United Nations Environment Programme

برنامج الأمم المتحدة للبيئة · 联合国环境规划署

PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT · PROGRAMA DE LAS NACIONES UNIDAS PARA EL MEDIO AMBIENTE

ПРОГРАММА ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ПО ОКРУЖАЮЩЕЙ СРЕДЕ

UNEP

Chemicals
International Environment House
Telephone: +41 22 917 12 34
Facsimile: +41 22 797 34 60
E-mail: ssc@chemicals.unep.ch

Substances chimiques
Maison Internationale de l'Environnement
11-13, chemin des Anémones
CH - 1219 Châtelaine
Geneva, Suisse (Switzerland)

Workshop on liability and redress in the context of the Stockholm Convention on Persistent Organic Pollutants
Vienna, 19-21 September 2002

FURTHER SUBMISSIONS OF INFORMATION ON LIABILITY AND REDRESS

Note by the secretariat

1. The Conference of Plenipotentiaries on the Stockholm Convention adopted Resolution 4 on liability and redress concerning the use and intentional introduction into the environment of persistent organic pollutants. Paragraph 1 of the resolution invited "Governments and relevant international organizations to provide the secretariat with information on national, regional and international measures and agreements on liability and redress, especially on persistent organic pollutants."

2. The secretariat wrote, on 14 September 2001, to Governments, members of the Inter-Organization Programme for the Sound Management of Chemicals (IOMC) and other relevant intergovernmental organizations, reminding them of the invitation by the Conference of Plenipotentiaries to provide information. Responses were received from the Governments of Austria, Bulgaria, Canada, Central African Republic, Czech Republic, Ethiopia, Georgia, Jordan, Kazakhstan, Madagascar, Mauritius, Peru, Singapore and United Kingdom, and from the European Commission, the secretariat of the Convention on Biological Diversity and the Organization for the Prohibition of Chemical Weapons. Copies of the responses, together with the secretariat's letter, were circulated as an information paper for the Sixth Session of the Intergovernmental Negotiating Committee, 17-21 June 2002 (Document **UNEP/POPS/INC.6/INF/5**).

3. At its Sixth Session, the Committee called upon those that had not already done so to provide their comments on liability and redress to the secretariat by 31 July 2002. The attached letter of 1 July 2002 from the secretariat reminded Governments and organizations of the request for further comments and announced the present workshop. Also attached are copies of the six responses received (from Chile, Lithuania, Republic of Moldova, Mongolia, Romania and Togo).

Interim Secretariat of the Stockholm Convention
Geneva

19 August 2002

United Nations Environment Programme

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Interim Secretariat for the Stockholm Convention on Persistent Organic Pollutants

1 July 2002

Subject: Liability and redress: workshop and request for information

Dear Colleague,

The Conference of Plenipotentiaries on the Stockholm Convention adopted resolution 4 on liability and redress concerning the use and intentional introduction into the environment of persistent organic pollutants. Paragraph 2 of the resolution requested the "secretariat in cooperation with one or more States to organize a workshop on liability and redress in the context of the Convention on persistent organic pollutants and related matters, no later than 2002." I wish to confirm that the workshop will be held in Vienna from 19 to 21 September. The draft programme for the workshop is attached. A limited amount of funding from the Government of Austria is available to support the attendance of participants from developing countries and countries with economies in transition. **Governments and organizations interested in participating in the workshop should contact the Government of Austria by 31 July** at the following address.

Federal Ministry of Agriculture, Forestry,
Environment and Water Management
Stubenbastei 5
1010 Vienna
AUSTRIA

Attention: Ms Britta Jedinger (International Environmental Affairs)
Fax (+43 1) 515 22 7626; e-mail britta.jedinger@bmlfuw.gv.at

At its sixth session held in Geneva from 17 to 21 June, the Intergovernmental Negotiating Committee noted information submitted by countries and others on the subject of liability and redress in the context of the Stockholm Convention (Document UNEP/POPS/INC.6/INF/5). The submissions were in response to resolution 4 of the Conference of Plenipotentiaries, which had invited "Governments and relevant international organizations to provide the secretariat with information on national, regional and international measures and agreements on liability and redress, especially on persistent organic pollutants." I wish to draw to your attention that the Committee invited interested stakeholders who had not already provided information to the secretariat to do so **by 31 July 2002**. This will enable such additional material to be considered at the workshop on liability and redress noted above. Information should be sent to:

Jim Willis, Executive Secretary
Attention: Liability and redress
Interim Secretariat for the Stockholm Convention
UNEP Chemicals
11-13 chemin des Anémones
CH-1219, Chatelaine, Geneva, Switzerland
Fax: (+41 22) 797 34 60
E-mail: ssc@chemicals.unep.ch

Submission by e-mail is much preferred.

If you have any questions, please contact Matthew Gubb at telephone (41 22) 917 82 00; fax (41 22) 797 34 60; or e-mail: mgubb@chemicals.unep.ch

Yours sincerely,

James B. Willis
Executive Secretary

CHILE

ESTUDIO PARA EL TEMA DE RESPONSABILIDAD Y COMPENSACION EN EL CONVENIO DE ESTOCOLMO.

I.- ANTECEDENTES:

El Convenio de Estocolmo es un instrumento internacional jurídicamente vinculante para la aplicación de medidas internacionales respecto de ciertos contaminantes orgánicos persistentes: aldrina, clordano, DDT, dieldrina, dioxinas, endrina, furano, hexaclorobenceno, heptacloro, mirex, PCB, y toxafeno.
El principio de la responsabilidad internacional de los Estados tiene su origen en diversas resoluciones de tribunales arbitrales internacionales. Fue formulado en la Declaración de Rio, Principio 21, y consta de dos elementos: primero es la reafirmación de la soberania permanente de los Estados sobre sus recursos naturales y, segundo, la obligación de los Estados de impedir que actividades realizadas dentro de su jurisdicción o bajo su control puedan causar daños al medio ambiente de otros Estados o de zonas fuera de las jurisdicciones nacionales.

Aunque ningún artículo de este Convenio, (ni del Convenio de Rotterdam) se refiere a la responsabilidad y compensación, como otros Convenios: Basilea, art. 12; Convenio de Biodiversidad, art. 2; en el Preámbulo el Convenio de Estocolmo, está presente el Principio 13 de la declaración de Rio sobre el medio Ambiente y el Desarrollo de 1992, por la que los Estados deberán elaborar los instrumentos jurídicos nacionales e internacionales relativos a la responsabilidad y la indemnización respecto de la victimas de la contaminación y los daños ambientales.

Con todo, en el preámbulo se señala expresamente:
a.- Reafirmando que los Estados, de conformidad con la Carta de las Naciones Unidas y los principios del Derecho Internacional, tiene el derecho soberano de explotar sus propios recursos con arreglo a sus políticas propias en materia de medio ambiente y desarrollo, así como la responsabilidad de velar por las actividades que se realicen bajo su jurisdicción o control , no cauce daños al medio ambiente de otros Estados o de zonas situadas más allá de los límites de la jurisdicción nacional.

b.- Tomando nota de las respectivas capacidades de los paises desarrollados y en desarrollo, así como de las responsabilidades comunes pero diferenciadas de los Estados de acuerdo con lo reconocido en el principio 7 de la Declaración de Rió ya señalada, y

c.- Subrayando la importancia de que los fabricantes de contaminantes orgánicos persistentes asuman la responsabilidad de reducir los efectos adversos causados por sus productos y de suministrar información a los usuarios, a los gobiernos y al público sobre las propiedades peligrosas de los productos químicos.

d.- El otro elemento lo aporta el art. 1 del Convenio de Estocolmo: "teniendo presente el principio de precaución consagrado en el Principio 15 de la Declaración de Río sobre el Medio Ambiente y el Desarrollo, el objetivo del

presente Convenio es proteger la salud humana y el medio ambiente frente a los contaminantes orgánicos persistentes".

e.- Finalmente, en la Conferencia de Plenipotenciarios en Johannesburgo, a la que concurrieron los ministros de los Estados para la firma, se aprobaron varias resoluciones, entre las que figura la Resolución N°4, sobre responsabilidad y reparación con respecto a la utilización e introducción intencional en el medio ambiente de contaminantes orgánicos persistentes, que señala " consciente del riesgo representado por los contaminantes orgánicos persistentes para la salud humana y el medio ambiente, reconociendo que los contaminantes orgánicos persistentes son transportados a través de las fronteras internacionales y depositados lejos del lugar de su liberación por el aire, el agua y las especies migratorias, reconociendo que el momento es oportuno para seguir examinando la necesidad de elaborar reglas internacionales en materia de responsabilidad y reparación derivadas de la producción, el uso y la liberación intencional en el medio ambiente de contaminantes orgánicos persistentes.

2.-Este principio de la responsabilidad internacional de los Estados ha sido formulado en las siguientes convenciones internacionales:

- Tratado sobre Protección de Plantas de 1951, que estableció la obligación de los gobiernos de impedir la expansión de enfermedades y pestes a través de las fronteras nacionales.
- Tratado Nuclear de 1963, que prohibió los ensayos nucleares que causen contaminación radioactiva fuera del territorio donde estos tiene lugar.
- La Convención del Mar, arts. 193 y 194 que establecen la obligación de los estados de adoptar las medidas necesarias para prevenir, reducir y controlar la contaminación del ambiente marino de cualquier fuente.
- Convenio para prevenir la contaminación del mar por hidrocarburos, de 1954, este Convenio fue puesto en vigencia mediante el Decreto Supremo N°474 de 1977, se aplica a los buques matriculados en el territorio de los gobiernos contratantes y a los buques no matriculados que posean la nacionalidad de una de las partes.
- Convenio sobre responsabilidad civil por daños causados al mar por hidrocarburos, promulgado por Decreto Supremo N°475 de 1977, se aplica a los daños causados en el territorio, inclusive el mar territorial, de un Estado contratante, por contaminación de hidrocarburos derramados o descargados desde un barco como resultado de un siniestro.
- Convenio sobre prevención de la contaminación del mar por vertimiento de desechos y otras materias. Decreto Supremo N°476 del Ministerio de Relaciones Exteriores de 1972.
- Acuerdo sobre cooperación regional para combate contra la contaminación del Pacífico Sudeste por hidrocarburos y otras sustancias nocivas (Panamá, Colombia, Ecuador, Perú y Chile) Decreto Supremo N°425 de 1986.
- Protocolo sobre Responsabilidad y Compensación de daños causados por el movimiento Transfronterizos de Desechos Peligrosos de acuerdo al Convenio de Basilea. (Análisis aparte punto 3c).

3.-Breve análisis de tres de los Convenio citados a modo de explicar brevemente cómo opera la responsabilidad civil y la responsabilidad penal.

a.- El Convenio sobre Responsabilidad Civil por Daños Causados al Mar por Hidrocarburos, se aplica exclusivamente a los daños causados en el territorio,

inclusive el mar territorial de un Estado Contratante, por contaminación de hidrocarburos derramados o descargados desde un barco como resultado de un siniestro. El responsable del siniestro es el propietario de la nave, a menos que pruebe que fue causado por un acto de guerra, actuaciones de terceros o actos de negligencia de cualquier gobierno. Si el daño es causado por dos o más barcos, la responsabilidad será solidaria por todos los daños que no sea posible prorratear razonablemente. Ahora bien, el propietario de un barco tiene derecho a limitar su responsabilidad con respecto a cada siniestro hasta un monto de 210 millones de francos. Sin embargo, si el siniestro fue causado por culpa del propietario, éste no podrá valerse del derecho de limitación. Cuando el propietario de un barco transporte en él más de 2000 toneladas de hidrocarburos a granel, deberá tomar un seguro u otra garantía financiera por el importe a que ascienden los límites de responsabilidad fijados en el tratado a fin de responder por los daños causados por la contaminación. Podrán interponerse acciones de indemnización para el resarcimiento de los daños directamente contra el asegurador o la persona que extendió la garantía. En tal caso el demandado podrá ampararse en los límites de responsabilidad prescritos en el Convenio. Las acciones, en caso de siniestro que haya causado daño al territorio de un Estado o su mar territorial, se interpondrán ante los tribunales del Estado afectado. Sus fallos serán ejecutorios en todos los Estados contratantes .

b.- El Convenio para la Protección del Medio Ambiente y la zona costera del Pacífico Sudeste. El ámbito de aplicación comprende el área marítima y la zona costera del Pacífico Sudeste dentro de la zona marítima de soberanía y jurisdicción hasta las 200 millas de las partes, y más allá de dicha zona y el alta mar, hasta una distancia en que la contaminación de ésta pueda afectar a aquélla.
El convenio define la contaminación del medio marino, que une dos palabras claves: contaminación y daño: "Se entiende por contaminación del medio marino la introducción por el hombre, directa o indirectamente, de sustancias o energía en el medio marino (inclusive estuarios) cuando produzca o pueda producir efectos nocivos, tales como daños a los recursos vivos y la vida marina, peligros para la salud humana, obstaculización de las actividades marítimas, deterioro de la calidad del agua del mar y menoscabo de los lugares de esparcimiento".

c.- El Protocolo sobre Responsabilidad y Compensación de daños causados por el movimiento Transfronterizos de Desechos Peligrosos de acuerdo al Convenio de Basilea.

II.- EL DAÑO AMBIENTAL EN LA LEGISLACIÓN CHILENA

- Manual de derecho ambiental chileno
- Pedro Fernández Bitterlich

II-1.- El Daño Ambiental
Definición de daño: La Ley de Bases Generales de Medio Ambiente define el daño ambiental como toda pérdida, disminución, detrimento o menoscabo significativo inferido al medio ambiente o a uno o más de sus componentes.
Las características del daño ambiental son: velocidad, imperceptibilidad, irreversibilidad y universalidad.

La velocidad con que se causa el daño tiene que ver con la tecnología empleada, que cada vez es más agresiva en contra los factores de la naturaleza y el ecosistema, por ejemplo barcos factorías que reemplazan la pesca artesanal y maquinaria forestal versus el hacha de los leñadores .
El daño en el ecosistema es inadvertido para la comunidad, por ejemplo la contaminación del suelo por plaguicidas de largo efecto residual, la desertificación la salinización por mal uso.
La irreversibilidad significa que una vez producido el daño al ecosistema o a algunos de sus componentes, no es posible que vuelva a recuperarse, a escala humana, o el costo de su recuperación hace rechazar la idea de intentarlo. De allí se aplica el principio de prevención, evitando por todos los medios que el daño se produzca.
Universalidad: las normas y medidas universales son el instrumento idóneo para regular el daño ambiental, ya que no sólo afecta al patrimonio de una persona, comunidad o país, sino que a una región o conjunto de países y al planeta entero.

II.2.-Responsabilidad por daño ambiental en la Ley N°19.300, art. 3: "sin perjuicio de las sanciones que señale la ley, todo el que culposa o dolosamente cause daño al medio ambiente, estará obligado a repararlo materialmente, a su costo, si ello fuera posible, e indemnizarlo en conformidad a la ley". Esta norma manifiesta el principio internacional del que contamina paga, y el art. 51 señala, "todo el que culposa o dolosamente cause daño ambiental, responderá del mismo en conformidad a esta ley".
Esto significa que existen numerosas normas especiales que prevalecerán sobre esta Ley N°19.300, como el Decreto Ley N°3557 de 1981 sobre Protección Agrícola o la Ley N°18.302 sobre seguridad nuclear. En todo caso, en el silencio de las leyes siempre prevalece el Código Civil relativas a los delitos y cuasidelitos que en su art. 2329 dispone que, por regla general, todo daño que pueda imputarse a malicia o negligencia de otra persona, debe ser reparado por ésta. Para que el daño pueda ser reparado es fundamental que el autor haya cometido el acto mediante acción culposa o dolosa, situación que deberá ser probada por quien la alega. Estamos ante la responsabilidad subjetiva, en que la prueba de la culpa o el dolo resulta esencial. En el fondo, el sistema protege al autor por sobre la víctima, sobre quien descansa además, el peso de la prueba, situación que en la mayoría de los casos resulta dificultosa." Por tal motivo, el autor de este manual, sostiene que en el daño ambiental debe exigirse la responsabilidad objetiva, salvo los casos de fuerza mayor o caso fortuito, dada la trascendencia social del daño, en que el bien afectado no es un patrimonio individual, ni siquiera la suma de ellos, sino que es la vida, la salud humana o bien los ecosistemas naturales, base única de sustentación de la vida.

II.3.-El daño ambiental en la ley de Protección Agrícola, Decreto Ley N°3557 de 1981. (Ministerio de Agricultura – MINAGRI).
El art. 36 del Decreto Ley N°3557 señala que si al aplicar plaguicidas se causaren daños a terceros, ya sea en forma accidental o como consecuencia inevitable de la aplicación, éstos podrán demandar judicialmente la indemnización de perjuicios correspondientes mediante procedimiento sumario ante el juez civil pertinente.
El plazo de prescripción es de un año contado desde que se detecten daños. Con todo, podrá ejercerse esta acción pasados dos años desde que se aplicó el plaguicida.

El art. 8 de este Decreto Ley señala que cuando a raíz de trabajos realizados para el control de plagas por el Servicio Agrícola y Ganadero (SAG), se produjesen perjuicios en bienes u objetos anexos y diversos de los sometidos a tratamientos, el afectado podrá reclamar judicialmente contra el SAG, aun cuando el perjuicio fuese causado en forma accidental o como consecuencia inevitable de las medicas fitosanitarias decretadas. En este caso, el afectado sólo podrá reclamar del daño emergente ocasionado. El plazo para reclamar indemnización prescribe en dos años.
Este es un caso de responsabilidad objetiva, en que se debe responder de un daño sin necesidad de acreditar dolo o culpa.

II.4-El daño ambiental en la Ley de Navegación contenida en el Decreto Ley 2.222 de 1978.
Esta ley también constituye excepción a la norma general de la responsabilidad subjetiva o culpable. En su art. 144 N°1 y 2, señala que el propietario, armador u operador a cualquier titulo de una nave, naves o artefacto naval, serán responsables de la indemnización de perjuicios por los daños que se produzcan con ocasión de cualquier clase de materias o desechos que se produzcan derrame o descarga dentro de las aguas sometidas a la jurisdicción nacional, sea cual fuere la actividad que estuviere realizando la nave o artefacto naval que lo produjo, responsabilidad que es objetiva, a menos que prueben que ellos fueron producidos exclusivamente por las siguientes causales: a.- Acto de Guerra, hostilidades, guerra civil o insurrección o un fenómeno natural de carácter excepcional, inevitable e irresistible. b.- Acción u omisión dolosa o culpable de un tercero extraño al dueño, armador u operador a cualquier titulo del barco o artefacto naval, las faltas, imprudencia o negligencias de los dependientes del dueño, armador u operador, o las de la dotación, no podrán ser alegadas como causal de la presente excepción de responsabilidad.
Estamos en presencia de la responsabilidad objetiva seguida de solidaridad, ya que la responsabilidad por daños que se causen afectará en forma solidaria a las personas nombradas precedentemente, las cuales deberán responder de ellos por el solo hecho de producirse, a menos que concurran algunas de las situaciones señaladas en las letras a) ó b) citadas precedentemente. La responsabilidad del propietario, armador u operador está limitada a un máximo de 210 millones de francos, a menos que el siniestro se hubiere producido por falta o culpa de cualquiera de ellos, en cuyo caso no existe limite. El plazo de prescripción de los derechos es de tres años.
De acuerdo al articulo 147, en caso de instalaciones terrestres que produzcan daños al medio ambiente marino por vertimiento o derrame de sustancias contaminantes, el dueño de ellas será siempre civilmente responsable y deberá indemnizar todo perjuicio que se haya causado. En este caso estamos frente a otro caso de excepción a las normas de la ley ambiental, ya que la responsabilidad del dueño de las instalaciones que producen daño también es objetiva.

III.- ACCIONES QUE ORIGINA EL DAÑO AMBIENTAL

III.1.- Acción de reparación.
La acción ambiental tiene por objeto reparar el medio ambiente dañado, entendiendo por reparación la acción de reponer el medio ambiente o uno o más de sus componentes a una calidad a la que tenían con anterioridad al

daño causado, o en caso de ello no ser posible, restablecer sus propiedades básicas.(art. 53 Ley N°19.300)
Son titulares de la acción ambiental o de reparación las personas naturales o jurídicas, públicas o privadas, que hayan sufrido el daño o perjuicio, las municipalidades por los hechos acaecidos en su territorio y el Estado por intermedio del Consejo de Defensa del Estado. Deducida la demanda por cualquiera de ellos, no podrán interponerla los restantes, sin perjuicio de actuar como terceros; en tal caso, la ley presume que las municipalidades y el Estado tienen interés actual en los resultados del juicio.

III.2.-La acción de indemnización.
Está contemplada en el art. 2314 y siguientes del Código Civil, referido a los delitos y cuasidelitos civiles en los casos de responsabilidad extracontractual, establecen que el que ha cometido un delito o cuasidelito que ha inferido daño a otro, es obligado a la indemnización, siempre que concurran los siguientes requisitos:
a.- que exista daño producto de una acción u omisión del agente,
b.- que el daño sea originado por culpa o dolo de quien lo provoca,
c.- capacidad del autor del hecho ilícito,
d.- relación de causalidad entre la acción culpable o dolosa y el daño,
e.- la no concurrencia de una causal de exención de responsabilidad.
Se define la **culpa** como la falta de diligencia o cuidado en la ejecución de un hecho o en el cumplimiento de una obligación.
El **dolo** lo define el art. 44 el Código Civil como la intención positiva de inferir injurias a la persona o propiedad de otro.
La culpa no se presume, debe probarla la víctima del daño, salvo en el caso del art. 52 de la Ley N°19.300, que ya señalamos, en que se presume la culpa cuando el autor del daño ambiental comete infracción a las normas de calidad ambiental, emisiones, planes de prevención o de descontaminación, regulaciones especiales en caso de emergencias o a normas de protección, preservación o conservación ambientales establecidas en la ley ambiental o en otras disposiciones reglamentarias.
Son titulares de esta acción de indemnización los directamente afectados, sean personas naturales o jurídicas. Los titulares pueden ejercer dos acciones conjuntamente: la acción de reparación del daño ambiental y la acción indemnizatoria de perjuicios. Pueden deducirla tanto los privados, las municipalidades y el Estado en el caso que sean directamente afectados (art. 53 Ley N°19.300).

III.3.- La Acción de requerimiento.
El art. 56 de la Ley N°19300, establece una acción de requerimiento, que pueden ejercer las municipalidades y los demás organismos competentes del Estado en materia ambiental, (y también las personas naturales o jurídicas que estén sufriendo el daño), ante el juez de letras en lo civil del lugar en que ocurre la infracción o del domicilio del afectado para obtener la aplicación de sanciones a las personas responsables de fuentes emisoras que no cumplan con los planes de prevención o descontaminación o con las regulaciones especiales para las situaciones de emergencia ambiental o a los infractores por incumplimiento de los planes de manejo a que se refiere la ley. El juez, además de las sanciones, puede ordenar suspender de inmediato las actividades emisoras u otorgar un plazo a los infractores para que cumplan con las normas.

IV.- EL PROTOCOLO DE BASILEA SOBRE RESPONSABILIDAD E INDEMNIZACIÓN POR LOS DAÑOS RESULTANTES DE LOS MOVIMIENTOS TRANSFRONTERIZOS DE DESECHOS PELIGROSOS Y SU ELIMINACIÓN.

1.- El objetivo de este Protocolo es establecer un régimen global de responsabilidad e indemnización pronta y adecuada por los daños resultantes de los movimientos transfronterizos de desechos peligrosos y otros desechos y su eliminación, incluido el tráfico ilícito de esos desechos.

2.- Contiene un artículo con definiciones como: qué se entiende por daño, medidas de restablecimiento y medidas preventivas entre otras.

3.-Lo más difícil en su negociación fue definir el ámbito de aplicación, es decir, desde que momento y hasta cuando se consideraba que podrían ocurrir los daños y desde cuando era responsable cada uno de los actores involucrados en los incidentes ocurridos durante un movimiento transfronterizo de desechos peligrosos.

4.- El Protocolo define que entiende por responsabilidad objetiva en la persona del notificador, el eliminador, el importador, el reimportador y los casos de excenciones, la responsabilidad culposa: toda persona será responsable por daños causados por el incumplimiento de las disposiciones del Convenio de Basilea.

5.- Señala los conflictos entre las disposiciones del protocolo y las disposiciones de un acuerdo bilateral, multilateral, que se apliquen a la responsabilidad e indemnización por daños causados en un incidente ocurrido durante la misma porción de un movimiento transfronterizo.

6.- Otra de las grandes dificultades del este Protocolo fue la de definir los límites financieros, que se señalan en un anexo aparte, y los seguros y otras garantías financieras, y los fondos para cubrir los costos de los daños, se señaló allí "En el caso en que la indemnización con arreglo al Protocolo no cubra los costos de los daños, se podrán tomar medidas adicionales y complementarias para garantizar una indemnización pronta y adecuada utilizando **los mecanismos existentes. La Reunión de las Partes mantendrá en examen la necesidad y posibilidad de mejorar los mecanismos existentes o de establecer un nuevo mecanismo".**

7.- Los tribunales competentes son los tribunales de la partes Contratante donde se ha sufrido el daño, ha ocurrido el incidente, o la residencia habitual o centro operacional comercial. El derecho aplicable es, además del Protocolo, la legislación del tribunal competente.

V.- ASUNTOS DEL CONVENIO DE ESTOCOLMO RELATIVOS AL TEMA DE LA RESPONSABILIDAD Y COMPENSACIÓN QUE SE PODRIAN PLANTEAR EN EL TALLER DE VIENA.

1.- El preámbulo señala los principios que llevaron a iniciar actividades internacionales para proteger la salud humana y el medio ambiente con medidas para reducir y/o eliminar las emisiones y descargas de contaminantes orgánicos persistentes. Reconoce la importancia de concebir y emplear procesos alternativos y productos químicos sustitutivos ambientalmente racionales.

La idea de precaución es el fundamento de las preocupaciones de todas las Partes y se halla incorporada de manera sustancial en el Convenio, asimismo alienta a las Partes que no cuentan con sistemas reglamentarios y de

evaluación para plaguicidas y procuctos químicos industriales a que desarrollen esos sistemas

Reconoce además los siguientes principios, ideas y políticas ambientales internacionales:

- las circunstancias y las especiales necesidades de los paises en desarrollo, particularmente las de los paises menos adelantados, y de los países con economías en transición, en particular la necesidad de fortalecer su capacidad nacional para la gestión de los productos químicos, inclusive mediante la transferencia de tecnología, la prestación de asistencia financiera y técnica y el fomento de la cooperación entre las Partes.
- las respectivas capacidades de los países desarrollados y en desarrollo, así como de las responsabilidades comunes pero diferenciacas de los Estacos de acuerdo con lo reconocido en el principio 7 de la Declaración de Río sobre el Medio Ambiente y el Desarrollo.
- reconoce que el Convenio y los demás acuerdos internacionales en la esfera del comercio y el medio ambiente, se apoyan mutuamente, especialmente:

1.-Reafirma el principio 16 de la Declaración de Río sobre el Medio Ambiente y el Desarrollo que estipula que las autoridades nacionales deberían procurar fomentar la internalización de los costos ambientales y el uso de instrumentos económicos, teniendo en cuenta el criterio de que el que contamina debe, en principio, cargar con los costos de la contaminación, teniendo debidamente en cuenta el interés público y sin distorsionar el comercio ni las inversiones internacionales.

2.-Reafirma que los Estados, de conformidad con la Carta de las Naciones Unidas y los principios del derecho internacional, tienen el derecho soberano de explotar sus propios recursos con arreglo a sus políticas propias en materia de medio ambiente y desarrollo, así como la responsabilidad de velar por que las actividades que se realicen bajo su jurisdicción o control no causen daños al medio ambiente de otros Estados o de zonas situadas más allá de los límites de la jurisdicción nacional.

3.- la coordinación con el Convenio de Rotterdam para la aplicación del procedimiento de consentimiento fundamentado previo a ciertos plaguicidas y productos químicos peligrosos objeto de comercio internacional.

4.-la consideración de las normas establecidas en el Convenio de Basilea sobre el control de los movimientos transfronterizos de los desechos peligrosos y su eliminación, incluidos los acuerdos regionales elaborados en el marco de su artículo 11.

II.-Se estima que la ratificación del Convenio obligará a los países que forman parte del mismo, a elaborar políticas, legislación, e instrumentos de regulación para la gestión de los 12 compuestos identificados inicialmente y otros que puedan ser incorporados a futuro. Además debido a las características de persistencia y facilidad para trasladarse a largas distancias de la fuente emisora, los países deberán adoptar medidas de colaboración complementarias bilaterales, regionales y multinacionales:

-Eliminación y prohibición del uso de los compuestos aldrín, clordano, dieldrín, endrín, heptacloro, mirex, hexaclorobenceno, toxafeno, bifenilos policlorados.

-El Convenio deja abierta la posibilidad de aplicar ciertas excepciones para fines muy justificados, a ciertos compuestos del listado.
-Restricción de la fabricación y uso de DDT, excepto para control de vectores mientras no exista disponibilidad de un sustituto y como producto intermedio en la producción de dicofol.
-Elaboración y aplicación de estrategias para identificación de almacenamiento de compuestos POPs, desechos que los contienen productos y equipos que contienen o estén contaminados con POPs.
-Identificación de sitios (suelos y sedimentos) contaminados con POPs para proceder a la remediación de manera ambientalmente racional.
-Implementación de medidas para: Reducir o eliminar las emisiones de compuestos no intencionales promoviendo o exigiendo el uso de las mejores técnicas disponibles para nuevas fuentes y mejores tecnologías y mejores prácticas ambientales para las fuentes existentes. Recolectar y almacenar POPs y desechos que los contega de manera ambientalmente adecuada, incluyendo los compuestos que, una vez prohibidos, se conviertan en desechos y proceder a su destrucción de manera irreversible.

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LITHUANIA

From: A.Bajoraitiene [mailto:A.Bajoraitiene@aplinkuma.lt]
Posted At: Friday, August 02, 2002 3:28 PM
Posted To: SSC
Conversation: Liability and redress
Subject: Liability and redress

Dear Mr. Jim Willis,

In respond to the Resolution 4 of the Conference of Plenipotentiaries, which have invited "Governments and relevant international organizations to provide the secretariat with information on national, regional and international measures and agreements on liability and redress, especially on persistant organic pollutants" we forward the relevant information on liability and redress in the context of the Stockholm Convention.

Aurelija Bajoraitiene

on behalf of Mrs. Marija Teriosina,
Focal point for Stockholm Convention in Lithuania
Chemicals Management Division
Ministry of Environment, Lithuania

Lithuania

There are no direct provisions on liability for damage caused by POPs as a group of substances, although most of the measures provided below will apply with respect to damage caused by POPs in appropriate circumstances.

The legal bases for the enforcement of the legal acts directly or indirectly related to POPs is set by the Law on Environmental Protection, the Law on Chemical Substances and Preparations and Administrative Code. Apart that, the Law on State Control of Environmental Protection provides more detailed provisions on rights and responsibilities to give binding directions to offender, to suspend the activities which may damage the environment, etc.
The Article 33 of the Law on Environmental Protection establishes provision on Claims for Compensation of Damage Caused by Illegal Activities.

The liability for violation of chemical substances and preparations handling requirements is provided for in the Law on Chemicals Substances and Preparations.
According to the Article 26 of the Law on Chemicals Substances and Preparations inspectors have the right

- according to their competence, give binding directions to persons placing on the market, manufacturing, importing chemical substances and preparations, as well as to the users, warn them against the violations and oblige them to take necessary safety measures,
- impose administrative penalties in accordance with the procedure laid down by the Administrative Code,
- issue binding orders to suspend the activities related to the use or other handling of dangerous chemical substances and preparations, where a violation of the effective requirements and existence of danger to human health or life or conditions likely to cause an accident are established, submit a proposal to suspend or revoke a licence to the institution which issued the licence.

The Regulations of Integrated Pollution and Control Permit Issuing, Renewal and Annulment also includes the liability for violations of the permit conditions and general responsibility to compensate the damage to the environment, man or property. This is also applicable to POPs as one of the chemicals, emission, and etc. group.

In addition to the general liability provisions provided for in the above frame laws, the Administrative Code establishes the administrative responsibilities and penalties for those violated the environmental norms and other requirements.

Charges on emissions of dangerous substances (including POPs) into environment and fines for deliberate releases are set in Law on Pollution Charges (No.VIII-1183 of 13.05.1999).

REPUBLIC OF MOLDOVA

From: liudmila [mailto:liudmila@mediu.moldova.md]
Sent: Wednesday, July 31, 2002 5:48 PM
To: SSC
Cc: Matthew Gubb
Subject: From Liudmila Marduhaeva, Republic of Moldova - liability and redress information

Dear Mr. Willis, dear colleagues,
I am sending you the requested information on national, regional and international measures and agreements on liability and redress, especially on persistent organic pollutants, inconformity with your letter from 1 July 2002.
Also, I would like to inform you that we sent to the Federal Ministry of Agriculture, Forestry, Environment and Water Management from Austria the our nomination letter concerning participation in the Vienna's workshop on liability and redress. This letter sent (by fax) on 22 July 2002 and copied to your fax number.

Sincerely Yours
Liudmila Marduhaeva

UNEP POPs Focal Point at the Republic Moldova
National Focal Point of the Stockholm Convention on POPs
Consultant of the General Division of Environmental Impact and Waste Management
Ministry of Ecology, Construction and Territorial Development
9, Cosmonautilor St., MD - 2005,
Chisinau, Republic of Moldova
Tel.: (373 2) 22 68 50
Fax: (373 2) 22 07 48
E-mail: liudmila@mediu.moldova.md or l.marduhaeva@mail.md

INFORMATION
of the Republic of Moldova concerning liability and redress
according to the letter of the UNEP Chemicals dated from 1 July 2002
and the Resolution on liability and redress concerning the use and intentional introduction into the environment of persistent organic pollutants

Prepared by Mrs. Liudmila Marduhaeva
Consultant on Air Protection,
UNEP POPs Focal Point at Moldova,
General Division for Environmental Impact and Waste Management,
Ministry of Ecology, Construction and Territorial Development.
Tel.: (373 2) 22 68 50
Fax: (373 2) 22 07 48
E-mail: l.marduhaeva@mail.md or liudmila@mediu.moldova.md

I. Preamble.

The Republic of Moldova is situated in the South-East of Europe with total area of 33.8 thousand square kilometres. It gained its independence in 1991 after the collapse of former USSR .The population of the Republic is about 4.3 mln inhabitants. out of which 45% is urban and 55% rural. Due to the favorable geographical conditions (rich soils, mild climate) the social – economic development of the country is based on agriculture with intense use of natural resources and biodiversity.

The Republic of Moldova is in transition to a market economy. This process has involved initiation of restructuring and reform of institutions and economic activity and has been accompanied by a sudden decline of production in all sectors of national economy. Since 1991 the total GDP has been decreased radically and in 2000 it was at the level of 36% from the level of 1990. The country is one of the poorest in Europe with only US$350 GDP per capita.

The main environmental problems are those that relate to water pollution (particularly ground water pollution), hazardous wastes, soil degradation and biodiversity conservation. The percentage of eroded soils is 30%, among which 5-6 % is highly eroded. Although Moldova has limited forest coverage (10%), the wood harvest increased significantly in recent years, alongside with reduction of necessary activities for forestation and for combating of forest diseases. As the main sources of drinking water supply for rural areas is ground water, and pollution of this resource has been increasing in recent years, the quality drinking water supply is considered one of the country's most important social and environmental problems. Due to the lack of adequate storage handling and disposal infrastructure, proper management of domestic and hazardous wastes is also considered one of the most urgent environmental problems. Currently in Moldova approximately 2000 tonnes of obsolete pesticides are stored in various former collective agricultural warehouses or disposed in uncontrolled dumps.

II. Current status of POPs in the Republic of Moldova

The assessment of POPs inventories and impacts to date in Moldova is limited and would require detailed assessment as part of the enabling activities. The following summarizes the current knowledge base on POPs, Convention participation, chemical and waste management generally and the relevant existing regulatory framework.

Table 1. POPs Pesticides

Name of pesticide	Situation in Republic of Moldova
DDT	Not produced. Not used. Prohibited since 1970. Not included in official register of permitted substances for use in agriculture, including and individual farms, forestry and household.
Aldrin	Not produced. Not used. Prohibited since 1972. Not included in official register of permitted substances for use in agriculture, including and individual farms, forestry and household.
Dieldrin	Not produced. Not used. Not included in official register of permitted substances for use in agriculture, including and individual farms, forestry and household.
Chlordane	Not produced. Not used. Not included in official register of permitted substances for use in agriculture, including and individual farms, forestry and household.
Endrin	Not produced. Not used. Not included in official register of permitted substances for use in agriculture, including and individual farms, forestry and household.
Heptachlor	Not produced. Not used. Prohibited since 1986. Does not included in official

	register of permitted substances for use in agriculture, including and individual farms, forestry and household.
Mirex	Not produced. Not used. Not included in official register of permitted substances for use in agriculture, including and individual farms, forestry and household.
Toxaphene	Not produced. Not used. Prohibited since 1991. Not included in official register of permitted substances for use in agriculture, including and individual farms, forestry and household.

Table 2. Industrial chemicals

PCBs	Not produced. Were used in past. There is equipment in storage and in service, containing PCBs (mostly Trichlorobiphenyl)
Hexachlorobenzene	Not produced. Not known to have been used in any industrial applications.

Table 3. By-products

PCBs	Trichlorobiphenyl is one from PCBs used in the Republic of Moldova. Its use is restricted by hygienic standard on the indicative safe exposure level in air of residential areas (0,001 mg/m3).
Hexachlorobenzene	Restricted by hygienic standard on maximum permissible concentrations of chemicals polluting air of working zone (0,9 mg/m3) and the indicative safe exposure level in air of residential areas (0,013 mg/m3).
PCDD / PCDFs	Restricted by hygienic standard on maximum permissible concentrations of chemicals polluting air of residential areas (0,5 pg/m3)

Status of the Republic of Moldova re: Major Global Chemical Conventions and other international agreements

Table 4. Status of the Republic of Moldova re: Chemical and other Conventions and Protocols

Treaty	Signed	Ratified	Remarks
Basel Convention	----------	*Yes*	----------
Rotterdam Convention	No	*No*	Plan to ratify in near future
LRTAP Convention	----------	*Yes*	----------
Aarhus POPs Protocol to the Convention LRTAP	June 24, 1998	*No*	There is Law on ratification of the Protocol on POPs and Protocol on HMs to the Convention LRTAP (No. 1018- XV) approved by the Parliament on 25 April 2002. This Law promulgated by the President Decree No. 665-III from 16 May 2002. The Republic of Moldova will present the necessary documents to Depositary in nearest future.
Aarhus HMs Protocol to the Convention LRTAP	June 24, 1998	*No*	There is Law on ratification of the Protocol on POPs and Protocol on HMs to the Convention LRTAP (No. 1018- XV) approved by the Parliament on 25 April 2002. This Law promulgated by the

			President Decree No. 665-III from 16 May 2002. The Republic of Moldova will present the necessary documents to Depositary in nearest future.
Gothenburg Protocol to the Convention LRTAP	May 23, 2000	*No*	Plan to ratify in near future
Convention on the Transboundary Effects of Industrial Accidents	----------	*Yes*	----------
FCCC	12 June 1992	*Yes*	----------
Vienna Convention for the Protection of the Ozone Layer	----------	*Yes*	----------
Montreal Protocol to the Vienna Ozone Convention	----------	*Yes*	----------
Aarhus Convention	June 1998	*Yes*	----------

Also, the Republic of Moldova is Party of the following international Conventions:

- On Environmental Impact Assessment in a Transboundary Context (Espoo, February 25, 1991), ratified by Parliament Decision Nr. 1546-XII from June 23, 1993);
- On Biological Diversity (Rio de Janeiro, June 5, 1992), ratified by Parliament Decision No. 457-XIII from March 16, 1995;
- To Combat Desertification, ratified by Parliament Decision Nr. 257-XIV from December 24, 1998;
- Of the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, March 17, 1992), ratified by Parliament Decision No. 1546-XII from June 23, 1993,
- Convention on cooperation for the protection and sustainable use of the Danube River (Sofia, 26 June 1994), ratified by the Decision of the Parliament Nr. 323-XIV from 17 March 1999, - and other conventions.

Actually representatives of the Republic of Moldova participate in the UN ECE negotiation process on ***legally binding instrument on Civil Liability for Transboundary Damage caused by Hazardous Activities.***

Future international activities:

The Republic of Moldova plans to ratify/accede to the following international agreements:

- The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.
- The Gothenburg Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone.
- Stockholm Convention on Persistent Organic Pollutants.

Also, the Republic of Moldova plans to adopt and sign the further ***legally binding instrument on Civil Liability for Transboundary Damage caused by Hazardous Activities***.

III. Relevant Legislative Acts

The Republic of Moldova is living through a difficult stage of its development. The situation is complicated by several problems related to the transition to a market economy and establishing a democratic state. Since 1990 the country's economic situation has been constantly deteriorating. Possessing no energy and other raw material resources the country is almost totally dependent on import from the former USSR republics and the countries of Western Europe

Having gained the independence and despite economic difficulties the Republic of Moldova has adopted a number of legislation and regulations on chemicals, harmful products and waste management, environment and health protection.

The principle legal act is the Constitution of the Republic of Moldova adopted on 29 July 1994. Environmental protection and a human right for clean environment are stipulated by several articles of the Constitution, e.g. Paragraph 1 of Article 37 states:

" Every person has a right for the environmentally safe and the healthy environment and also safe food and household products".

Besides, Paragraph 2 of the same Article states:

" The State guarantees to each person a right for free access to reliable information on the state of the environment, living and labor conditions, quality of food and household products, and dissemination of this information".

Paragraph 5 of Article 46 "Private property and its protection" states:

"The right for private property demands compliance with regulations for environment protection and ensuring good neighborly relations, and also observance of other requirements imposed on the owner in compliance with the legislation".

The principle legal acts regulating harmful substances, products and waste, protecting the environment and human health against the impact posed by hazardous products, waste and substances are:

- Law on Regime of Harmful Products and Substances (No. 1236-XIII), approved by the Parliament of the Republic of Moldova on 3 July 1997;
- Law on Wastes of Production and Consumption (No. 1347 – XIII), approved by the Parliament of the Republic of Moldova on 9 October 1997;
- Law on Licensing Certain Tips of Activities (No. 451-XV), approved by the Parliament of the Republic of Moldova on 5 September 2001;
- Law on Civil Protection (No. 271-XIII) , approved by the Parliament of the Republic of Moldova on 9 November 1994;
- Law on Industrial Safety of the Dangerous Industrial Objects (No. 803-XIV), approved by the Parliament of the Republic of Moldova on 11 February 2000;
- Law on Consumers Rights Protection (No. 1453-XIII), approved by the Parliament of the Republic of Moldova on 25 May 1993;
- Law on Plants Protection (No. 612-XIV), approved by the Parliament of the Republic of Moldova on 1 October 1999;
- Law on Sanitary and Epidemiological Support of Population (No. 1513-XII), approved by the Parliament of the Republic of Moldova on 16 June 1993;
- Law on Protection of Environment (No. 1515-XII), approved by the Parliament of the Republic of Moldova on 16 June 1993;
- Law on Atmospheric Air Protection (No. 1422-XIII), approved by the Parliament of the Republic of Moldova on 17 December 1997, - and other legislative acts.

Practically all legislative acts contain some stipulations concerning civil, administrative and criminal responsibility for violating legislation, and, also, economical responsibility for damage caused to the environment and human health.

The present report deals with only several legal and regulatory documents, which are in force in the country.

Law on Regime of Harmful Products and Substances:

Hazardous products and substances are regulated mainly by the above-mentioned Law on Regime of Harmful Products and Substances. It constitutes legal basis for activity related to production, storage, transportation and use of hazardous products and substances, their import and export aimed at reducing or eliminating their adverse impacts on human health and the environment. Chapter IV contains main provisions on enforcement and responsibility for violating the Act. So, Article 17 "Civil, administrative and criminal liability" and Article 18 "Economical liability " state that:

"Legal entities and natural persons, guilty for violating of present low stipulations, bear civil, administrative and criminal responsibility in order, established by legislation"

"Damage caused to the environment and human health in consequence of import, production, storage, transportation, use, processing and disposal of hazardous products and substances, compensates by guilty in full size in conformity with legislation"

Law on Environment Protection:

One of the first environment acts adopted in the Republic of Moldova upon acquiring independence was the Law on Environment Protection (No. 1515-XII of 16 June 1993). It is the principle environmental act in the Republic. Environment Protection is considered the national priority directly concerning the population health and living conditions, implementing economic, social and humanitarian interests and sustainable development of society.

Chapter IX of this Law contains main provisions on civil, administrative and criminal responsibility for violating legislation, and, also, economical responsibility for damage caused to the environment and human health.

In line with Article 89 the violating of present low provisions involves civil, administrative and criminal responsibility in conformity with existing legislation.

Article 91 states that:

" *Legal entities and natural persons must compensate damage and loss, caused by violating of this Law, in order and sizes, established by existing legislation*".

Law on Wastes of Production and Consumption:

In compliance with the Law on Environment Protection, **Law on Wastes of Production and Consumption** regulates handling production and consumption waste aimed at their reducing and maximum involvement into economic activity and preventing environment pollution.

Chapter VI of the Law on Wastes of Production and Consumption formulates the responsibility for violating of this low provisions. So, paragraph 1 of article 25 "Responsibility " states that:

"Legal entities and natural persons, guilty for violating of legislation on waste management, bear economical, disciplinary, administrative and criminal responsibility in conformity with legislation".

Law on Atmospheric Air Protection:

The next hierarchic level of legislation to protect the atmospheric basin from pollution is constituted by the Law on Atmospheric Air Protection. In line with its Article 1 the present act is aimed at *"preserving and improving the atmospheric air quality, preventing and reducing harmful physical, chemical, biological, radioactive and other exposure to the atmosphere causing negative consequences for population health and/or the environment".*

The sphere of application of the above-mentioned act is regulating the activities of natural persons and legal entities (irrespective of ownership pattern or institutional and legal form) capable of directly or indirectly deteriorating the atmospheric air quality.

Chapters VI and VII of the act formulate provisions on state registration and control of atmospheric air pollution and responsibility of natural persons and legal entities for violating these provisions.

In line with paragraph 1 of Article 33 *natural persons and legal entities, which by its activity promoted to atmospheric air pollution, must compensate caused damage in order, established by legislation.*

Future development of related legislation

Actually proposals to introduce modifications in the Law on Payment for Pollution of the Environment are under development and their goal is stipulation of payment provisions for some goods that have environmental impact. List of goods that are supposed to be regulated by some economic instruments will include the following:

- Ozone- depleting substances and products containing such substances;
- Polymer packaging and PVC products;
- Heavy oil with medium and high sulphur content;
- Technical oils and lubricants, contained halogenated additives;
- Luminescent lamps;
- Pesticides, including pesticides, contained chlorine and Hg;
- Cigarettes;
- Auto venicles accumulators;
- Detergents, contained chlorine;
- Mineral oils;
- Naphtalin and other products.

Also, actually the Republic of Moldova effectuates first steps on approximation of the national legislation in conformity with EU legislation. In framework of the project " Preparatory EU *Approximation Work of the Republic of Moldova in Integrated Pollution Prevention Control and Waste Management*" the Republic of Moldova prepared tables of contens (ToCs), ToCs analysis and project of strategy on approximation of legislation. This study included

multiple EU Directives, including, also, for example: IPPC Directive, **Disposal of PCB/PCTs Directive (96/59/EC)** etc.

IV. Relevant regulatory acts

The main activities for management of toxic chemical substances, products and wastes, and also, environmental and human protection, included in the range of normative acts, prepared, published and entered in force after the Republic of Moldova became independent.

The following normative acts were developed and introduced:

- List of chemical and biological preparations for struggling with diseases, vermins and weeds, regulators and ferments for plants growing, permitted for using in agriculture, including and individual farms, forestry and household of the Republic of Moldova for 1997-2001 period.
- Sanitary Regulation on storage, neutralization, use and burring of toxic substances and wastes.
- Regulation on State Sanitary-Epidemiological Control in the Republic of Moldova.
- Temporary Regulation on confiscation, utilizing or destruction food production and raw material, that presents a threat for Human Health and Environment.
- Sanitary Regulation on import of food materials and products in the Republic of Moldova.
- Regulation on Division of State Trade Inspection for protection of consumers rights.
- Instruction on the order of organization and holding of State Ecological Expertise.
- Regulation on ecological audit of enterprises.
- Regulation on Environmental Impact Assessment of privatized enterprises.
- Statistical classificatory of wastes of the Republic of Moldova.
- Regulation on import, sale and using of chemical and biological preparations of protection and stimulation of plants growth.
- List of Sanitary-Hygienic Standards on maximum permissible concentrations, indicative safe exposure levels, indicative permissible quantity etc., - and a range of other normative acts, regulating management of toxic products and substances and their wastes, effectuation of control, registration and other measures.

Also, there are regulatory acts on determination of damage, caused to atmospheric air and water by hazardous activities. At the same time, unfortunately, these regulatory acts are old and were approved and published in former Soviet Union. List of chemicals regulated by these acts does not contain POPs chemicals.

At the same time the new Regulation on liability and redress, caused to soil resources by means of chemicals pollution was elaborated and published in 2000. Please find below the short description of the above-mentioned regulatory act:

Regulation on determination of damage, caused to soil resources by means of chemicals pollution

In conformity with this normative act damage caused by chemicals pollution determinate in cases:

- Soil pollution (emissions and introductions of pollutants into soil) - on basis of studies results or laboratory analysis as compared with previous results;
- Breaches of technologies and established norms for use pesticides and fertilizers, non-observances of the environment protection norms in the time of chemicals storage, transportation, effectuation of the loading and unloading of the chemicals, emissions, introductions on basis of studies or laboratory analysis results;
- Soil pollution in locations of the unsanctioned of waste stockpiles - on basis of results concerning volumes (mass) and danger degree of waste, and laboratory analysis.

Damage size from soil pollution determinates proceeding from expenditures for effectuation of total volume of works for polluted soil decontamination. In case impossibility of these expenditures determination, damage size calculates by formula:

$P = Nc * S(i) * Ct * Cp(i)$, where:

- **P** – payment size for damage from soil pollution by one or few (from 1 to n) chemical substances (thousands lei);
- **Nc** – cost normative of agricultural soils (thousands lei / ha), determinated in conformity with table. Cost norms of agricultural soils (Nc) equal cost norms of new terrenes reclamation in exchange of terrenes, taking from agricultural using, which approved by corresponding Government's Decision;
- **Ct** – coefficient of re-computation in dependence from necessary time for rehabilitation of agricultural soils, which determinate in conformity with table.
- **S(i)** – Square of soils, polluted by chemical substances (i);
- **Cp(i)** - coefficient of re-computation in dependence from danger degree of soils by chemical substances (i), determinated in conformity with table.

Five levels of soil pollution degree were established for this:

1 – non-polluted soils;
2 - feebly polluted soils;
3 – middle-polluted soils;
4 – strongly polluted soils;
5 – very strongly polluted soils.

This act regulates the multiple chemical substances, including several POPs: Heptachlor, DDT, Hexachlorobenzene PCBs regulated by the Stockholm Convention on POPs. Also, this act includes several POPs substances regulated by the Aarhus Protocol on Persistent Organic Pollutants and other PTS, for example: HCH, benzo(a)pyrene from PAHs, HCBD etc.

At the same time this act does not contain any provisions to regulate the other POPs substances regulated by the Stockholm Convention on POPs.

Future development of regulatory acts

Presently the following documents are under development:

- Draft Regulation on granting authorisation for carrying on the waste management activities.
- Draft Regulation on the transfrontier transport control of wastes and their disposal.
- Draft Regulation on waste management.
- Draft Regulation on determination of damage, caused to the environment by anthropogenic activities. - and other regulations.

The Working Group has been established by order of the Minister of Ecology, Construction and Territorial Development in goals to develop the above-mentioned Regulation on determination of damage, caused to the environment by anthropogenic activities.

V. Economical instruments

The National Strategic Programme of Actions on Environmental Protection approved by the Decree of the President of the Republic of Moldova on 6 October 1995 and National Action Plan on Environmental Protection approved by the Decision of the Government in 1996 have laid down the guidelines for economic relations in using the natural resources potential. They are based on the principles "user pays" and "polluter pays". These principles were further developed in the following new legislation and normative acts, namely:

- Law on change and adding to the Law on Protection of Environment (nr.1539 – XIII from 25.02.1998);
- Law on the Payment for Environmental Pollution (nr.1540 - XIII from 25.02.1998);
- Law on change and adding to the Law on the Payment for Environmental Pollution (nr. 732-XIV from 16.12 1999);
- Regulation on Ecological Funds, approved by the Decision of the Government (nr.988 from 21.09.1998);
- Instruction on Calculation of the Payment for Environmental Pollution, approved by Minister of Environment and Territorial Development of the Republic of Moldova from 17.04.2000;
- Regulation on activity of the administrative councils of the ecological funds, approved by Minister of Environment of the Republic of Moldova from 05.11 1998;
- Regulation on ecologic – economical services of the territorial bodies of the Ministry of Environment, approved by Minister of Environment of the Republic of Moldova from 05.11 1998;
- Temporary Regulation on Determination of Redress Harmed to Environment, approved by Minister of Environment and Territorial Development of the Republic of Moldova from 18.01.2000, Minister of Justice from 17.02.2000, Minister of Finance from 19.01.2000, Minister of Economy and Reforms from 20.01.2000.

These legislative and normative acts and Laws on Budget (for each year) are principal legislative acts, which stipulate the concrete provisions for formation and use of environmental funds, economic instruments and financial mechanisms for regulation of the environment pollution, stimulating of industrial facilities and other enterprises, redress for environment pollution and other provisions.

Other documents used in activities for ecological funds:

- Statistical reporting form 1 – EF "On formation and use of local ecological funds", approved by Order of the Minister of Environment and Order of the General Director of the Department of Statistical and Sociological Analysis;

- Statistical reporting form 1 – NEF "On formation and use of the National Ecological Fund", approved by Order of the Minister of Environment and Order of the General Director of the Department of Statistical and Sociological Analysis;
- Instruction on mechanisms of the payment levy for pollution from importing petrol products, approved by Minister of Environment of the Republic of Moldova (Nr. 01-13/509 from 25.11.1998) and Minister of Finance of the Republic of Moldova (Nr. 0311-02-182 from 20.11.1998) and, also, adopted by General Director of the Customs Control Department (Nr. 3033 from 10.11.1998).

Law on the Payment for Environmental Pollution

The Law on the Payment for Environmental Pollution is aimed at introducing the commonly applied in Western states principle "Polluter pays", stimulating of industrial facilities and other enterprises, while restructuring and being privatized, to introduce more resource-saving technologies with minimum exposure to the environment as well as to establish environmental foundations to finance environment protection projects.

The above-mentioned act has introduced payment for pollutants emissions and discharges into the atmosphere by stationary sources (Article 6) and mobile sources (Article 7), into water bodies (Article 9), and also for waste disposal sites (Article 10).

The economic instruments currently used for environment pollution abatement under the Law on the Payment for Environmental Pollution are charge for pollution of the environment. The procedure for determining such payments for pollution of the environment, disposal of wastes and other harmful activities, and their maximum levels, was approved by the Parliament of the Republic of Moldova in decision nr.1540 - XIII from 25.02.1998.

Payment for atmospheric pollutants releases by stationary sources:

The payment for atmospheric pollutants releases by stationary sources are taken according to Article 6 of the Law from the users in the following cases:

- Pollutants releases within the established limits;
- Pollutants releases exceeding the established limits .

Each economic agent pays for the pollutants that are enclosed in the permit given by State Ecological Inspectorate of the Ministry of Ecology, Constructions and Territorial Development.

Payment for pollutants emission into atmosphere by stationary sources is differentiated by regions and fixed per one ton of a pollutant. Payment for pollution is incurred for the actual pollutant emission and is quarterly transferred to local environmental foundation accounts. Payment for pollutants emission by stationary sources exceeding the allowed standard increases fivefold, and payment for accidental discharges by stationary sources increases 50-fold.

Payment for atmospheric pollutants releases by mobile sources using fuel petrol:

The Article 7 "Payment for Pollutants Emission by Mobile Sources" of the above-mentioned Law states:

(1) Payment for pollutants emission into the atmosphere by mobile sources using as fuel petrol (ethylated and non-ethylated) and diesel fuels is fixed for natural persons and legal and physical entities importing this fuel.
(2) Payment for pollutants emission into the atmosphere by mobile sources amounts 1 percent of the custom-duty price for ethylated petrol and diesel fuel; 0,5 percent of the custom-duty price for non-ethylated petrol and is effected at the moment of paying the custom duty for imported fuel.

It is clear from Paragraph 2 of Article 7 of the above act that Republic of Moldova has introduced some economic instruments to stimulate imports of non-ethylated fuel and consequently reducing heavy metals and POPs emissions.

Payment for atmospheric pollutants releases by mobile sources using as fuel liquefied natural gas and compressed hydrocarbon gas:

Payment for pollutants emissions into atmosphere mobile sources (auto vehicles) using as fuel liquefied natural gas and compressed hydrocarbon gas (excluding the owners of private transport, that don't carry business activities) is fixed for natural persons and legal entities with due account for the actual amount of fuel consumed during automobile transport operation expressed in tons or cubic meters.

The established costs for payment are the following:

- Mobile sources, working on compressed hydrocarbon gas – 0,9 lei for 1 ton of used fuel

- Mobile sources, working on liquefied natural gas – 0,75 lei for 1000 cubic meters of used fuel

Payment for pollutants discharge into water bodies and sewerage

In line with Article 9 payment for pollutants discharges with waste- waters into water bodies and sewerage network is imposed on nature users in the following cases:

- Pollutants discharges within the established limits;
- Pollutants discharges violating the established limits.

Paragraph 2 of the same Article states:

"Payment for pollutants discharge in setting ponds, filtration fields, silt collectors of animal husbandry wastes is imposed on nature users with due account for discharged volume".

Paragraph 3 of the same Article states:

"Payment for discharges into fisheries ponds, storm runoff from a facility area is imposed on nature users when the pollutant amount in waste- waters exceeds the established limits".

Payment for waste disposal:

In line with Article 10 of the above Law payment for industrial waste disposal is imposed in the following cases:

- waste disposal sites are located within the enterprise area;
- waste disposal at landfills (open dumps) within the established limits;
- waste disposal at landfills (open-dumps) at amounts exceeding the established limits.

Other documents related to environment protection, including economic instruments:

Certain directions of the activity on financial mechanisms and economics instrument in relation with environment protection were included in the following documents:

- The National Strategic Programme of Action on Environmental Protection, approved by the Decree of the President of the Republic of Moldova on 6 October 1995;
- "Environmental Performance Review", which elaborated and the final document with recommendations for solution of existing problems in national environmental policy and management was presented in 1998 for evaluation by the ECE Committee on Environmental Policy at its annual session in Geneva. This document was approved and published;
- National Strategy on Sustainable Development "Moldova 21";
- New Concept of Environmental Policy of the Republic of Moldova, approved by the Parliament of the Republic of Moldova on 2 November 2001 (No. 605-XV).

Main difficulties related to the management of POPs:

The Republic of Moldova is living through a difficult stage of its development. The situation is complicated by several problems related to the transition to a market economy and establishing a democratic state.

Since 1990 the country's economic situation has been constantly deteriorating. Possessing no energy and other raw material resources the country is almost totally dependent on import from the former USSR republics and the countries of Western Europe.

There are following problems:

- The most serious problem from global and regional aspect represents presence of the big quantity of the obsolete pesticides stocks, which storage in the old half-destructed deposits. In conformity with inventory, effectuated in 1997, the obsolete pesticides stocks, including prohibited pesticides, were 2626,9 tonnes. In conformity with inventory, effectuated in 2000, the obsolete pesticides stocks were already 2000 tonnes. This indicates on pesticides stocks leakage. Nature of leakage is unknown.
- The most serious problem from global and regional aspect represents presence of the big quantity of the PCBs liquid stocks and reserved equipment, containing PCBs liquid at enterprises of the Ministry of Energy. At the same time information concerning PCBs sources, emissions and concentrations into environment are insufficient. In this context national inventory of PCBs sources, assessment of the emissions and monitoring are urgent needs.
- The Republic of Moldova does not have any accredited laboratory for determination and analysis of the dioxins and furans. In this context dioxins and furans not well studied. National inventory of dioxins and furans sources in environment is of urgent need.
- The lack of sufficient information on environment pollution at territory, located on the left bank of the Dniester River, in conformity with separatist tendencies of this territory. At the same time the principal

energetical and industrial plants located at this territory (e.g. Moldavian metallurgical plant, Moldavian electric station - large combustion plant, cement plant etc).

- The absence of the established state statistical registration and systematization of use of chlororganic pesticides (COPs). Unfortunately, Department of Statistical and Sociological Analyses has not accomplished state statistical registration of the pesticides and PCBs and also has not the sufficient knowledge and experience to registrate the hazardous substances, including POPs substances regulated by Stockholm Convention.
- The Customs Department of the Republic of Moldova has not the sufficient knowledge and experience to control import and export of the hazardous substances, including POPs substances regulated by Stockholm Convention.
- The air laboratory equipment of the State Ecological Inspectorate, National Institute of Ecology and Hydrometeorological Service are obsolete and in conformity with the difficult economic situation it doesn't renewed. There is necessity of renovation of mentioned laboratories.
- The lack of transboundary air pollution monitoring of POPs. The Republic of Moldova has one post for monitoring of transboundary air pollution. At the same time the difficult economic situation in which we have been put now only selection of samples of atmospheric precipitation with their further analysis in laboratories for monitoring of atmospheric pollution of the Hydrometeorological Service is made. There is necessity of renovation of mentioned post.
- Existing structure of state health, agriculture, industry, energy management sectors is not able to solve the problems regarding the phase out/reduction of POPs use, trade, and the safe destruction/disposal.
- Existing legal and regulatory acts related to determination of damage, caused to the environment and human health, liability and redress, cost and benefits assessing are not sufficient.

It will be helpful if some POPs guidance on international level will be develop and available, for example:

- guidance for developing a POPs inventory and assessing the management infrastructure related to POPs, including POPs inventory in water and soil;
- guidance on POPs monitoring and evaluation in waste;
- guidance on analytical methods for POPs in air and other media;
- guidance on POPs cost and benefits assessing;
- guidance on determination of damage, caused to the environment and human health, liability and redress etc.

MONGOLIA

From: oyundar [mailto:oyundar@mongol.net]
Posted At: Monday, July 29, 2002 9:29 AM
Posted To: SSC
Conversation: Information on liability and redress of POPs in Mongolia
Subject: Information on liability and redress of POPs in Mongolia

Dear Mr. Jim Willis,

Please find attached the information on liability and redress on POPs in Mongolia.

MINISTRY OF NATURE AND ENVIRONMENT

From the late 1950s to 1970s. Mongolia used DDT substance in great amounts for eradicating cattle parasites. It is clear that such a wide use of this substance has affected badly the health of veterinarians, herders and wider general population who was using the agricultural products. But until today there is no any available research on the impacts caused by the use of this chemical. It is obvious that the use of such substances has been affecting the health of Mongolian people because in the 1960-1970s herders used to utilize DDT with no any protective measures, such as wearing gloves, and sued to store the substances at their homes due to lack of any instruction concerning such prevention. Given Mongolian situation with underdeveloped chemical industry, all chemical used was imported. But there is no available data on type and amount of chemicals being used in Mongolia as well as sources of chemicals imported.
Mongolian government is aware of the harm that POPs might possibly cause and has been an active participant in the process of developing the Convention and is putting a great effort toward being accepted a member of the Convention and adopting the Convention in Mongolia. But general population, consumers and buyers in Mongolia lack awareness of and any information on the possible harm and sources of the harmful chemicals and consequently do not know the amount of reserve contained.

Mongolia is not party to any international regulation of the liability for damage caused by POPs. Although the respective national laws cover the issues of protecting people from toxic organic substances and pollutants, the issue of liability and redress of the POPs is at the beginning stage in the country.

In the Law of Health Insurance and Law of Protecting from Toxic Organic Substances there are provisions stating that a serious damage to the people from using and importing toxic organic substances should be fully covered by the user/importer.

The ammendement on liability and redress of POPs to the relevant environment laws is at the finalization stage.

The Constitution of Mongolia states "the human right to live in healthy and safe environment and to be protected from environmental pollution and ecological imbalance'.

ROMANIA

From: Elena POPOVICI [mailto:popovic@mappm.ro]
Posted At: Tuesday, July 30, 2002 4:06 PM
Posted To: SSC
Conversation: Liability and redress
Subject: Liability and redress

Dear Mr. James B. Willis,

Following your letter dated 1 July 2002, I would like to give you some information to the Resolution on liability and redress:

In Romania the environmental protection shall represent obligation of all natural and legal persons.

The violation of national in force laws on environmental protection shall involve civil, contravention or criminal responsibility, depending on action gravity.

From the principles which lay at the basis of the Law on environmental protection in force in Romania, shall be mentioned "the polluter-pays principle" and "the removal on priority basis of the pollutants that directly and severely jeopardize public health".

It is also necessary underline that the principle regarding "the development of international collaboration to ensure the quality of the environment" has an important role in the matter of liability and redress.

The activities subjected to a special administration and management regime shall refer to the manufacture, trade and utilization of dangerous substances; and to the transport, transit, temporary or permanent storage, destruction, handling as well as to the import and export of dangerous substances and hazardous waste.

Romania support the international rules in the field of liability and redress resulting from the production, use and international release into the environment of persistent organic pollutants.

Ministry of Waters and Environmental Protection

Elena Popovici

Councillor, General Commissariat of Environmental Guard

TOGO

From: Komla Sanda [mailto:komla.sanda@tg.refer.org]
Posted At: Tuesday, July 30, 2002 7:54 PM
Posted To: SSC
Conversation: Workshop on Liability and Liability
Subject: Workshop on Liability and Liability

Dear Mr Willis,

In response to your request for information on country specific provisions in the legal framework with regard to Liability and redress in connection with Resolution N° 4 of the Plenipotentiaries conference of the Stockholm Convention on POPs, I have the honour to provide hereinafter a brief overview of the situation prevailing in Togo.
The first part of the submission is attached to this message and the second part will follow tomorrow may be by fax.
Yours sincerely,

Prof Komla Sanda
POPs focal point
Togo

From: Komla Sanda [mailto:komla.sanda@tg.refer.org]
Posted At: Wednesday, July 31, 2002 7:14 PM
Posted To: SSC
Conversation: Workshop on Liability and Redress
Subject: Workshop on Liability and Redress

Dear Mr Willis,
Pursuant to my promise I have the pleasure to send you attached to the present message the complete contribution of Togo on liability and redress as requested in connection with resolution 4 of the plenipotentiaries conference of the Stockholm Convention on POPs.
Best regards
Prof. Komla Sanda

INFORMATION ON LIABILITY AND REDRESS

SUBMISSION BY TOGO

Background

Legal framework at local level

In Togo, the management of chemicals in general falls under the national legal framework termed to as law N° 88-14, 3 November 1988 setting up an Environmental Code. Recentlythe domestic legislation on chemicals has been strengthened with two other laws respectively refered to as law N° 96-007/PR, 3 July 1996 that regulate plant protection and law N° 96-026/PR, 18 March 1996 to address issues in the pharmaceutical sector. With regard to pesticides, a national interdepartmental committee is responsible for registration and licensing.

Regional and sub-regional conventions and agreements

Togo is member state to the following conventions/agreements addressing chemical legislation

Global level

On the global level, Togo is party or signatory to some major conventions the most important of whom in the context of the National Implementation Plan are the Basel Convention on the Transboundary Movement of Hazardous Waste and their Disposal and the Rotterdam Convention on Prior Informed Consent Procedures of Certain Hazardous Chemicals and Pesticides in International trade. The ratification procedure is under way for both conventions which are linked by reference to the Stockholm Convention

Use and intentional introduction into the environment of POPs

Small scale agriculture

Many of the POPs pesticides such as aldrin, dieldrin, endrin or DDT are said to banned in Togo according to the governemental department in charge of plant protection regulation issues. Actually, the use and misuse of such pesticides could not be eliminated due to legislation gaps since there are no legal instruments for implementation and enforcement of this ban. As a consequence of this, recent laboratory tests have shown residues of these POPs in drinking water and food in rates much higher than the reference values in Codex Alimentarius . These scientifical data clearly support the assumption that humans and the environment are significantly exposed to some POPs in Togo.
The informal sector at large through illegal trade is if not the sole, at least the chief responsible for the intentional introduction and use of POPs pesticides namely by individual poor and small farmers for market gardening and grain storage sometimes.

Termite control

In addition to small scale agriculture, the housing sector stands as another area of concern since commercial products aimed at termite control and consisting of a mixture of aldrin, dielarin or lidan are legally produced in West Africa and also legally imported and commercialised for use in Togo.

Residual indoor spray for mosquitoes control

The use of DDT to combat mosquitoes is normally said to be banned since the 1980's and a shift towards synthetic pyrethroid is presently being promoted in Togo. Nevertheless, a residual use of DDT purchased from illegal trade by individuals is still continuing.

Domestic practices with regard to liability and redress

Status of chemicals regulation

In Togo, the legal and regulation framework aimed at managing chemicals and wastes is rather weak because governmental decision-makers and the public at large are somehow far from being sufficently aware of chemical risk. This results in lack of education,lack of knowledge and lack of skilled personnel and relevant expertise for legislating chemicals. But above all, the challenge to overcome is funding to support political will and commitment if any. Hence nationally endorsed legal principles on liability and redress on POPs inter alia are still to be established pursuent to national priorities to be set up in the NIP.

Provisions on Liability and Redress in the domestic Civil Code

The followings provisions in domestic legal practices in connection with liability and redress may serve as refrence for regulation on POPS based on the Polluter pay principles.

Article 1382 :

Tout fait quelconque de l'homme qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.

Article 1383

Chacun est responsable du dommage qu'il a causé, non seulement par son fait, mais encore par sa négligence ou par son imprudence.

Loi N° 98-012 du 11 juin 1998 portant réglementation de pêche

L'article 8 alinéa 2 de la dite loi interdit l'utilisation pour la pêche des explosifs, détonateurs ou armes à feu et l'usage d'appâts ou leurres toxiques ou autres substances pouvant tuer, paralyser ou changer le comportement des animaux aquatiques immédiatement ou ultérieurement

L'article 29 de cette loi sanctionne les infractions aux disposition,s de l'article 8 d'une amende de 100.000 à 5.000.000 et ou d'un emprisonnement de 15 jours à 6 mois.

DROIT PENAL SPECIAL (ORDONNANCES,LOIS ET DECRETS)

La loi N° 96-007/PR du 03 juillet 1996 relative à la protection des végétaux.

Le régime de la responsabilité pénale aux termes de ladite loi est organisé par les articles 41 à 47 qui prévoient des peines d'amendes (de 20.000 à 5.000.000 F CFA), d'emprisonnement de 15 jours à 6 mois avec faculté de doublement de peine en cas de récidive, et de peine de confiscation des produits objet de l'infraction

POPs Focal Point TOGO
Prof Komla Sanda