OEWG-9, namely, technical guidelines on persistent organic pollutant (POP) wastes, mercury wastes, and electrical and electronic waste (e-waste), and a glossary of terms used in the implementation of the Basel Convention, this brief analysis considers whether OEWG-9 succeeded in paving the way for a positive resolution of these issues at COP-12. It also reflects on the OEWG's role in facilitating the work of the COP by providing a venue to review and discuss key issues on the COP's agenda.

### TECHNICAL GUIDELINES

As anticipated by most participants, the review of eight technical guidelines, six on POP waste, one on mercury waste and one on e-waste, took a large bulk of delegates' time at OEWG-9. Regarding the POP and mercury wastes guidelines, the OEWG completed its work and, pending further revisions during the intersessional period, the technical guidelines should all be ready for adoption at COP-12. Since the implementation of these guidelines will help not only to implement the Basel Convention but also further the goals of the Stockholm Convention on POPs and the new Minamata Convention on Mercury, some said the guidelines were a concrete example of what strong collaboration between the chemicals-related conventions can achieve.

The outcomes on the seven of the guidelines were among OEWG-9's major achievements, and many delegates attributed this success to the fact that, under the strong leadership of specific countries and organizations, the small intersessional working groups tasked with the guidelines had achieved substantial progress in the run up to OEWG-9. This was not the case for the guidelines on e-waste, however, with no lead country

taking ownership of the guidelines and no financial resources provided to the Secretariat for the production of an analysis of the issue of exemptions to help move the process forward.

In spite of this, the OEWG reached agreement on an outcome on the e-waste technical guidelines that, while not solving the underlying issue that prevented the adoption of the guidelines at COP-11, could lead to a successful outcome at COP-12. The issue that remains to be resolved, which is contained in paragraph 26(b) of the draft guidelines, concerns the set of specific conditions under which non-functional used electronic equipment exported for repair or refurbishment would not be considered waste under the Basel Convention and would therefore not be subject to its control system. According to one seasoned negotiator who participated in the COP-11 discussions, agreement on the matter at COP-11 was thwarted by a combination of industry pressure to include exemptions that would make it possible for exports of used equipment as non-waste to continue, a rejection of any such exemptions by several developing countries, and the absence of leadership to develop a compromise text.

Given the limited progress achieved intersessionally, many delegates feared that OEWG-9, like COP-11, would not be able to resolve the impasse. Some parties, including a regional group, insisted that the OEWG should not attempt to negotiate paragraph 26(b) but focus instead on general principles that could be agreed by all. This, they said, would help secure adoption of the guidelines at COP-12 and leave it up to each country to determine the conditions under which used equipment would be considered non-waste, thereby simply confirming the status quo. An environmental NGO repeatedly cautioned against this approach, urging parties to clearly define those conditions in paragraph 26(b) in order to prevent unscrupulous actors from exporting e-waste disguised as used equipment, thereby externalizing the environmental and human health costs of its improper disposal.

In the end, the decision to discuss the specific issue of exemptions in a small but representative group made up of regional, industry and environmental group participants proved to be fruitful. To the surprise of many delegates, the small group was able to draft a new paragraph 26(b) with a single set of conditions under which used equipment would be considered non-waste. In addition to this text, which was presented as the "preferred option," the group drafted an alternative, interim solution to guide parties in producing their own set of conditions, in case no agreement could be reached on paragraph 26(b).

The OEWG decided not to discuss the specific conditions produced by the smaller group. Instead, it agreed to replace the options that were listed in paragraph 26(b) of the draft guidelines with the single new set of conditions crafted by the group, in addition to the interim solution, for consideration by the COP. This means that it will be up to interested parties to engage with others during the intersessional period to achieve a positive outcome at COP-12. Musing about what a "positive outcome" would look like, one delegate said it would be one that enables legitimate actors to export used electronic equipment while preventing illegitimate ones from adding to the burden of countries that cannot manage hazardous waste in a way that protects the environment and human health. Noting that

there is now a single set of conditions to discuss and negotiate, and recalling Japan's offer to provide financial resources to conduct further intersessional work on the guidelines, many left OEWG-9 feeling optimistic about the prospect of achieving such an outcome, which they said would reaffirm the relevance of the Basel Convention by tackling a major waste stream that continues to grow worldwide.

### **LEGAL ISSUES – OR ARE THEY?**

In addition to the technical guidelines produced by various intersessional groups, the OEWG had before it an innovative product drafted by a small intersessional working group on legal clarity: a glossary providing easy-to-understand definitions of key terms found in the Basel Convention or otherwise used by parties in their day-to-day implementation of the treaty.

The glossary was developed in response to an initiative to improve the effectiveness of the Basel Convention by, among other things, providing clarity around the interpretation of key terms that parties might find difficult to understand and that have implications for how customs officials and other national enforcement authorities implement the Basel Convention control system. For instance, the Convention's definition of "waste" makes reference to national legislation and intentionality (i.e., substances or objects that are "intended to be disposed of"), thereby allowing considerable room for interpretation, while the definition of "hazardous waste" makes reference to national legislation and to a complex list of waste categories and hazardous characteristics.

As the discussion on paragraph 26(b) of the technical guidelines on e-waste evidenced, the issue of how parties interpret key Convention terms is not merely an academic exercise, as it determines which substances and products are subject to its requirements.

It was therefore of no surprise that the glossary proved to be controversial at OEWG-9. Several delegates questioned whether the small intersessional working group had exceeded its mandate by defining terms not found in the Basel Convention or its guidelines, and some cautioned that the glossary could effectively be construed as a new set of legal definitions under the Convention. A few participants also expressed concern about some of the definitions proposed, such as a reference to economic value in the definition of "goods," which they said could easily lead to waste being considered a good, given that virtually everything had at least some economic value.

Recalling that the objective of producing a glossary was to enhance the effectiveness of the Basel Convention, other delegates urged focusing on whether the glossary could help parties implement the Convention at the national level, in particular by helping government officials, such as customs officers and port authorities, distinguish between waste and non-waste and between hazardous and non-hazardous waste. This, they claimed, could require defining terms not included in the Convention but directly related to the interpretation of core Convention terms. Along these lines, a few delegates suggested that the glossary could be seen as a reference tool with various definitions that parties could use as guidance in their implementation of the Convention, rather than a document providing a set of "legal" definitions.

In the end, the OEWG took a flexible approach and agreed that the small intersessional working group should expand to increase participation and continue its work and, under the OEWG's specific instructions, revise the glossary for possible adoption by the COP. Leaving the meeting, one participant said the decision was evidence that most delegates were finally persuaded by the view that the glossary could truly serve to enhance the implementation of the Basel Convention at the national level. Another, while also buoyed by progress achieved, looked ahead to issues still to be defined at COP-12 or beyond, such as the purpose and legal nature of the glossary, wondering how the OEWG would address this in years to come.

### **THE ROAD TO COP-12**

OEWG-9 paved the way for COP-12 to adopt important technical guidelines whose implementation will serve to protect human health and the environment from persistent organic pollutants and mercury, two groups of chemicals of serious concern. Although the road to adopting the technical guidelines on e-waste at COP-12 promises to be more treacherous, the OEWG produced tangible proposals to help parties resolve the impasse during the intersessional period. With COP-12 fast approaching, it will be up to those who want to see the Basel Convention address a major waste stream of concern to many developing countries to work hard to see the e-waste guidelines through.

Through these and other outcomes, including further work on the legal glossary, the OEWG demonstrated the critical role it plays in facilitating the work of the COP as a forum that gives all parties and observers the opportunity to review and discuss key issues on the COP's agenda. This success perhaps further persuaded those few parties who want to replace the OEWG with a scientific and technical committee of the value of maintaining an inclusive process where a broader, often politically-charged, set of issues can be discussed prior to meetings of the COP. While much of the Basel Convention's work is undertaken by small intersessional groups, the importance of having the OEWG—an arena in which everyone, including those who are unable to participate in intersessional work, can learn from and provide input to that work—is evident.

However, COP-12 will have to determine the future of the OEWG against a backdrop of concerns over limited resources for OEWG meetings, including for interpretation and translation of key documents into all UN languages. Thus, a key challenge at COP-12 will be to ensure that steps taken towards more efficient OEWG arrangements do not diminish the body's ability to fulfill its mandate.

## **UPCOMING MEETINGS**

**Special High-level Event for the Signature and Ratification of the Minamata Convention on Mercury:** A Special High-Level event on the Minamata Convention on Mercury will be held at UN Headquarters, on the margins of the 2014 Treaty Event, organized by the UN Office of Legal Affairs. This event intends to offer an opportunity for governments to demonstrate their commitment to the Minamata Convention, and will be used also as a means for outreach to facilitate rapid entry into force of the Convention. **date:** 24 September 2014 **location:**

UN Headquarters, New York **contact:** Minamata Convention Secretariat **fax:** +41-22-797-3460 **email:** mercury.chemicals@unep.org **www:** <http://www.mercuryconvention.org>

**67th Session of the IMO's Marine Environment Protection Committee:** The Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) will meet for its 67th session in London, UK, from 13-17 October 2014. **dates:** 13-17 October 2014 **location:** IMO Headquarters, London, UK **contact:** IMO Secretariat **phone:** +44 (0)20 7735 7611 **fax:** +44 (0)20 7587 3210 **email:** info@imo.org **www:** <http://www.imo.org/MediaCentre/MeetingSummaries/Pages/Default.aspx>

**Tenth Meeting of the Rotterdam Convention Chemical Review Committee (CRC10):** This subsidiary body of the Rotterdam Convention reviews chemicals and pesticide formulations according to the criteria set out by the Convention in Annexes II and IV respectively and makes recommendations to the COP for listing these chemicals in Annex III. **dates:** 21-24 October 2014 **location:** Geneva, Switzerland **contact:** Rotterdam Convention Secretariat **phone:** +41-22-917-8296 **fax:** +41-22-917-8082 **email:** pic@pic.int **www:** <http://www.pic.int/>

**Tenth Meeting of the Persistent Organic Pollutants Review Committee (POPRC 10):** The POPRC is a subsidiary body to the Stockholm Convention established for reviewing chemicals proposed for listing in Annex A, Annex B, and/or Annex C. **dates:** 26-30 October 2014 **location:** Geneva, Switzerland **contact:** Stockholm Convention Secretariat **phone:** +41-22-917-8729 **fax:** +41-22-917-8098 **email:** ssc@pops.int **www:** <http://www.pops.int>

**Ninth International Conference on Waste Management and Technology:** This meeting is organized by the Basel Convention Regional Centre for Asia and the Pacific, the Society of Solid Waste of Chinese Society for Environmental Sciences and the Chinese Research Academy of Environmental Sciences, Research Institute of Solid Waste Management. The meeting will convene under the theme, 'Towards Closed Loop of Waste Management,' with financial support from the Strategic Approach to International Chemicals Management (SAICM). **dates:** 29-31 October 2014 **location:** Beijing, China **contact:** Chen Yuan **phone:** +86-10-62794351 **fax:** +86-10-62772048 **email:** icwmt@tsinghua.edu.cn **www:** <http://2014.icwmt.org/ICWMT2014/indexen.asp>

**Sixth Session of the Intergovernmental Negotiating Committee on Mercury:** The intergovernmental negotiating committee on mercury will meet during the period between the date on which the Convention is opened for signature and the date of the opening of the first meeting of the Conference of the Parties to the Convention as may be necessary to facilitate the rapid entry into force of the Convention and its effective implementation upon its entry into force. **dates:** 3-7 November 2014 **location:** Bangkok, Thailand **contact:** Sheila Logan, Secretariat **phone:** +41-22-917-8511 **fax:** +41-22-797-3460 **email:** sheila.logan@unep.org **www:** <http://www.mercuryconvention.org/>

**CBD Expert Workshop to Prepare Practical Guidance on Preventing and Mitigating the Significant Adverse Impacts of Marine Debris on Marine and Coastal Biodiversity and Habitats:** This workshop is being organized by the Secretariat of the Convention on Biological Diversity (CBD) with the support from the European Commission. It will bring together nominated experts to discuss the impacts of marine debris on marine and coastal biodiversity and habitats. **dates:** 2-4 December 2014 **location:** Baltimore, MD, US **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/doc/?meeting=MCBEM-2014-03>

**Second Meeting of the SAICM OEWG:** The second meeting of the Strategic Approach to International Chemicals Management (SAICM) Open-Ended Working Group (OEWG) is expected to: review and prioritize proposals for emerging policy issues in preparation for the fourth session of the International Conference on Chemicals Management (ICCM4); consider proposals for the inclusion of new activities in the Global Plan of Action; consider the outcomes of regional meetings; and identify priority issues for consideration at ICCM4. **dates:** 15-17 December 2014 **location:** Geneva, Switzerland **contact:** SAICM Secretariat **phone:** +41-22-917-8532 **fax:** +41-22-797-3460 **email:** saicm@unep.org **www:** <http://www.saicm.org/>

**Basel COP 12, Rotterdam COP 7 and Stockholm COP 7:** The 12th Meeting of the Conference of the Parties (COP) to the Basel Convention, seventh meeting of the COP to the Rotterdam Convention, and seventh meeting of the COP to the Stockholm Convention are expected to convene back-to-back in May 2015. **dates:** 3-14 May 2015 **location:** Geneva, Switzerland **contact:** Basel, Rotterdam and Stockholm Secretariats **phone:** +41-22-917- 8729 **fax:** +41-22-917-8098 **email:** brs@brsmeas.org **www:** <http://synergies.pops.int/>

## GLOSSARY

BAN	Basel Action Network
BCRC	Basel Convention Regional Centre
COP	Conference of the Parties
ESM	Environmentally-sound management
E-waste	Electrical and electronic waste
ExCOPs	Extraordinary meeting of the Conferences of the Parties
GRULAC	Latin American and Caribbean Group
ICC	Committee for Administering the Mechanism for Promoting Implementation and Compliance
ILO	International Labour Organization
OEWG	Open-ended Working Group
PACE	Partnership for Action on Computing Equipment
PCBs	Polychlorinated biphenyls
POPs	Persistent organic pollutants
SIWG	Small intersessional working group