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EXPERT GROUP ON BEST AVAILABLE
TECHNIQUES AND BEST ENVIRONMENTAL
PRACTICES

Third session

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Item 3 of the provisional agenda¹

Development of guidelines on best available techniques and provisional guidance on best environmental practices relevant to the provisions of Article 5 and Annex C of the Stockholm Convention on Persistent Organic Pollutants

**CONSIDERATION OF COMMENTS ON SECTION II,
CONSIDERATION OF ALTERNATIVES IN
THE APPLICATION OF BEST AVAILABLE TECHNIQUES,
OF THE DRAFT GUIDELINES AND GUIDANCE²**

Note by the Secretariat

1. The development of Section II, “Consideration of Alternatives in the Application of Best Available Techniques” of the draft guidelines on best available techniques and provisional guidance on best environmental practices relevant to the provisions of Article 5 and Annex C of the Stockholm Convention on Persistent Organic Pollutants was coordinated by Mr. Nelson Manda (Zambia) and Mr. Jack Weinberg (International POPs Elimination Network). A note from Mr. Weinberg to the Expert Group on the consideration of comments received in the development of the Section is contained in annex I to the present note.

2. As indicated in annex I of the present note, the Secretariat was provided two versions of draft text of Section II of the guidelines and guidance. Having taken into account Mr. Weinberg’s observations, version 1 was included in the full draft text of the guidelines and guidance found in document UNEP/POPS/EGB.3/2. Version 2 of the draft text of Section II is contained in annex II of the present note.

¹ UNEP/POPS/EGB.3/1.

² This document has not been formally edited.

Annex I

NOTE TO THE EXPERT GROUP

Note to the Expert Group:

In suggesting a final version of the draft to be used in the October meeting, I would like to explain the approach used:

1) Several people pointed out to me that the presentation in the draft on the web site with extensive square brackets and with some text in red and some text in blue can not be read and understood. Therefore, my first intervention was to split the draft into two documents -- version 1 and version 2 -- with version 1 presenting the red version of the square bracketed text and version 2 representing the blue version.

2) Once the two alternatives are presented side-by-side, it becomes possible for participants to understand what the issues are. On the one hand, the intended meaning and content of version 1 can be understood. In essence, it is a proposed methodology for giving "*priority consideration*" to alternatives under certain circumstances. On the other hand, (from my own perspective) it remains difficult for me to understand what positive meaning is contained in version 2. I attempted to present it in an honest way, but I still do not understand it as having a meaning or an intent of its own other than possibly a negotiating attempt to defeat version 1. (For example, the word "priority" never even appears in version 2.) Still, presenting the two versions side-by-side gives proponents of each version an opportunity to explain to others their intentions. This could help create better understanding and help clarify the issues in what has become a very polarized situation. It will also help other experts understand the issues to be addressed. This is better than treating the two versions as variations of a single proposal with differences reflected in square brackets -- something that merely seems to create confusion.

3) I did not feel it was appropriate to take liberties in improving version 2, although it may be useful to offer its proponents that opportunity. However, based on inputs received, I did take some liberties in attempting to improve version 1. These proposed changes fall generally into the following three categories:

a) Heidi Fiedler of UNEP wrote in her submitted comments:

"I recognize that the text provided to define the borderlines of "alternatives" as agreed and requested in the mentioned conference call were not included into the draft. I kindly ask the coordinators to consider inclusion."

I went back and reviewed the submission on this topic Heidi originally submitted. It appeared to me that most of her submission was in the form of notes for a background paper, not something that could easily be integrated into the Guidance Document (accept, possibly as an Annex). However, one aspect of Heidi's intervention appeared to me as very relevant to the guidance paper -- the discussion of the meaning of the term "alternative" as it appears in Part V B(b). I therefore attempted to capture what I think was the substance of Heidi's intervention on that topic, and I inserted it into Version 1 in the following full paragraph that appears as a new paragraph near the top of page 2:

"In this regard, the Stockholm Convention is ambitious. It encourages a search for processes, techniques and practices that avoid POPs generation and release, and it encourages Parties to give these priority consideration. However, these provisions cannot be interpreted to mean that production or disposal process listed in Parts II

and III of Annex C, or listed in the UNEP Dioxin Toolkit must always be avoided since complete elimination may not always be practical or feasible. The term "similar usefulness" in Annex C can be here understood, broadly speaking, as taking into account the full range of considerations relative to the practicality and feasibility of a proposed alternative in comparison with the originally proposed new source."

I hope this proposed paragraph addresses UNEP's concern here, as expressed by Dr. Fiedler.

b) A private conversation I had with an industry expert led me to believe that one of the paragraphs in our original version may inadvertently have contributed to industry NGO concerns and opposition. Our original first paragraph might have been understood as broadening the concept of BAT and broadening the content of our Expert Group recommendations to provide Parties with guidance in their implementation of Article 5 (c). I have concluded that while the Convention does call for COP Guidelines for 5 (d); this appears beyond what our EG can prepare since it require a more thorough and difficult discussion than we still have time for. Therefore, I have removed the following paragraph from version 1:

"Each Party to the Stockholm Convention shall promote the development, and where it deems appropriate, require the use of substitute or modified materials, products and process to prevent the formation and release of chemicals listed in Annex C (henceforth referred to as Unintentional POPs), taking into consideration the general guidance on prevention and release measures in Annex C and the present guidelines as adopted by decision of the Conference of the Parties. (Art 5 (c))"

It would be unfortunate if concerns and possible disagreements relating to implementation of Art 5 (c) would prevent us from reaching sound and broad agreements on the implementation of Art 5 (d) and (e).

c) Several reviewers commented that the original draft "*Consideration of Alternatives*" needed a better introduction to make it understandable and useable. In reviewing the text, it seemed that the core needed introductory ideas were present, but were not well organized or articulated. This failing may have made the original paper difficult to understand, and may have contributed to some of the problems we have had. Therefore, I took some liberties in reorganizing the introductory section, and in inserting a transition paragraph at the start of the second section. (These add no new content or ideas.) The transition paragraph is then followed by the paragraph that attempts to capture the substance of Heidi's proposed intervention; and this is then followed by text as originally presented.

I hope you will find this contribution helpful and useful. I know Secretariat will find a good way to incorporate the attached material into the meeting documents for EGB 3 in a way that will assure the most constructive possible discussions and outcome.

Jack Weinberg

Annex II

VERSION 2 OF THE DRAFT TEXT OF SECTION II OF
THE GUIDELINES AND GUIDANCE

**Draft Guidance on Consideration of Alternatives in the
Application of BAT**

The importance of best available techniques (BAT) and best environmental practices (BEP) practices to reduce and minimize by-products releases is recognized, but it is also understood that complete elimination is not always feasible.

**Consideration of Alternatives in Applying BAT to New Sources:
a Checklist Approach**

Authorities are encouraged to use a checklist approach when they consider to make a choice between alternatives for best available techniques (BAT) and best environmental practices (BEP) or combinations of both to be applied in the construction of a new facility or significant modification of an existing facility that uses process that releases Unintentional POPs.

In doing this, they should keep in mind the overall sustainable development context, and they should take fully into account environmental, health, safety and socio-economic factors. The following are elements of a checklist approach:

- 1) **Review the proposed new facility in the context of sustainable development.** Authorities should carry out a review of the proposal to construct a new facility or significantly modify an existing facility using processes that release Unintentional POPs in the context of the country's plans for sustainable development. The purpose of such a review is to enable the authorities to better understand the proposed facility and its intended usefulness in relation to social, economic and environmental considerations, and as a basis for sustainable development.
- 2) **Identify Possible and Available Alternatives.** If authorities decide that the proposed new facility (or the significant modification of an existing facility) using processes that release Unintentional POPs, has an intended useful purpose that should be pursued, an effort will be made to identify other available alternative processes, techniques or practices that may have similar usefulness including those to minimize or, where feasible that avoid the formation and release of Unintentional POPs.
 - a. Available guidance comprising options for those processes, techniques and practices should be taken into account (e.g. guidance from Basel Convention, WHO, FAO etc.)
 - b. In order to assist Parties to identify possible, available and appropriate alternatives, one or more intergovernmental organization and/or the Convention Secretariat may produce, manage and facilitate a compendium of available processes, techniques or practices that avoid the generation and release to the environment of Unintentional POPs – ones that may be utilized as appropriate other alternatives to

facilities and processes that do generate and release Unintentional POPs. This might take the form of an information clearinghouse or some other mechanism for information exchange. If such a compendium, information clearinghouse and/or other mechanism for information exchange is to be developed, it must:

- i. Be done in a transparent manner;
 - ii. Be kept up to date;
 - iii. Provide information that Parties can use in ways that take fully into account the particular circumstances of developing countries and some countries with economies in transition; and
 - iv. Provide information that Parties can use to give consideration to regional differences, to help them to focus on sustainable development, taking into account environmental, health, safety and socio-economic factors;
- 3) **Undertake a Comparative Evaluation of All Alternatives.** The appropriate authority should undertake comparative evaluations of all possible and available alternatives for BAT and BEP or combinations of both. In carrying out the comparative evaluation, consideration should be given to appropriate items of the indicative list contained in Annex F, Information on Socio-Economic Considerations; and also relevant criteria from Annex C, Part V, Section A and B. (See below)
- 4) **Final Consideration.** One of the available alternatives for BAT and BEP or combinations of both should be given final consideration based on the comparative evaluation described in checklist item 3) above, and using relevant considerations and criteria from Convention Annex F and Annex C:
- a. Continue minimize and, where feasible, eliminate the formation and release of Unintentional POPs;
 - b. Have similar usefulness;
 - c. Fit comparatively well within a country's sustainable development plans, taking into account effective integration of social, economic, environmental, health and safety factors.

Social and Economic Considerations

Stockholm Convention Annex F is about Information on Socio-Economic Considerations. It addresses relevant information relating to socio-economic considerations associated with possible control measures to enable decisions by the Conference of Parties. However, it is also a starting point for a useful list of social and economic considerations and criteria that can be used by authorities in carrying out comparative evaluations of originally proposed facilities and identified possible and available alternatives, as called for in checklist item 3) above. In the evaluation of the proposal and the available alternatives the following criteria should be taken into account:

- 1) Technical feasibility,
- 2) Costs, including environmental and health cost,
- 3) Cost efficiency,
- 4) Efficacy (infrastructural capacity e.g. availability of well-trained staff etc.),
- 5) Risk,
- 6) Availability,
- 7) Accessibility,
- 8) Operator friendliness,
- 9) Positive or negative impacts on society including
 - a) Health, including public, environmental and occupational health,
 - b) Agricultural, including aquaculture and forestry,
 - c) Biota (biodiversity),
 - d) Economic aspects,
 - e) Movement towards sustainable development; and
 - f) Social costs.

A proponent considering to invest in a new facility or to significantly modify an existing facility will need to evaluate all the above in arriving at a final decision.

Annex C Considerations

All relevant sections of Annex C, Part V, Sections A and B should be fully taken into consideration in carrying out both checklist items 2) and 3) above.