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Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2001

Statutory Rules 2001 No. 41

339

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

Dated 20 DEC 2001 2001

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

DAVID KEMP
Minister for the Environment and Heritage

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1 Name of Regulations

These Regulations are the *Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2001*.

2 Commencement

These Regulations commence on gazettal.

3 Purpose of these Regulations

These Regulations are intended to provide for giving effect to the bilateral arrangement between Australia and the United Nations Transitional Administration in East Timor (UNTAET), the text of which is set out in Schedule 1.

Note The bilateral arrangement is an Article 11 arrangement under the Basel Convention: see section 4C of the Act (subject to the making of a declaration by the Minister under that section). The Basel Convention is set out in the Schedule to the Act.

4 Definition

In these Regulations:

Act means the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

5 Proposals that are within the scope of these Regulations

Proposals to import hazardous waste from East Timor are within the scope of these Regulations.

6 Import permit

Sections 12 and 13B, and Divisions 3 and 4 of Part 2, of the Act are taken to apply in relation to a special import permit for an import of hazardous waste from East Timor, or an application for such a permit, as if:

- (a) a reference in those provisions (except section 13B) to a Basel permit or a Basel import permit were a reference to a special import permit to import hazardous waste from East Timor; and
- (b) the following provisions were omitted:
 - (i) subsections 17 (8) and 18B (1);
 - (ii) provisions that apply in relation to an export permit, a transit permit, an application for an export permit or an application for a transit permit and do not apply in relation to an import permit.

Schedule 1 Bilateral arrangement between Australia and UNTAET

(regulation 3)

Text of Australian Government note 27/2000 of 15 November 2000

The Australian Representative in East Timor presents his compliments to the United Nations Transitional Authority of East Timor and has the honour to refer to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, done at Basel on 22 March 1989 (the Basel Convention).

Noting that the people and environment of East Timor are at risk of damage to human health and the environment caused by hazardous wastes,

Noting that the United Nations Transitional Authority of East Timor does not have the capacity to dispose of some hazardous wastes in East Timor, but has the need to dispose of hazardous waste in an environmentally sound manner,

Noting that the Government of Australia is a party to the Basel Convention,

Noting that the United Nations Transitional Authority of East Timor is not a party to the Basel Convention,

The Australian Government has the honour to propose the following bilateral arrangement under Article 11 of the Basel Convention, to ensure the environmentally sound export of hazardous wastes from East Timor into Australia.

The transboundary movements of hazardous waste, undertaken pursuant to this arrangement, will be regulated by any relevant national legislation in force in the two States. Any amendment to such legislation shall be notified immediately.

The competent authority in Australia is Environment Australia. The relevant national legislation to be applied by the Australian Government is the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*. An export of hazardous waste should not take place from East Timor until the shipment is granted an import permit issued by the Australian Government. All arrangement in relation to the import of hazardous waste into Australia shall be consistent with the Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal. The Australian representative has the honour to request that the United Nations Transitional Authority of East Timor indicate in its note in reply, the relevant legislation applied in East Timor.

The Australian Representative in East Timor has the honour to propose that the United Nations Transitional Authority of East Timor and the Government of Australia consider that this document shall constitute a bilateral arrangement pursuant to Article 11 of the Basel Convention, which will become effective on the date of the note in reply.

Text of UNTAET note OSRSG/3/2001 of 2 January 2001

The United Nations Transitional Administration in East Timor presents its compliments to the Australian Representative Office in East Timor and, referring to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Convention), has the honor to reply to the Office's note 27/2000 of 15 November 2000.

UNTAET, as a subsidiary organ of the Security Council, is an integral part of the United Nations. Without prejudice to any future decision with regard to accession to the Convention that might be undertaken by an independent East Timor, the United Nations is, during its mandate period, required to respect the terms of a Convention which has been approved by the General Assembly and which must be respected by parties to the Convention.

With respect to the bi-lateral arrangement proposed by the Government of Australia, as a party to the Convention, under Article 11 thereof in connection with the environmentally sound transboundary shipment of hazardous wastes from East Timor to Australia, UNTAET, as the transitional administration in East Timor pursuant to the mandate of the United Nations, will be bound by the applicable provisions of the Convention. UNTAET is, in addition, guided by the Law Concerning

Environmental Management (Indonesia, No. 23/97) and the Regulation regarding Hazardous and Toxic Waste Management (Indonesia No. 85/1999).

All arrangements for the shipment of hazardous wastes from East Timor to Australia under the Convention shall be consistent with the requirements of the Convention, and no shipment shall be embarked from East Timor to Australia without the prior grant of an import permit by the Australian Government. For purposes of this bilateral arrangement, UNTAET's Environmental Protection Unit will be the counterpart authority of Environment Australia.

Without prejudice to any future arrangements that may be undertaken between an independent East Timor and Australia following East Timor's accession to the Convention or otherwise, UNTAET has the honor to confirm that it considers this document and the Australian Government's note 27/2000 of 15 November 2000 to constitute a bilateral arrangement pursuant to Article 11 of the Convention.

The United Nations Transitional Administration in East Timor avails itself of this opportunity to extend to the Australian Representative Office in East Timor the assurances of its highest consideration.

Note

1. Notified in the *Commonwealth of Australia Gazette* on 2001. 21 December