The United States in Violation of Their OECD Treaty Obligation

I. OECD Decision-Recommendation

In 1986, the Organization for Economic Cooperation and Development (OECD) adopted Council Decision-Recommendation C(86)64(final)\(^1\) (OECD Decision) which has to do with hazardous wastes exported from the 30 developed nations who comprise the OECD. Decisions of the OECD Council are legally binding upon Member countries at the time of the adoption of the decision.\(^2\) Since the United States was a member country in 1986, the OECD Decision is legally binding on the United States. Some of the more pertinent, OECD Decision elements that the United States agreed to implement are as follows:

i. Monitor and control exports of hazardous wastes to a final destination which is outside the OECD area; and for this purpose shall ensure that their competent authorities are empowered to prohibit such exports in appropriate instances;

>> **Reality in the United States today:** US competent authorities are empowered to forbid only some of their exports but remarkably do not consider lead-acid batteries, electronic wastes and other OECD defined wastes to be hazardous waste.

ii. Apply no less strict controls on transfrontier movements of hazardous wastes involving non-member countries than they would on movements involving only Member countries;

>> **Reality in the United States today:** Transfrontier shipments between OECD Member States of CRTs and/or CRT glass, for example, must in fact be controlled within the OECD as it is part of the “amber” list under Council Decision C(92)39/Final, as amended by C(2001)107/Final\(^3\) (governing recycling trade in hazardous wastes between member states). Thus, in fact, the United States is violating this provision.

iii. Prohibit movements of hazardous wastes to a final destination in a non-Member country without the consent of that country and the prior notification to any transit countries of the proposed movements;

---

Reality in the United States today: The United States does not require the consent of the receiving country for hazardous electronic waste, lead-acid batteries and other hazardous waste exports as defined as such by the OECD and thus, is in clear violation of this obligation.

iv. Prohibit movements of hazardous wastes to a non-Member country unless the wastes are directed to an adequate disposal facility in that country.

Reality in the United States today: The United States exercises no control, nor shows any concern as to whether the hazardous wastes they export are destined for adequate facilities.

OECD Decision-Recommendation Definitions of Hazardous Waste

The definitions applicable to C(86)64(final) that have to do with wastes exported from the OECD area have been amended to those found in Council Decision C(88)90(Final)\(^4\), which in turn has been amended by C(94)152(Final)\(^5\).

The definition of hazardous waste in C(94)152(Final) calls any waste listed in a core, Y list of hazardous constituents to be controlled as a hazardous waste, as long as they possess hazardous characteristics listed in Table 5. The Y list includes lead, listed as Y31 – “Wastes having as constituents lead or lead compounds”. Table 5 includes substances considered H11 -- “toxic”, H12 -- “ecotoxic” and H13-- “capable, by any means, after disposal, of yielding another material, e.g. leachate, which possesses any of the characteristics listed above.”

Clearly, lead, listed as Y31 (“Wastes having as constituents lead or lead compounds”) from CRTs, circuit boards, and lead-acid batteries etc., has been demonstrated to create toxic lead leachate by virtue of their failure to pass the Toxic Characteristic Leachate Procedure (TCLP) test’s threshold of 5mg/l (see below for more detail). So, it is clear that CRTs and circuit boards, as well as equipment containing CRTs, CRT glass or circuit boards, fall under the OECD Council Decision-Recommendation C(86) 64 (final) having satisfied both the list and Table 5.

---

\(^4\) OECD Council Decision C(88)90(final), see http://www.olis.oecd.org/horizontal/oecdacts.nsf/a0da5457376d5a1f412569750054d65b/eca14832de914b75c1256ac005158fb?OpenDocument

The United States’s claim that certain wastes are not hazardous simply because they are recyclable is not consistent with their obligation under OECD accords.

-- Prepared by the Basel Action Network