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CONSULTANCY FOR THE REVIEW OF USED OIL REGULATIONS

FINAL REPORT - RE-DRAFTED MODEL REGULATIONS

Table of Contents

Executive Summary

List of Recommendations

- A. Background**
- B. Objectives and activities**
- C. Methodology**
- D. Key features of the Revised Regulations**
 - (a) Changes made as indicated in the checklist of recommendations
 - (b) Other changes made in the final stages of the revision of the Draft Regulations

Attachment 1: Checklist of Recommendations (with responses from the project team)

Attachment 2: Revised Draft Regulations

EXECUTIVE SUMMARY

1. Draft Model Used Oil Regulations have been comprehensively reviewed with a view to modifying them to facilitate the Draft Regulations being adopted as law by as many countries in the Pacific region as is possible.
2. A range of observations were made in the Progress Report about the Draft Model Regulations and these highlighted some issues which may mitigate against them being readily adopted in many countries. These observations noted that the Draft Regulations had no explanation about key issues, had no index of provisions, had a focus on “management” of used oils rather than the regulation of them, referred to two major conventions in a way which can be improved, and provided for roles and powers of the Minister in ways which may expose the government to liability and which may mitigate against the effectiveness of the new law. It was also noted that Schedule 2 of the Draft Regulations is not referred to in the body of the Draft Regulations.
3. The Draft Regulations have now been revised and are included in this Report as Attachment 2. The changes include all of the recommendations made in the Progress Report, and additional changes were made in relation to the following matters:
 - A major change has been made to the sequence of the Parts of the Draft Regulations so that regulatory requirements are stated ahead of the financial issues;
 - A new Part 3 has been added to impose controls on transboundary movements as provided for in the *Waste Assessment Guide for the Export and Import of Used Lubricant and Used Oil*.

A. Background

The Pacific POPs Release Reduction project is a GEF funded project under the Pacific Alliance of Sustainability, with components co-financed by the French Development Agency (AFD). The project is in its final year of implementation and is being co-implemented by United Nations Environment (UNE) and the Food and Agriculture Organization of the UN (FAO).

The Project commenced in June 2013, for a five year term, to assist 14 Pacific Island Countries in addressing unintentionally released POPs (uPOPs). The project has been extended and is now scheduled to be completed by the 30th June, 2019.

The Mid-Term Review of the Project and the 2017 Project Steering Committee meeting identified an urgent need for additional targeted technical support to the various project components to ensure that project activities are executed efficiently in line with the original project development objective and according to the revised project work plan. As such it has been identified that a Legal Consultant is required to provide services for the revision of the Draft Model Used Oil Regulation.

B. Objectives and activities

The objective has been stated as the review and revision of the Draft Model Used Oil Regulations.

The scope of work has been determined as being to assist SPREP and the Pacific Island countries by using the used oil drafting instructions, to review and revise the draft model used oil regulations, and specifically to -

- (a) Review related instruments such as the waste assessment guide for the export and import of used lubricant and used oil; and
- (b) Revise and finalise the a model used oil regulation for use by the Pacific Island countries;

In accordance with the contract, all work has been undertaken as home office inputs.

C. Methodology

The review of the Draft Model Used Oil Regulations has involved the following steps:

- (a) A general review of the Draft Regulations has been undertaken to assess basic issues such as style and formatting, and the relative ease with which they might be used as a model for drafting Regulations in a range of countries;
- (b) A thorough review of the text of the Draft Regulations has then been undertaken, and observations have been made about many provisions that form part of the draft document;

- (c) Consideration has been given to the assumptions that appear to have been made in the formulation of the Draft Regulations, and the validity of these assumptions has been assessed and commented on;
- (d) The provisions of the Draft Regulations have then been assessed to determine whether they might expose a government to unwarranted liability, and whether they might tend to create situations where a government itself might fail to comply with them;
- (e) The Draft Regulations have been assessed in the light of related instruments such as the *Waste Assessment Guide for the Export and Import of Used Lubricant and Used Oil*;
- (f) On the basis of the above assessments, a range of recommendations have been formulated in relation to possible amendments to the Draft Regulations, and to the inclusion of explanatory notes which might facilitate the adaptation of the Draft Regulations as final drafted legal instruments.
- (g) A Progress Report containing and explaining all of the outcomes of the review and the recommendations which were formulated was submitted to the project management team. This Report included a checklist of proposed recommendations. This checklist was reviewed by the project team and support was expressed for all of the proposed changes to the Draft Regulations. The responses to the checklist of recommendations are indicated in Attachment 1.
- (h) On the basis of the recommendations, and the approval indicated for them, a final version of the revised Draft Regulations has been prepared. The key features of this are explained in Part D of this Final Report, and the final version is in Attachment 2.

D. Key features of the Revised Regulations

- (a) *Changes made as indicated in the checklist of recommendations*

All of the changes recommended in the Progress Report, and approved by the project management team, have been made to the Draft Regulations. These changes relate to the following matters:

- Explanatory notes have been formulated and are now part of the Draft Regulations (these include a range of matters relating to the authority to make the regulations under an Act, and the inclusion of licensing provisions, financial arrangements and the application of international conventions);
- An index of provisions has been added;
- The major focus of the objectives of the Regulations is now on regulating used oil;
- References to the "Managing Agency" have been changed;

- Modifications have been made to the definitions of the two conventions;
- Changes have been made to the wording of the powers of the Minister to be less prescriptive and more empowering;
- References have been added to compliance with approved standards etc;
- The relevance and application of Schedule 2 has been clarified
- A general offence provision has been added;
- Procedural requirements have been applied in less mandatory terms.

(b) *Other changes made in the final stages of the revision of the Draft Regulations*

During the re-drafting of the Draft Regulations, other deficiencies with the original draft became apparent, and these have been addressed in the revised version. These changes relate to the following matters:

- A major change has been made to the sequence of the Parts of the Draft Regulations so that regulatory requirements are stated ahead of the financial issues;
- A new Part 3 has been added to impose controls on transboundary movements as provided for in the *Waste Assessment Guide for the Export and Import of Used Lubricant and Used Oil*.



Graham Bruce Powell

ATTACHMENT 1

Checklist of Recommendations (with responses from the project team)

Nature of recommendation	Y/N*	Comments
1. Explanatory notes should form part of the Draft Regulations	Y	Yes I agree
2. An index of provisions should be included	Y	Yes I agree
3. Objectives of the Regulations should focus on regulating used oils in addition to “managing” them	Y	Highly agree. I would have read it mostly from a management perspective so welcome the legal insight.
4. References to the “Managing Agency” should be changed to “Ministry/Agency” to be adapted in each country	Y	Ok with this. Leaves it flexible.
5. Definitions of the conventions should cover any future amendments to them, and also any Protocols, Codes or Regulations made under them	Y	Yes agree.
6. Powers of the Minister should require approvals and determinations in writing. The Minister should have power to review the levy and other matters, but such reviews should not be mandatory	Y	I’m not sure about this and would leave it to your legal expertise.
7. Some reference should be made to compliance with approved standards etc as many waste management law make provision for such regulatory tools	Y	Yes I agree.
8. The relevance of Schedule 2 needs to be clarified and confirmed	Y	I thought this was ok but am happy to make it more clear.
9. The offence provisions should state a “general offence” provision to cover any breach of the Regulations. Courts should be empowered to order than offenders pay the costs of remedial action.	Y	I will leave it to legal expertise.

Nature of recommendation	Y/N*	Comments
Fines should be stated in currency terms and not as “penalty units”.		
10. The Explanatory notes should explain the need for there to be an Act which permits the Regulations to be made	Y	I agree
11. The Explanatory notes should explain issues related to applying conventions under Regulations	Y	I agree
12. The Explanatory notes should explain the need to have a sound legal basis for the proposed system of licensing	Y	I agree
13. The Explanatory notes should explain issues related to the financial aspects of the Regulations, including a power to impose the levy, authority to establish and operate a Special Purpose Fund, and authority to make payments out of such a Fund	Y	I agree
14. The Explanatory notes should general explain how a model law can be best adapted to become drafted Regulations for a country	Y	This should be part of the instructions.
15. The procedural requirements in regulation 5(4) should be stated in less mandatory terms and it should be clarified that failure to give notice of a levy does not affect its validity	Y	I agree
16. The requirement in regulation 24(3) should be stated in less mandatory terms, and an inspector should only be required to prove authority if requested to do so	Y	Easier for compliance officers.
17. The mandatory requirements for the Minister to undertake annual or periodic reviews should be re-stated as a power to do so	Y	Agree

ATTACHMENT 2

Revised Draft Regulations

DRAFT MODEL USED OIL REGULATIONS

BACKGROUND AND EXPLANATION

This is the first model law for application in Pacific Island jurisdictions to make provision for dealing with used oils and for applying relevant provisions of the Basel Convention which relate to them.

Assumptions underlying this draft and its application

(a) *The power to make Regulations under the authority of a waste related Act*

This draft model law has been designed specifically for countries which have already enacted comprehensive waste management legislation. For countries that have not enacted legislation that deals with waste management issues in a comprehensive manner, and which permit the application and enforcement of the Basel Convention, it is recommended that consideration be given to adapting the suggested provisions of these Regulations as a stand-alone Act to deal with the management and regulation of used oils.

(b) *Implementing the Basel Convention and the Waigani Convention*

This law has been prepared to facilitate the making of necessary legislation to effectively implement aspects of the Basel Convention. The Draft Model Used Oil Regulations make specific references to both the Basel Convention and the Waigani Convention. The Draft Regulations assume that each relevant country is a Party to each of these Conventions, and that Regulations may be made to apply them. Many countries will not make laws to apply conventions that they are not a Party to. And in countries like Vanuatu there is a constitutional impediment to the making of any law which applies an international convention unless an Act of the Parliament specifically adopts the provisions of the Convention.

It will be necessary to confirm that all necessary steps have been taken to permit the application and enforcement of the Basel Convention and the Waigani Convention under this new law

(c) *Licensing of waste collectors and recyclers*

There is an assumption in the Draft Model Used Oil Regulations that Regulations can be used to apply licensing regimes. Many countries will permit this if the authorising Act specifically permits such matters to be applied by Regulations. However, there are some

countries which may require that all licensing arrangements be provided for under the provisions of the Act itself.

It will be necessary to confirm that the Act under which these Regulations are to be made permit the implementation of a system of licensing under the Regulations. Certain countries may wish to pursue these reforms by the making of an Act of Parliament, rather than by Regulations such as those which are proposed.

(d) Financial provisions – levies and an approved Fund, payments of benefits

There are many assumptions in these Draft Model Used Oil Regulations that complex financial provisions can form part of Regulations, and that these are authorised under the relevant Act. In this case these provisions relate to applying levies, enforcing the payment of levies, establishing a Trust Fund or Special Purpose Fund, and authorising payments out of the Fund to qualifying persons. Many countries will not permit such arrangements to be part of Regulations and require that such financial arrangements be authorised and provided for in detail by the relevant Act.

It will be necessary to confirm that the Act under which these Regulations are to be made permit the application of levies, the establishment of a special purpose fund and the payment out of the Fund to certain persons who meet the statutory criteria. Certain countries may wish to pursue these reforms by the making of an Act of Parliament, rather than by Regulations such as those which are proposed.

Instructions for the Use of this Draft Model Law

Care must be taken to make the appropriate modifications to the form and text of this model law to suit the specific requirements of the country which seeks to apply this model law, and this will involve –

- (a) substituting a title for the Regulations which reflects the Act under which they are made (e.g. Waste Management (Used Oil) Regulations), including in regulation 1(1);
- (b) re-formatting the entire draft Regulations to comply with the drafting and formatting styles applicable in your jurisdiction;
- (c) stating the appropriate enactment provisions before or after the list of provisions. Ensure that the relevant law under which they are to be made is identified. This could be the Waste Management Act or another law which deals with the regulation and management of wastes, and should be referred to in the promulgation provision and identified in the first definition – “the Act”;
- (d) insert the year the law is made in regulation 1(1), and appropriate commencement provisions in regulation 1(2);
- (e) insert the definition of “Ministry”, "Department", "Authority" or "Agency" in regulation 2, the name of the Ministry or administrative agency which will have the primary responsibility for implementing this law - note that the term "Ministry/Agency" which is used throughout the Draft Regulations must be

changed to refer to the agency in your country which will have responsibility for implementing this law;

- (f) determine the title of the head of the implementing agency and modify all references to “CEO” to reflect the appropriate terminology;
- (g) insert the name of the country in every place where the word [country] appears; and
- (h) insert appropriate fines where indicated in each of the offence provisions.

DRAFT MODEL USED OIL REGULATIONS

Provisions

PART 1 - PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objectives of these Regulations

PART 2 – DEALING WITH USED OIL

4. Storage requirements for used oil
5. Collection of used oil
6. Recycling or export of used oil
7. Occupational health and safety
8. Licensing of collectors and recyclers
9. Licence forms and fees
10. Requirements for re-refining base oil
11. Requirements for using recycled oil to make petroleum products

PART 3 - CONTROLS OVER TRANSBOUNDARY MOVEMENTS

12. Duty to comply with the Basel and Waigani Convention
13. Notifications of exports of used oil

PART 4 - LEVY

14. Recycling levy on oil
15. Amount of levy
16. Payment of levy
17. Waste Recycling Fund

PART 5 – OIL RECYCLING BENEFIT

18. Entitlement to benefit
19. Application for benefit
20. Amount of benefit
21. Payment of benefit

PART 6 – MISCELLANEOUS

22. Contracts may be entered into
23. Offences against these Regulations

- 24. Offences by licensed collectors or recyclers
 - 25. Obligation to clean up spills
 - 26. Reports by Ministry/Agency
 - 27. Reports by licensed collectors and recyclers
 - 28. Inspection
 - 29. Review
- Schedules

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PART 1 - PRELIMINARY

1. Short title and commencement

- (1) These Regulations may be cited as the Used Oil Regulations 20xx.
- (2) These Regulations commence on [insert commencement date].

2. Interpretation

- (1) In these Regulations, unless the context otherwise requires:

“Act” means the [name of Act under which the Regulations are authorised to be made].

“base oil” means an oil that is free from contaminants or additives and to which other substances may be added for a particular application.

“Basel Convention” means the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 1989 (as amended), and includes any Protocols, Codes, Rules and Regulations made under the authority of the Convention.

“CEO” means the [insert the appropriate description of head of the relevant implementing agency, and replace the term "CEO" as necessary];

“Fund” means the Waste Recycling Fund established by regulation 17.

“licensed collector” means a person who is licensed as a waste management operator under the Act or these Regulations to collect or manage used oil.

“licensed recycler” means a person who is licensed as a waste management operator under the Act to recycle or sell used oil.

“Ministry/Agency” means [insert the title of the Ministry, Department, Authority or Agency which is responsible for administering these Regulations].

“oil” means:

- (a) petroleum-based oil (including lubricant base oil; prepared lubricant additives containing carrier oils; lubricants for engines, gear sets, pumps and bearings; greases, hydraulic fluids; transmission oils; and transformer and heat transfer oils);
- (b) synthetic equivalents of goods covered by paragraph (a); and
- (c) any other goods determined by the Minister for the purposes of this definition.

“oil recycling benefit” means an amount payable under Part 4.

“recognised overseas buyer” means a person in a country other than [country] who is recognised in that country as a person who recycles oil in an environmentally sound manner by complying with the Basel Convention and the Waigani Convention.

“recycled oil” means:

- (a) goods produced from used oil; or
- (b) used oil that has been re-refined.

“recycling levy” means the levy imposed under Part 4.

“recycling of oil” means:

- (a) producing goods from used oil; or
- (b) re-refining used oil.

“re-refined” has the meaning given by sub-regulation (2).

“used oil” means any oil that has been used and that, as a result of that use, is contaminated by physical or chemical impurities.

“Waigani Convention” means the Convention to ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, Waigani, 1995 (as amended), and includes any Protocols, Codes, Rules and Regulations made under the authority of the Convention.

- (2) For the purpose of these Regulations, used oil has been re-refined if it has been restored to the condition of a base oil meeting the criteria in Schedule 1:
- (a) by thin film evaporation, followed by solvent extraction or hydrofinishing;
or
 - (b) by vacuum distillation, followed by solvent extraction or hydrofinishing; or
 - (c) by another process approved for the purpose of this sub-regulation by the Minister as being:
 - (i) consistent with the objects of the Act and these Regulations; and
 - (ii) similar in purpose and effect to the processes mentioned in paragraphs (a) and (b).
- (3) When any provision of these Regulations is applied to petroleum products, such products can be determined as being petroleum products by applying the criteria set out in Schedule 2, and all requirements of that Schedule must be complied with in relation to such products.

3. Objectives of these Regulations

The objectives of these Regulations are to:

- (a) develop a product stewardship arrangement for used oil that promotes the sharing of responsibility by importers, retailers, consumers and users of oil;
- (b) impose regulatory requirements and processes for the proper management and disposal of used oil;
- (c) provide an arrangement for managing used oil that is financially sustainable;
- (d) ensure that the regulation and management of used oil complies with relevant international conventions and national legal requirements and best international practice;
- (e) ensure that users of oil contribute to the costs associated with exporting or otherwise managing used oil in an environmentally sustainable manner;
- (f) regulate the export of used oil to ensure that such oils are managed, stored and transported in an environmentally sound manner.

PART 2 – DEALING WITH USED OIL

4. Storage requirements for used oil

- (1) Used oil must be stored in a safe and secure manner.

- (2) In addition to the obligation under sub-regulation (1), used oil must be stored in accordance with any applicable approved standards, guidelines, operating procedures or codes of practice.
- (3) The owner of the used oil, and any other person responsible for its safe-keeping, must ensure that no adverse impacts are caused to the environment or to human health from the used oil, and the onus of proving that the used oil has been stored and managed in an environmentally safe manner lies with the owner and person responsible for it.
- (4) Without limiting the obligations applying under this regulation, used oil must be stored in a container that:
 - (a) is in good condition and labelled to show it contains used oil;
 - (b) has spill prevention and collection equipment that includes appropriate and adequately sized bunding; and
 - (c) has adjacent and accessible fire prevention and suppression equipment.

5. Collection of used oil

- (1) Used oil may only be collected on a commercial basis by a person who is licensed by the Ministry/Agency under these Regulations for such purposes.
- (2) A licensed collector must:
 - (a) meet all health, safety and environmental requirements for the handling, collection, transport and storage of used oil;
 - (b) wear appropriate personal protective equipment;
 - (c) provide suitable storage tanks where required, that have appropriate spill prevention equipment and appropriate and adequately sized bunding;
 - (d) have adjacent and accessible fire prevention and suppression equipment;
 - (e) keep a record of each amount of used oil received; and
 - (f) provide any information or records about the used oil to the Ministry/Agency when requested to do so.
- (3) A person who collects oil on a commercial basis while not being the holder of a valid and current licence commits an offence against these Regulations.

- (4) A licensed collector who breaches any requirement stated in this Regulation commits an offence against these Regulations, and in addition to any penalty imposed for the breach, is liable to have his or her licence suspended or cancelled for any such breach.

6. Recycling or export of used oil

- (1) Used oil may only be recycled or exported by a person who is licensed by the Ministry/Agency under these Regulations for such purposes.

- (2) A licensed recycler and exporter must:

- (a) meet all health, safety and environmental requirements for the handling, transport and storage of used oil;
- (b) wear appropriate personal protective equipment;
- (c) provide suitable storage tanks where required, that have appropriate spill prevention equipment and appropriate and adequately sized bunding and fire extinguishers;
- (d) have adjacent and accessible fire prevention equipment;
- (e) keep a record of each amount of used oil received;
- (f) provide any information or records about the used oil to the Ministry/Agency when requested to do so.
- (g) recycle used oil by:
 - (i) re-refining the used oil in [country]; and
 - (ii) selling the recycled oil for reuse in [country]; or
 - (iii) subject to sub-regulation (4), export the used oil.

- (2) If the licensed recycler sells the recycled oil, he or she must be reasonably satisfied that the buyer of the oil will deal with the oil in an environmentally safe manner.

- (3) If the licensed recycler exports the used oil, he or she must be reasonably satisfied that the person to whom the oil is exported will deal with the oil in an environmentally safe manner.

- (4) The recycler may only export used oil with the approval of the Minister.

- (5) A person who recycles or exports oil while not being the holder of a valid and current licence commits an offence against these Regulations.
- (6) A licensed recycler or exporter who breaches any requirement stated in this Regulation commits an offence against these Regulations, and in addition to any penalty imposed for the breach, is liable to have his or her licence suspended or cancelled for any such breach.

7. Occupational health and safety

- (1) All persons involved in collecting, storing, transporting or recycling used oil must wear appropriate personal protective equipment and comply with any other requirement provided for under approved standards, guidelines, operating procedures or codes of practice.
- (2) An employee of a licensed collector or recycler must wear an identity card showing his or her status as an employee.

8. Licensing of collectors and recyclers

- (1) A person who is required to be licensed under these Regulations must apply in writing and pay the relevant application fee to the Ministry/Agency to be licensed as a used oil collector or a used oil recycler and exporter, or both.
- (2) The CEO has authority to grant the licence if he or she is satisfied:
 - (a) for an application for a used oil collector's licence – that:
 - (i) the applicant has a viable business model to operate an oil collection business;
 - (ii) the applicant has the relevant expertise and equipment to collect, handle and transport used oil in compliance with environmental and safety standards and guidelines;
 - (iii) all vehicles and drivers used by the applicant in the collection of used oil will comply with transport regulations and any licensing requirements for transporting hazardous materials; and
 - (iv) all transportation vehicles are appropriately labelled.
 - (b) for an application for a used oil recycler's licence – that:
 - (i) the applicant has a viable business model to operate an oil recycling and export business;

- (ii) the applicant has suitable bulk storage tanks that are installed on an impervious base; and
 - (iii) any spillage will be caught by an appropriate and adequately sized bund;
 - (iv) the applicant has the relevant experience and equipment to recycle used oil in compliance with safety and environmental standards and guidelines;
 - (v) if used oil is to be exported, the applicant is able to establish that the oil will be sold to a recognized overseas buyer of used oil in accordance with the Basel Convention and the Waigani Convention; and
 - (vi) the applicant has not been convicted of any environmental offences in [country]; and
- (c) in both of those cases – that:
- (i) the applicant has provided all information, and all verification of information, as required by the CEO;
 - (ii) the applicant's employees are trained in the handling of used oil and will be issued with appropriate personal protective equipment; and
 - (iii) the applicant is aware of his or her obligations under the Act and these Regulations, and under relevant environmental legislation, in relation to the handling of used oil.

9. Licence forms and fees

- (1) The licence shall be in the form approved by the CEO.
- (2) Fees for applications, inspections, monitoring and the issue of a licence under these Regulations can be fixed by the Minister.

10. Requirements for re-refining base oil

When re-refining base oil, the end product must comply with the criteria prescribed in Schedule 1.

11. Requirements for using recycled oil to make petroleum products

When using used oil to produce petroleum products, the criteria prescribed in Schedule 2 must be complied with, and all other requirements prescribed in Schedule 2 apply to the end product.

PART 3 - CONTROLS OVER TRANSBOUNDARY MOVEMENTS

12. Duty to comply with the Basel and Waigani Convention

A person who imports or exports used oil, or who stores, transports or otherwise deals with used oil during its import or export, must comply with all obligations, requirements and obligations applying under the Basel Convention and the Waigani Convention.

13. Notifications of exports of used oil

- (1) No used oil may be exported from [country] to any destination in a country which is a Party to the Basel or Waigani Conventions unless –
 - (a) notification has been given to the competent authority of the country of import containing the declaration and information stated in Schedule 3;
 - (b) the competent authority of the country of import has informed the notifier of its consent to the export;
 - (c) the notifier has agreed to comply with any conditions placed on the approval by the competent authority of the country of import; and
 - (d) the notifier has arranged for the movement of the hazardous substances to be insured, or has lodged a bond or other guarantee, as required by the competent authority of the country of import.
- (2) No used oil may be exported from [country] unless all of the following have been complied with –
 - (a) all necessary approvals for the export have been obtained;
 - (b) the applicable customs code is used on the shipping documentation; and
 - (c) there is adequate labelling to inform of the nature of the substance and of its risks to human health and the environment, taking into account relevant international standards.

PART 4 - LEVY

Notes: As stated in the Background and Explanation the following provisions relating to a recycling levy, and those in Part 5, are likely to need a clear legal basis under the Act which authorises the making of the Regulations. If there are any doubts about the

authority to apply these provisions then they will need to be provided for in an Act of Parliament.

14. Recycling levy on oil

For the purposes of section XX of the Act, a levy is imposed on the importation of oil into [country].

15. Amount of levy

- (1) The amount of levy is to be determined by the Minister.
- (2) In determining the amount of levy, the Minister must have regard to:
 - (a) the costs of storing used oil, including the costs of providing temporary storage containers;
 - (b) the costs of collecting and transporting used oil;
 - (c) the costs of recycling used oil;
 - (d) if the used oil is not recycled, the costs of exporting the used oil for recycling, or selling the oil for further use;
 - (e) the estimated amount of the oil recycling benefit; and
 - (f) the estimated costs of ongoing initiatives to raise people's awareness of the need to protect the environment by collecting and recycling used oil.
- (3) Before determining the amount of levy, the Minister must consult:
 - (a) [any relevant government bodies, such as the Department of Finance];
 - (b) importers of oil;
 - (c) a representative of major users of oil;
 - (d) the power utility;
 - (e) any existing oil recyclers;
 - (f) business representatives; and
 - (g) community representatives.
- (4) The Minister must ensure notice of the amount of recycling levy is published at least one month before the levy commences by any means approved by the

Minister which is likely to come to the attention of persons affected by the imposition of the levy.

- (5) Failure to comply with the requirement under sub-regulation (2), (3) or (4) does not affect the validity of the levy or the authority given under these Regulations for its collection.

16. Payment of levy

The recycling levy is payable by the importer of the oil.

17. Waste Recycling Fund

- (1) A Fund called the Waste Recycling Fund is established.
- (2) The recycling levy is to be paid into the Fund.
- (3) The Fund is to be managed by the Ministry/Agency, in accordance with the requirements of the [Department of Finance or other government body].
- (4) Moneys paid into the Fund are to be used:
 - (a) for payment of oil recycling benefit, in accordance with Part 4;
 - (b) to provide short term oil storage containers; and
 - (c) for ongoing initiatives to raise people's awareness of the need to protect the environment by collecting and recycling used oil.

PART 5 – OIL RECYCLING BENEFIT

Notes: As stated in the Background and Explanation the following provisions relating to a recycling levy, and those in Part 4, are likely to need a clear legal basis under the Act which authorises the making of the Regulations. If there are any doubts about the authority to apply these provisions then they will need to be provided for in an Act of Parliament.

18. Entitlement to benefit

- (1) Subject to sub-regulation (2), a licensed recycler is entitled to be paid oil recycling benefit for used oil that is recycled or exported in accordance with these Regulations within a benefit period:
- (2) A licensed recycler is only entitled to be paid benefit for used oil that is recycled or exported after [specific date OR the date of commencement of these Regulations].

19. Application for benefit

- (1) A licensed recycler may apply to the Ministry/Agency for payment of oil recycling benefit for a benefit period.
- (2) The application must:
 - (a) be made using the form approved by the Ministry/Agency;
 - (b) set out, for the benefit period, the quantity of used oil:
 - (i) recycled;
 - (ii) sold or available for sale; and
 - (iii) exported; and
 - (c) be signed by the licensed recycler.
- (3) The application must have with it:
 - (a) documentation that establishes the quantity of used oil that has been recycled and is available for sale; and
 - (b) for oil that is being exported - shipping documentation (including the bill of lading) to show the quantity of used oil that is ready to be shipped.
- (4) The Ministry/Agency must assess the application for benefit and issue a notice of assessment to the licensed recycler showing the amount of benefit and how it was calculated.
- (5) In assessing the application for the benefit, the Ministry/Agency may:
 - (a) ask the applicant for further information about:
 - (i) the dates and quantities of used oil received by the applicant; and
 - (ii) the name of the licensed collector that provided the used oil;
 - (b) inspect the oil loaded for shipping.

20. Amount of benefit

- (1) The amount of benefit is to be based on the quantity of used oil recycled, ready to be exported or exported during the benefit period.

- (2) In determining the amount of benefit, the Ministry/Agency must have regard to:
- (a) the volume of used oil that has been recycled; and
 - (b) the volume of used oil that has been exported or is ready for export.

21. Payment of benefit

All payments of the Benefit are payable out of the Fund in accordance with any applicable financial procedures.

PART 6 – MISCELLANEOUS

22. Contracts may be entered into

- (1) The Ministry/Agency may enter into agreements with a licensed collector and a licensed recycler concerning the collection and recycling of used oil and the sale and export of recycled oil.
- (2) An agreement may require the collector or recycler to pay a bond.

23. Offences against these Regulations

- (1) A person who breaches any requirement applying under these Regulations for which no other offence or penalty is prescribed commits an offence and is liable upon conviction to a fine not exceeding [suggest the equivalent in local currency or penalty units to A\$10,000].
- (2) A person must not dispose of used oil in a manner which breaches the Act or these Regulations.
- (3) In particular, a person must not:
 - (a) pour used oil onto the ground;
 - (b) pour used oil into a drain or into still or flowing water;
 - (c) allow used oil to escape onto the ground or into a drain or still or flowing water;
 - (d) store used oil in a way that allows the oil to escape onto the ground or into a drain or still or flowing water; or
 - (e) burn used oil in the open air.

- (3) A person who contravenes subsection (2) and (3) commits an offence and is liable upon conviction to a fine [suggest the equivalent in local currency or penalty units to A\$25,000] or imprisonment for a term not exceeding 12 months, or both.

24. Offences by licensed collectors or recyclers

- (1) A person (whether a licensed collector or a licensed recycler or not) who:
- (a) transports used oil in such a way no oil escapes from the container in which it is transported;
 - (b) allows collected used oil to escape onto the ground or into still or flowing water; or
 - (c) fails to comply with the requirements of these Regulations in dealing with used oil -

commits an offence and is liable upon conviction to a fine [suggest the equivalent in local currency or penalty units to A\$25,000] or imprisonment for a term not exceeding 12 months, or both.

- (2) A licensed recycler must carry out the recycling process in such a way that no used oil escapes onto the ground or into still or flowing water.
- (3) A person who contravenes (2) commits an offence and is liable on conviction to a fine not exceeding commits an offence and is liable upon conviction to a fine [suggest the equivalent in local currency or penalty units to A\$25,000] or imprisonment for a term not exceeding 12 months, or both.

25. Obligation to clean up spills

- (1) If a licensed collector or licensed recycler accidentally discharges used oil during storage, collection, transportation or recycling, he or she must, immediately after becoming aware of the discharge, take all necessary action to:
- (a) contain the spill;
 - (b) clean up the spill; and
 - (c) notify the Ministry/Agency.
- (2) When convicting a person of any offence against these Regulations the court has authority, in addition to imposing any other penalty provided for by these Regulations, to order that the offender pays the cost associated with any action required to rectify the consequences to the environment of the breach.

26. Reports by Ministry/Agency

- (1) The Ministry/Agency must give an annual report to the Minister by [DATE] each year, setting out:
 - (a) the amount of levy paid into the Fund;
 - (b) how money in the Fund has been spent;
 - (c) the total quantity of oil on which levy is paid;
 - (d) the total quantity of used oil collected; and
 - (e) the total quantity of used oil recycled or exported.
- (2) The Minister must present the report to Parliament within one month of receiving it.
- (3) The Ministry/Agency must make the report available to the public after it has been presented to Parliament.

27. Reports by licensed collectors and recyclers

- (1) A licensed collector must give a written report to the Ministry/Agency and the Minister every 12 months setting out the amount of used oil:
 - (a) collected; and
 - (b) delivered to a licensed recycler.
- (2) A licensed recycler must give a written report to the Ministry/Agency and the Minister every 12 months setting out the amount of used oil:
 - (a) received;
 - (b) held awaiting decision whether it should be recycled, sold or exported;
 - (c) identified for recycling;
 - (d) undergoing recycling;
 - (e) identified for sale in [country] as used oil;
 - (f) sold in [country] as used oil;
 - (g) identified for export;

- (h) ready for shipping;
 - (i) shipped.
- (3) The report must be accompanied by all of the following:
- (a) copies of relevant documents relating to the recycling, sale or export;
 - (b) a health and safety incident report; and
 - (c) a report concerning whether the recycler has complied with relevant standards and codes of practice relating to the environmentally sound management of used oil.

28. Inspection

- (1) Inspectors appointed under the Act have the powers provided for in this regulation, and the Ministry/Agency may appoint additional inspectors for the purposes of these Regulations.
- (2) An inspector may, during business hours:
- (a) enter premises used by a licensed collector or a licensed recycler for the storage or recycling of used oil;
 - (b) inspect the storage and recycling operations carried out on those premises;
 - (c) inspect books and records relating to the collection and recycling of used oil.
- (3) Before carrying out an inspection, an inspector must produce evidence of his or her appointment if requested to do so by the person apparently in charge of the premises where the inspection is to be carried out.

29. Review

- (1) The rate of levy and benefit payable under these Regulations can be reviewed by the Minister annually.
- (2) At any time after the commencement of these Regulations, the Minister has authority to appoint a person to review:
- (a) the operation of the Fund; and

- (b) the general operation of the system of managing used oil under these Regulations.
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SCHEDULES

SCHEDULE 1 – RE-REFINED BASE OIL CRITERIA

1. Mutagenicity

The oil must be non-carcinogenic, demonstrated by having a mutagenicity index of less than 1 using the Modified Ames Test.

2. Poly-aromatic hydrocarbons

(1) The oil must contain less than the following for each kilogram of oil:

- (a) 10 mg of benzo(a)pyrene;
- (b) 10 mg of dibenz(ah)anthracene;
- (c) 100 mg of benz(a)anthracene;
- (d) 100 mg of benzo(b)fluoranthene;
- (e) 100 mg of benzo(k)fluoranthene;
- (f) 100 mg of chrysene;
- (g) 100 mg of indeno(123-cd)pyrene.

(2) The total amount of poly-aromatic hydrocarbons mentioned in subclause (1) that the oil contains must be less than 400 mg for each kilogram of oil.

(3) The total amount of all poly-aromatic hydrocarbons that the oil contains (including poly-aromatic hydrocarbons mentioned in subclause (1)) must be less than 1 000 mg for each kilogram of oil.

3. Polychlorinated biphenyls

The oil must contain less than 2.0 mg of polychlorinated biphenyls for each kilogram of oil.

4. Polychlorinated dibenzo-p-dioxins

The total amount of dioxins and furans that the oil contains must be less than 10 picograms Toxic Equivalent for each gram of oil.

5. Total acid number

The oil must have a total acid number of less than 0.07 mg of potassium hydroxide for each gram of oil.

6. Heavy metals

The oil must contain less than the following for each kilogram of oil:

- (a) 5 mg of arsenic;
- (b) 2 mg of cadmium;
- (c) 10 mg of chromium;
- (d) 100 mg of lead.

7. Appearance

The oil must have a clear and bright appearance.

SCHEDULE 2 PETROLEUM PRODUCT CRITERIA

1. Density

The petroleum product must have a density:

- (a) equal to or exceeding 0.900 at 15° Celsius as determined by ASTM 1298; or
- (b) less than 0.900 at 15° Celsius as determined by ASTM 1298 and:
 - (i) a maximum cetane index of 35 as determined by ASTM D976; or
 - (ii) in respect of the heaviest 10% of a particular volume of fuel tested, a value of 0.35% mass of carbon residue on 10% distillation residue as determined by ASTM D189 or D524; or
 - (iii) a minimum pour point of 15° Celsius as determined by ASTM D97; or
 - (iv) a minimum sulphur content of 1.5% mass as determined by ASTM D129; or
 - (v) a minimum kinematic viscosity of 10 centistokes (millimetres squared per second) at 40° Celsius as determined by ASTM D445.

2. Duty

Duty on the petroleum product must have been paid at a rate that is applicable to diesel fuel.

3. Use

The petroleum product must be capable of being used as a fuel otherwise than in an internal combustion engine.

4. References to ASTM tests

In this Schedule, ASTM, followed by a number, is a reference to the test so numbered as prescribed by the American Society for Testing and Materials and set out in Section 5 of

the Annual Book of ASTM Standards (1986 revision) published by the American Society for Testing and Materials at Philadelphia, Pennsylvania in the United States of America.

SCHEDULE 3
INFORMATION TO BE PROVIDED ON NOTIFICATIONS OF
TRANSBOUNDARY MOVEMENT OF USED OIL

1. Reason for export
2. Exporter 1/
3. Generator(s) of the used oil and site of generation 1/
4. Disposer of the used oil and actual site of disposal 1/
5. Intended carrier(s) of the used oil or their agents, if known 1/
6. Country of export of the used oil
Competent authority 2/
7. Expected countries of transit
Competent authority 2/
8. Country of import of the used oil
Competent authority 2/
9. General or single notification
10. Projected date(s) of shipment(s) and period of time over which used oil is to be exported and proposed itinerary (including point of entry and exit) 3/
11. Means of transport envisaged (road, rail, sea, air, inland waters)
12. Information relating to insurance 4/
13. Designation and physical description of the used oil including Y number and UN number and its composition 5/ and information on any special handling requirements including emergency provisions in case of accidents
14. Type of packaging envisaged (e.g. bulk, drummed, tanker)
15. Estimated quantity in weight/volume 6/
16. Process by which the used oil is generated 7/
17. For used oils listed in Annex I, classifications from Annex III: hazardous characteristic, H number, and UN class
18. Method of disposal as per Annex IV
19. Declaration by the generator and exporter that the information is correct
20. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the used oil upon which the latter has based his assessment that there was no reason to believe that the used oils will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import
21. Information concerning the contract between the exporter and disposer.

Notes

- 1/ Full name and address, telephone or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.
- 2/ Full name and address, telephone, telex or telefax number.
- 3/ In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.

- 4/ Information to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.
 - 5/ The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the used oil both in handling and in relation to the proposed disposal method.
 - 6/ In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.
 - 7/ Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.
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