



## **Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 Amendment Order 2013**

Rt Hon Dame Sian Elias, Administrator of the Government

### **Order in Council**

At Wellington this 12th day of August 2013

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to sections 3(1) and 3A(1) of the Imports and Exports (Restrictions) Act 1988, Her Excellency the Administrator of the Government makes the following order,—

- (a) acting on the advice and with the consent of the Executive Council; and
- (b) in compliance with the requirements of those provisions.

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**Order**

**1 Title**

This order is the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 Amendment Order 2013.

**2 Commencement**

This order comes into force on 16 August 2013.

**3 Principal order**

This order amends the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 (the **principal order**).

**4 Clause 4 amended (Interpretation)**

(1) In clause 4, replace the definition of **hazardous waste** with:

“**hazardous waste**—

“(a) means any waste that—

“(i) either falls into a category of waste specified in Part 1 of Schedule 3 or has as a constituent any substance specified in Part 2 of Schedule 3; and

“(ii) has any of the hazardous characteristics specified in Part 3 of Schedule 3; and

“(b) includes, in relation to exportation to or importation from a Basel Party, any other waste if the Basel Party has informed the Secretariat of the Basel Convention that the waste is considered or defined as hazardous under the Basel Party’s national legislation; and

- “(c) includes, in relation to exportation to or importation from an OECD member country,—
    - “(i) any other waste if the OECD member country has informed the OECD Secretariat that the waste is considered or defined as hazardous under the OECD member country’s legislation; and
    - “(ii) any other waste that has any of the hazardous characteristics specified in Part 3 of Schedule 3”.
  - (2) In clause 4, insert in their appropriate alphabetical order:
    - “**OECD Decision**—
    - “(a) means Decision C(2001)107/FINAL concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, made on 14 June 2001 by the Council of the Organisation for Economic Co-operation and Development; and
    - “(b) includes the appendices to the decision; and
    - “(c) includes any amendments to, or substitutions of, those documents that are or will become binding on New Zealand
- “**OECD member country** means a Party to the Convention on the Organisation for Economic Co-operation and Development, done at Paris on 14 December 1960”.

**5 Clause 6 replaced (Exports of certain chemicals prohibited)**

Replace clause 6 with:

- “**6 Exportation of certain chemicals and waste prohibited**
- “(1) The exportation of Stockholm chemicals, Rotterdam chemicals, banned chemicals, severely restricted chemicals, hazardous waste, and household waste is prohibited, except as provided in clauses 7 to 11.
  - “(2) However, it is outright prohibited to export hazardous waste or other waste to—
    - “(a) a Basel Party that has informed the Secretariat of the Basel Convention that it has prohibited importation of that waste; or

“(b) an OECD member country that has informed the OECD Secretariat that it has prohibited importation of that waste.”

**6 Clause 11 replaced (When waste may be exported)**

Replace clause 11 with:

**“11 When hazardous waste or household waste may be exported**

- “(1) A person may export hazardous waste or household waste (including waste that is or contains a Stockholm chemical) from New Zealand if the EPA grants the person a permit authorising the exportation of the waste.
- “(2) The EPA must grant a permit—
- “(a) for exportation to a Basel Party, other than exportation to which paragraph (b) applies, if the requirements of subclause (3) are met; or
  - “(b) for exportation to an OECD member country of waste intended for diversion if the requirements of subclause (4) are met.
- “(3) The requirements of this subclause are that—
- “(a) the common requirements are met; and
  - “(b) the importing State has not prohibited the importation of the waste as described in clause 6(2)(a); and
  - “(c) the importing State has consented in writing to the specific importation in question; and
  - “(d) the exportation of the waste is otherwise in conformity with New Zealand’s obligations under the Basel Convention and, if relevant, the Waigani Convention.
- “(4) The requirements of this subclause are that—
- “(a) the common requirements are met; and
  - “(b) the importing State has not prohibited the importation of the waste as described in clause 6(2)(a) or (b); and
  - “(c) the exportation of the waste is otherwise in conformity with New Zealand’s obligations under the Basel Convention, the OECD Decision, and, if relevant, the Waigani Convention.
- “(5) Despite subclause (2), the EPA may refuse to grant a permit if section 3BC of the Act applies.

“(6) In this clause,—

“**common requirements** means that—

“(a) any of the following applies:

“(i) New Zealand does not have the technical capacity and the necessary facilities, capacity, or suitable disposal sites to dispose of the waste in an environmentally sound and efficient manner:

“(ii) the waste is required as a raw material for any recycling or recovery industry in the importing State:

“(iii) the waste is exported in accordance with any criteria decided by the Basel Parties; and

“(b) the waste can be disposed of or managed in an environmentally sound and efficient manner in the importing State; and

“(c) for waste that is or contains a Stockholm chemical, the exportation is in accordance with Article 6(1)(d) of the Stockholm Convention

“**intended for diversion** means that waste is intended to be, or required by any law of New Zealand to be, disposed of by any of the methods specified in clause 2 of Part 4 of Schedule 3.”

**7 Clause 12 replaced (Importation of wastes prohibited)**

Replace clause 12 with:

**“12 Importation of certain waste prohibited**

The importation of hazardous waste and household waste is prohibited, except as provided in clause 13.”

**8 Clause 13 replaced (When waste may be imported)**

Replace clause 13 with:

**“13 When hazardous waste or household waste may be imported**

“(1) A person may import hazardous waste or household waste if the EPA grants the person a permit authorising the importation of the waste.

“(2) The EPA must grant a permit—

- “(a) for importation from a Basel Party or Waigani Party, other than importation to which paragraph (b) applies, if the requirements of subclause (3) are met; or
  - “(b) for importation from an OECD member country of waste intended for diversion if the requirements of subclause (4) are met.
- “(3) The requirements of this subclause are that—
- “(a) the common requirements are met; and
  - “(b) the importation of the waste is otherwise in conformity with New Zealand’s obligations under the Basel Convention and, if relevant, the Waigani Convention.
- “(4) The requirements of this subclause are that—
- “(a) the common requirements are met; and
  - “(b) the importation of the waste is otherwise in conformity with New Zealand’s obligations under the Basel Convention, the OECD Decision, and, if relevant, the Waigani Convention.
- “(5) Despite subclause (2), the EPA may refuse to grant a permit if section 3BC of the Act applies.
- “(6) In this clause,—
- “**common requirements** means that—
- “(a) any of the following applies:
    - “(i) the exporting State does not have the technical capacity and the necessary facilities, capacity, or suitable disposal sites to dispose of the waste in an environmentally sound and efficient manner:
    - “(ii) the waste is required as a raw material for any recycling or recovery industry in New Zealand:
    - “(iii) the waste is imported in accordance with any criteria decided by the Basel Parties; and
  - “(b) the waste can be disposed of or managed in an environmentally sound and efficient manner in New Zealand
- “**intended for diversion** means that waste is intended to be, or required by any law of New Zealand to be, disposed of by any of the methods specified in clause 2 of Part 4 of Schedule 3.”

**9 Schedule 3 heading replaced**

Replace the Schedule 3 heading with:

**Schedule 3**

cls 4, 11, 13

**Matters relating to hazardous waste and waste”.**

**10 Transitional provision**

- (1) This clause relates to the exportation or importation of hazardous waste or household waste if, at the commencement of this order,—
  - (a) a person had already applied for a permit authorising the exportation or importation; but
  - (b) the EPA had not yet decided whether to grant the permit.
- (2) The principal order applies, as amended by this order, to the exportation or importation of that waste.

Michael Webster,  
for Clerk of the Executive Council.

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**Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order amends the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004. It comes into force on 16 August 2013.

The definition of hazardous waste is extended, in relevant situations, to—

- include waste that is hazardous waste under another Basel Party’s national legislation; and
- include waste that is hazardous waste under another OECD member country’s legislation and any other waste that has certain hazardous characteristics.

*New clause 6* provides that the restriction on the exportation of waste applies to hazardous waste and household waste. It also outright pro-

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hibits the exportation of hazardous or other waste to a State that has prohibited its importation and informed the relevant Secretariat.

*New clause 11* now also provides for the exportation of hazardous waste or household waste to an OECD member country (which may or may not also be a Basel Party) if the waste is intended for diversion.

*New clause 12* provides that the restriction on the importation of waste applies to hazardous waste and household waste.

*New clause 13* now also provides for the importation of hazardous waste or household waste from an OECD member country (which may or may not also be a Basel Party) if the waste is intended for diversion.

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Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 15 August 2013.

This order is administered by the Ministry for the Environment.

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