

Decision of the Council on the Exchange of Information Concerning Accidents Capable of Causing Transfrontier Damage

Adopted by the Council at its 687th Session on 8th July 1988, C(88)84(Final)

THE COUNCIL,

Having regard to Article 5 a) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to paragraph 3 of Article 6 of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the Recommendations of the Council of 14th November 1974 on Principles Concerning Transfrontier Pollution, of 11th May 1976 on Equal Right of Access in Relation to Transfrontier Pollution, of 17th May 1977 for the Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relation to Transfrontier Pollution, and of 21st September 1978 for Strengthening International Co-operation on Environmental Protection in Frontier Regions [C(74)224, C(76)55(Final), C(77)28(Final), C(78)77(Final)];

Having regard to the Recommendations of the Council of 26th July 1983 concerning the Exchange of Confidential Data on Chemicals and concerning the OECD List of Non-Confidential Data on Chemicals [C(83)97(Final), C(83)98(Final)];

Having regard to the Declaration on Environment: Resource for the Future adopted by the Governments of OECD Member countries and of Yugoslavia at the session of the Environment Committee at

Ministerial Level on 20th June 1985 stating that "they will ensure the existence of appropriate measures to control potentially hazardous installations, including measures to prevent accidents";

Having regard to the Conclusions adopted by the Third High Level Meeting of the Chemicals Group on 17th-18th March 1987 regarding the prevention of, and response to, unintended releases of hazardous substances in the environment.

Considering that certain hazardous installations are likely to cause serious damage to human health and the environment in the event of a major accident;

Considering that it is necessary to promote new measures for the prevention of accidents involving hazardous substances and for limiting the adverse consequences of such accidents;

Considering the need to ensure that frontiers between Member countries do not constitute an obstacle to the transmission of information needed in order to protect human health and the environment in the event of accidents capable of causing transfrontier damage;

Considering that increased co-operation between Member countries should help to address the international problems which can arise with hazardous installations located in their frontier regions;

On the proposal of the Environment Committee;

DECIDES:

1. Member countries concerned shall exchange information and consult one another, on a reciprocal basis if so desired, with the objective of preventing accidents capable of causing transfrontier damage and reducing damage should such an accident occur.
2. Member countries shall take all necessary practical steps to implement, on a reciprocal basis if so desired, the provisions set out in Appendix I to this Decision, which is an integral part of this Decision, including, as need be, to conclude arrangements or agreements aimed at specifying procedures for exchanging information relating to accidents capable of causing transfrontier damage.
3. Definitions of terms used in this Decision are given in Appendix II, which is an integral part of this Decision.
4. The Environment Committee will examine, within three years, actions taken by Member countries pursuant to this Decision.
5. The Environment Committee will review Appendix III, which is an integral part of this Decision, within three years and will propose, as need be, a revised minimum list for the identification of hazardous installations.

Appendix I to Annex I [OECD Council Act C(88)84(Final)]

Provisions Relating to the Exchange of Information

Title A. Exchange of Information on Hazardous Installations

1. Countries concerned shall exchange relevant information for the prevention of, and the response to, accidents at hazardous installations. To this end, the country of the installation shall provide to the exposed country relevant information concerning existing or planned hazardous installations located in the area under its national jurisdiction and capable of causing transfrontier damage in the event of an accident, and the exposed country shall provide to the country of the installation relevant information concerning the area under its jurisdiction capable of being affected by such transfrontier damage.
2. Relevant information supplied by the country of the installation shall include the following information in so far as it is available in accordance with domestic law to the public authorities of the country of the installation:
 - a) Location and general description of the hazardous installation capable of causing transfrontier damage;
 - b) Common chemical names or, if more appropriate, the generic names or general danger classifications of the main hazardous substances which may cause transfrontier damage in the event of a major accident;
 - c) The legislative, regulatory and administrative requirements, including any conditions imposed by the licensing authorities, under which the installation operates;
 - d) General information concerning the nature, extent and likely effects off-site of a major accident on human health or the environment, including property; and
 - e) Information on the off-site emergency plan relevant to the exposed country.
3. Relevant information supplied by the exposed country relating to the area under its national jurisdiction capable of being affected by transfrontier damage in the event of an accident at the hazardous installation shall include the following information, in so far as it is available in accordance with domestic law to the public authorities of the exposed country:
 - a) Distribution of the population, including sensitive groups;
 - b) Location and general description of pertinent properties and activities which could be adversely affected; and
 - c) Location of natural resources, protected areas, sensitive ecosystems and historical monuments which could be damaged.
4. The countries concerned shall consult one another in case of difficulties in the identification of those hazardous installations under their respective national jurisdictions which shall be subject to an exchange of information.

Title B. Proposals for a Hazardous Installation

5. Where a Member country, through any forum or by any process to which the public has access and through which it can make representations, determines any human health or environmental risks which may be posed by an accident at a proposed hazardous installation or where a Member country requires the completion of a study concerning the impact on human health or the environment of a proposed hazardous installation in the event of an accident, it shall transmit to an exposed country any conclusions of the enquiry or of the study which it makes available to the public and shall implement the procedures described in Title A above.
6. Where the country of the installation has transmitted to the exposed countries the conclusions referred to in paragraph 5 above, it shall allow a reasonable amount of time for consultations with the exposed countries prior to implementing the proposal for a hazardous installation.
7. Where a Member country convenes or holds, as part of existing procedures, a meeting, enquiry, hearing or session of a tribunal, at which a decision is to be taken or an advice given on the establishment of a hazardous installation, it shall provide the exposed countries with the venues and dates of such a meeting, enquiry, hearing or session at which the proposed hazardous installation will be considered.
8. The country of the installation shall transmit to the exposed countries a copy of the documents concerning any proposal for a hazardous installation which are made available to the public in the country of the installation in accordance with its domestic law.

Title C. Organisation of Emergency Measures

9. The countries concerned shall consult one another with a view to co-ordinating the off-site emergency plans relating to a hazardous installation capable of causing transfrontier damage. They shall inform one another of the communication systems to be used, the main features of their emergency plans and the means available for emergency response in the event of an accident capable of causing transfrontier damage.
10. The countries concerned shall inform one another of the instructions given to their respective population on how to respond in the event of an accident capable of causing transfrontier damage and on any evacuation or protection measures to be taken in the event of such an accident or imminent threat of such an accident.

Title D. Transmission of the Emergency Warnings

11. In the event of an accident or imminent threat of an accident capable of causing transfrontier damage, the country of the installation shall immediately transmit an emergency warning to the exposed countries.

Title E. Organisation of the Subsequent Transmission of Information Relating to the Accident

12. In the absence of an agreed system for transmitting information relating to an accident, the country of the installation shall communicate to the authorities responsible for receiving emergency warnings in the exposed countries appropriate information relating to the accident or imminent threat of an accident.

13. The countries concerned shall draw up, as need be, procedures and practical arrangements for rapid and effective transmission of information relating to an accident or to the imminent threat of an accident capable of causing transfrontier damage, and they shall set up, as need be, systems for communication of pertinent information following an accident. The information to be transmitted shall include:

- a) Accident location and brief description of the circumstances;
- b) Immediate effects of the accident;
- c) Emergency measures planned and actions taken;
- d) Chemical identity, quantity and physical form of the hazardous substances which may affect an exposed country; and
- e) Data available for evaluating the probable impact of the accident in an exposed country.

Title F. Confidentiality

- 14. The obligations of the countries concerned to transmit the relevant information referred to above shall be subject to the limitations of their domestic law concerning the protection of confidential information, including both proprietary data and information protected for reasons of national security.
- 15. The receiving country shall respect the confidentiality of the information received. It shall not make available to its public information that is not made available to the public in the country supplying it.
- 16. The information supplied in the framework of the implementation of

this Decision may be used only for assessing the nature and extent of the potential transfrontier damage and for reducing the consequences of an accident beyond the frontier or for coping with the imminent threat of an accident capable of causing transfrontier damage.

Title G. Identification of Competent Authorities

- 17. The countries concerned shall notify one another of the identity and details of the following:
 - a) National, regional and/or local authorities responsible for transmitting or receiving the relevant information referred to in paragraphs 2 and 3 above;
 - b) Authorities responsible for implementing the off-site emergency plans referred to in paragraphs 9 and 10 above; and
 - c) Authorities responsible for transmitting and receiving the emergency warnings referred to in paragraph 11 above at national, regional and/or local levels.

Title H. Information from other Sources

- 18. The above provisions shall not prejudice the direct transmission of information by the operator of a hazardous installation to the authorities or to the public in the exposed countries with the objective of preventing accidents in the hazardous installation or reducing transfrontier damage should an accident occur.

Title I. Strengthening International Co-operation

- 19. The countries concerned shall co-operate in ensuring that persons in

the exposed country who might be affected by an accident in the country of the installation receive the same information that is provided to persons who might be affected in the country of the installation.

20. The above provisions shall be taken into account by Member countries when preparing agreements or arrangements with non-Member countries on the subject area covered by this Decision.
21. The above provisions shall not prejudice the organisation of wider

exchanges of information or consultations between the countries concerned with the objective of preventing accidents involving hazardous substances and reducing transfrontier damage should an accident occur; nor shall it prejudice the conclusion of subsequent agreements intended to specify the scope and extent of the exchanges of information provided for under this Decision.

Appendix II to Annex I [OECD Council Act C(88)84(Final)]

Definitions

For the purpose of this Decision,

- a) "Hazardous installation" means an industrial installation which contains more than the threshold quantity of any of the hazardous substances mentioned in Appendix III and in which are used, stored or produced such hazardous substances which are capable, in the event of an accident, of causing serious damage to human health or the environment, including property, outside the installation site, with the exclusion of military or nuclear installations;
- b) "Proposal for a hazardous installation" means any proposal made to a competent authority to set up a new hazardous installation and any proposal involving substantial modification of an existing hazardous installation;
- c) "Accident" means any occurrence involving a hazardous substance such as a major emission, fire or explosion at a hazardous installation leading to serious damage to human health or the environment, including property;
- d) "Hazardous substance" means any substance which is capable of causing serious damage to human health or the environment, including property, in the event of an accident in a hazardous installation and which is identified in Appendix III;
- e) "Transfrontier damage" means any serious damage to human health or the environment, including property, suffered by an exposed country in the event of an accident and, in general, by the country of the accident;
- f) "Sensitive group" means any group of persons particularly sensitive to the consequences of an accident as a result of their age, health conditions or way of life;
- g) "Country of the installation" means any Member country within whose jurisdiction there is a hazardous installation or a proposal for a hazardous installation;
- h) "Exposed country" means any Member country other than the country of the installation which suffers serious damage as a result of an accident, or which is capable of being affected by such damage in an area under its national jurisdiction;
- i) "Countries concerned" means the country of the installation in the exposed country or countries.

Appendix III to Annex I [OECD Council Act C(88)84(Final)]

Threshold Quantities of Hazardous Substances

Hazardous Substances	Threshold quantity (tonnes)
1. Flammable, explosive or oxidizing substances:	
Flammable gases* including liquefied flammable gases	200
Highly flammable liquids**	50 000
Ethylene oxide	50
Sodium chlorate	250
Ammonium nitrate	2 500
2. Substances toxic to man and/or the environment:	
Ammonia	500
Chlorine	25
Hydrogen cyanide	20
Hydrogen fluoride	50
Methyl isocyanate	0.15
Sulphur dioxide	250
Acrylonitrile	200
Hydrogen sulphide	50
Phosgene	0.75
Methylbromide	200
Tetraethyl lead	50
Disulfoton	0.1
Parathion	0.1
Warfarin	0.1
Aldicarb	0.1

The hazardous substances and threshold quantities mentioned above are without prejudice to those used in more extensive lists of hazardous installations developed in a national or international context.

* Flammable gases: substances which in the gaseous state at normal pressure and mixed with air become flammable and the boiling point of which at normal pressure is 20°C or below.

** Highly flammable liquids: substances which have a flash point lower than 21°C and the boiling point of which at normal pressure is above 20°C.

Decision-Recommendation of the Council Concerning Provision of Information to the Public and Public Participation in Decision-Making Processes Related to the Prevention of, and Response to, Accidents Involving Hazardous Substances

Adopted by the Council at its 687th session on 8th July 1988, C(88)85(Final)

THE COUNCIL,

potentially significant impact on the environment;

Having regard to Articles 5 a) and 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the Recommendation of the Council of 26th July 1983 concerning the OECD List of Non-Confidential Data on Chemicals [C(83)98(Final)];

Having regard to paragraph 3 of Article 6 of the Convention on the Organisation for Economic Development of 14th December 1960;

Having regard to the Declaration on "Environment: Resource for the Future" adopted by the Governments of OECD Member countries and of Yugoslavia at the session of the Environment Committee at Ministerial Level on 20th June 1985 stating that "they will ensure the existence of appropriate measures to control potentially hazardous installations, including measures to prevent accidents";

Having regard to the Declaration on Anticipatory Environmental Policies adopted by the Governments of OECD Member countries and of Yugoslavia at the session of the Environment Committee at Ministerial Level on 8th May 1979 stating that "they will encourage public participation, where possible, in the preparation of decisions with significant environmental consequences, inter alia, by providing as appropriate information on the risks, costs and benefits associated with the decisions";

Having regard to the conclusions adopted by the Third High Level Meeting of the Chemicals Group on 17th-18th March 1987 regarding the prevention of, and response to, unintended releases of hazardous substances to the environment;

Having regard to the Recommendation of the Council of 8th May 1979 on the Assessment of Projects with Significant Impact on the Environment [C(79)116] in which Member governments were recommended to "introduce, where appropriate, practical measures for informing the public and for participation by those who may be directly or indirectly affected, at suitable stages in the process of arriving at decisions on projects" having a

Considering that the potentially affected public has a right to be informed about the hazards to human health or the environment, including property, which could arise from accidents occurring at hazardous installations;

Considering that persons potentially affected in the event of an accident at a hazardous installation should be well-informed of measures which need to

be taken by them in order to mitigate adverse consequences of such an accident;

Considering that such persons should have the opportunity to be heard, as appropriate, in decision-making processes related to prevention of, and response to, accidents involving hazardous substances;

On the proposal of the Environment Committee;

1. DECIDES that Member countries shall ensure, through the legal and procedural means they deem appropriate, that the potentially affected public:
 - a) is provided with specific information on the appropriate behaviour and safety measures they should adopt in the event of an accident involving hazardous substances;
 - b) is provided with general information on the nature, extent and potential off-site effects on human health or the environment, including property, of possible major accidents at a planned or existing hazardous installation*; and
 - c) has access to such other available information needed to understand
2. RECOMMENDS that Member countries take action to facilitate, as appropriate, opportunities for the public to comment prior to decisions being made by public authorities concerning siting and licensing of hazardous installations and the development of community emergency preparedness plans.
3. RECOMMENDS that, in implementing this Decision-Recommendation, Member countries take into account the Guiding Principles set out in the Appendix.
4. INSTRUCTS the Environment Committee to review, within three years, actions taken by Member countries in pursuance of this Decision-Recommendation.

the nature of the possible effects of an accident (such as information on hazardous substances capable of causing serious off-site damage) and to be able to contribute effectively, as appropriate, to decisions concerning hazardous installations and the development of community emergency preparedness plans.

* The definition of "hazardous installation" for purposes of this Decision-Recommendation is set out in paragraph 2 of the Appendix.

Appendix to Annex II [OECD Council Act C(88)85(Final)]

Guiding Principles on provision of information to the public and public participation in decision-making processes related to the prevention of, and response to, accidents involving hazardous substances

I. General Principles

1. The following Guiding Principles are designed to facilitate the implementation by Member countries of programmes and policies to ensure that the potentially affected public is well-informed about existing or planned hazardous installations and to facilitate the opportunities for the public to provide input, as appropriate, into decision-making by public authorities concerning such installations. These Principles do not prejudice public authorities from instituting more extensive requirements related to provision of information to the public or public participation.
2. These Guiding Principles relate to such hazardous installations defined under applicable law as being capable of giving rise to hazards sufficient to warrant the taking of precautions off-site, excluding nuclear or military installations.
3. These Guiding Principles focus on objectives to be achieved with respect to provision of information to the public and public participation, and not on the procedural approaches which should be followed. It is recognized that Member countries allocate responsibility differently between the public and private sectors and among national, regional and local governments and that Member countries have differing legal and administrative frameworks with regard

to prevention of accidents and development of community emergency plans.

4. In implementing this Decision-Recommendation, Member countries should give consideration to the protection of confidential information, as defined under domestic law, including both proprietary data and information protected for reasons of national security.

II. Division of Responsibilities

5. Industry and public authorities each have responsibilities to the public concerning prevention of, and response to, accidents involving hazardous substances.
6. Industry is a primary source of that information which should be made publicly available. It therefore has a responsibility to provide this information to public authorities and, directly or indirectly, to the public. Industry should be prepared to work with the authorities which develop community emergency plans.
7. Public authorities have the responsibility of ensuring that adequate and timely information is provided to the potentially affected public and that appropriate opportunities are available for public participation in certain decision-making processes. Public authorities also have the responsibility of ensuring that adequate community emergency plans are in effect.

III. Provision of Information to the Public

Information to be Provided without Request

8. Those members of the public who might be affected were an accident to occur should be provided with certain information, without request, so that they will be aware of the hazards arising from the installation and will be able to respond appropriately should an accident occur.

9. This information should include specific guidance related to public response in the event of an accident, such as:

- details on how the potentially affected public will be warned in the event of an accident;
- details of the actions and behaviour the potentially affected public should take in the event of an accident; and
- the source of post-accident information (e.g., radio or television frequencies).

It should clearly be indicated therein that the information should be read immediately and be kept in a convenient place for reference in the event of an accident.

10. The guidance on what to do in the event of an accident should be adapted to meet the needs of groups of sensitive persons, for example in schools, hospitals and homes for aged people.

11. The following information should also be provided, without request, to the potentially affected public:

- the name of the operator of the installation and the address of the installation;
- the common names or, if more appropriate, the generic names or the

general danger classification of the substances involved at the installation which could give rise to an accident capable of causing serious off-site damage, with an indication of their principal harmful characteristics;

- general information relating to the nature of the hazards of accidents capable of causing serious off-site damage, as well as their potential effects on human health and the environment, including property; and
- details of how further explanatory information can be obtained.

12. The information described in paragraphs 9 and 11 should be comprehensible to the general public and be provided in a format which is easily read and understood.

13. This information should be provided in a timely fashion, be reissued periodically as appropriate, and be updated as necessary.

14. The potentially affected public should also be provided with notification of applications for siting or licensing of a hazardous installation. Decisions concerning such applications should also be publicised.

15. In those cases in which a hazardous installation is located in a frontier region and the country of such installation has transmitted to the other country information referred to above in paragraphs 9 and 11, the country receiving this information should ensure that such information is provided to all persons within its jurisdiction potentially affected in the event of an accident.

16. Arrangements should be made, before an accident, for the timely transmission of information to the public and the media in the case of an accident in

order to mitigate adverse effects and to allay unjustified fears.

Information Available upon Request

17. The public should have access, upon request, to certain additional information to allow it to understand the nature of the hazards arising from hazardous installations, understand the reasons for guidance provided, and participate effectively in decision-making processes, as appropriate. Such information would include, for example:
 - any information concerning the hazardous installation which has previously been made publicly available by the installation or public authorities (as appropriate, licenses, environmental impact assessments, operating permits, safety reports, hearing documents);
 - a general description of the types of activities undertaken at the installation;
 - additional guidance concerning actions to be taken by the public to protect human health and the environment, including property, in case of an accident and the reasons for such guidance; and
 - other information necessary for effective participation in decision-making, as appropriate
18. Whenever possible and appropriate, the potentially affected public should be given the opportunity to participate, by providing their views and concerns, when decisions related to siting and licensing of hazardous installations and the development of community emergency plans are being made by public authorities.
19. In all cases, adequate information about the opportunity to participate should be given.
20. As appropriate, a variety of mechanisms for public participation in decision-making processes can be used. These mechanisms can include those for direct public participation, such as open public hearings, and those for indirect public participation by means of, for example, open consultative procedures.
21. In some Member countries, local safety committees have been established with representatives of the installation, local authorities and local residents which, *inter alia*, facilitate the flow of information from the installation to persons who live and work in the area and co-ordinate local participation in appropriate decision-making processes.
22. The mechanisms for public participation and the scope of participation should be adapted to the nature of the decision being made and to who may be affected by the decision, while taking account of applicable law and practice.
23. In determining who should be given the opportunity to participate in decision-making processes, public authorities should consider which persons are seriously threatened by a potential accident and the nature of the decision being made. For example, in the case of the development of a community emergency preparedness plan, the local community near the hazardous installation might have the opportunity to participate. In the case of a siting decision for an installation which could have serious adverse effects on a watershed, national park or natural resources of more than local concern, provision might be made for broader participation, for example by allowing comments by representatives

Annex II

of public-interest organisations (e.g., environmental, agricultural or forestry groups).

24. Providing an opportunity for public participation should not affect the ultimate responsibilities of the public authorities with respect to decision-making in this area.

Recommendation of the Council on the Application of the Polluter-Pays Principle to Accidental Pollution

Adopted by the Council at its 712th session on 7th July 1989, C(89)88(Final)

THE COUNCIL,

Having regard to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the Recommendation of the Council of 26th May 1972 on Guiding Principles Concerning International Economic Aspects of Environmental Policies [C(72)128];

Having regard to the Recommendation of the Council of 14th November 1974 on the Implementation of the Polluter-Pays Principle [C(74)223];

Having regard to the Recommendation of the Council of 28th April 1981 on Certain Financial Aspects of Action by Public Authorities to Prevent and Control Oil Spills [C(81)32(Final)];

Having regard to the Concluding Statement of the OECD Conference on Accidents Involving Hazardous Substances held in Paris on 9th and 10th February 1988 [C(88)83];

Considering that this Conference concluded that "operators of hazardous installations have the full responsibility for the safe operation of their installations and for taking all appropriate measures to prevent accidents" and that "operators of hazardous installations should take all reasonable measures... to take emergency actions in case of an accident";

Considering that such responsibility has repercussions on the allocation

of the cost of reasonable measures aimed at preventing accidents in hazardous installations and limiting their consequences and that the Conference concluded that "the Polluter-Pays Principle should be applied, as far as possible, in connection with accidents involving hazardous substances";

Considering that public authorities are often required to take expensive action in case of accidental pollution from hazardous installations and may find it necessary to undertake costly accident preparedness measures in relation to certain hazardous installations;

Considering that closer harmonization of laws and regulations relating to the allocation of the cost of measures to prevent and control accidental pollution is likely to reduce distortions in international trade and investment;

On the proposal of the Environment Committee,

I. RECOMMENDS that, in applying the Polluter-Pays Principle in connection with accidents involving hazardous substances, Member countries take into account the "Guiding Principles Relating to Accidental Pollution" set out in the Appendix which is an integral part of this Recommendation.

II. INSTRUCTS the Environment Committee to review the actions taken by Member countries pursuant to this Recommendation and to report to the Council within three years of the adoption of this Recommendation.

Appendix to Annex III [OECD Council Act C(89)88(Final)]

Guiding Principles Relating to Accidental Pollution

Scope and Definition

1. The Guiding Principles described below concern some aspects of the application of the Polluter-Pays Principle to hazardous installations.
2. For the purposes of this Recommendation:
 - a) "Hazardous installations" means those fixed installations which are defined under applicable law as being capable of giving rise to hazards sufficient to warrant the taking of precautions off-site, excluding nuclear or military installations and hazardous waste repositories (1);
 - b) "Accidental pollution" means substantial pollution off-site resulting from an accident in a hazardous installation;
 - c) "Operator of a hazardous installation" means the legal or natural person who under applicable law is in charge of the installation and is responsible for its proper operation (2).

The Polluter-Pays Principle

3. According to the Recommendation of the Council of 26th May 1972, on the Guiding Principles Concerning International Economic Aspects of Environmental Policies [C(72)128], the "principle to be used for allocating the costs of pollution prevention and control is the so called Polluter-Pays Principle". The implementation of this principle will "encourage rational use of scarce environmental resources". According to the Recommendation of

the Council of 14th November 1974 on the Implementation of the Polluter-Pays Principle [C(74)223], "the Polluter-Pays Principle... means that the polluter should bear the expenses of carrying out the pollution prevention and control measures introduced by public authorities in Member countries, to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption". In the same Recommendation, the Council recommended that "as a general rule, Member countries should not assist the polluters in bearing the costs of pollution control whether by means of subsidies, tax advantages or other measures".

Application of the Polluter-Pays Principle

4. In matters of accidental pollution risks, the Polluter-Pays Principle implies that the operator of a hazardous installation should bear the cost of reasonable measures to prevent and control accidental pollution from that installation which are introduced by public authorities in Member countries in conformity with domestic law prior to the occurrence of an accident in order to protect human health or the environment.
5. Domestic law which provides that the cost of reasonable measures to control accidental pollution after an accident should be collected as expeditiously as possible from the legal or natural person who is at the origin of the

accident, is consistent with the Polluter-Pays Principle.

6. In most instances and notwithstanding issues concerning the origin of the accident, the cost of such reasonable measures taken by the authorities is initially borne by the operator for administrative convenience or for other reasons (3). When a third party is liable for the accident, that party reimburses to the operator the cost of reasonable measures to control accidental pollution taken after an accident.
7. If the accidental pollution is caused solely by an event for which the operator clearly cannot be considered liable under national law, such as a serious natural disaster that the operator cannot reasonably have foreseen, it is consistent with the Polluter-Pays Principle that public authorities do not charge the cost of control measures to the operator.
8. Measures to prevent and control accidental pollution are those taken to prevent accidents in specific installations and to limit their consequences for human health or the environment. They can include, in particular, measures aimed at improving the safety of hazardous installations and accident preparedness, developing emergency plans, acting promptly following an accident in order to protect human health and the environment, carrying out clean-up operations and minimising without undue delay the ecological effects of accidental pollution. They do not include humanitarian measures or other measures which are strictly in the nature of public services and which cannot be reimbursed to the public authorities under applicable law nor measures to compensate victims for

the economic consequences of an accident.

9. Public authorities of Member countries that "have responsibilities in the implementation of policies for prevention of, and response to, accidents involving hazardous substances" (4), may take specific measures to prevent pollution. Although the cost entailed is as a general rule met by the general budget, public authorities may with a view to achieving a more economically efficient resource allocation, introduce specific fees or taxes payable by certain installations on account of their hazardous nature (e.g., licensing by fees), the proceeds of which to be allocated to accidental pollution prevention and control.
10. One specific application of the Polluter-Pays Principle consists in adjusting these fees or taxes, in conformity with domestic law, to cover more fully the cost of certain exceptional measures to prevent and control accidental pollution in specific hazardous installations which are taken by public authorities to protect human health and the environment (e.g., special licensing procedures, execution of detailed inspections, drawing up of installation-specific emergency plans or building up special means of response for the public authorities to be used in connection with a hazardous installation), provided such measures are reasonable and directly connected with accident prevention or with the control of accidental pollution released by the hazardous installation. Lack of laws or regulations on relevant fees or taxes should not, however, prevent public authorities from meeting their responsibilities in connection with accidents involving hazardous substances.

11. A further specific application of the Polluter-Pays Principle consists in charging, in conformity with domestic law, the cost of reasonable pollution control measures decided by the authorities following an accident to the operator of the hazardous installation from which pollution is released. Such measures taken without undue delay by the operator or, in case of need, by the authorities would aim at promptly avoiding the spreading of environmental damage and would concern limiting the release of hazardous substances (e.g., by ceasing emissions at the plant, by erecting floating barriers on a river), the pollution as such (e.g., by cleaning or decontamination), or its ecological effects (e.g., by rehabilitating the polluted environment).
12. The extent to which prevention and control measures can be considered reasonable will depend on the circumstances under which they are implemented, the nature and extent of the measures, the threats and hazards existing when the decision is taken, the laws and regulations in force, and the interests which must be protected. Prior consultation between operators and public authorities should contribute to the choice of measures which are reasonable, economically efficient, and provide adequate protection of human health and the environment.
13. The pooling among operators of certain financial risks connected with accidents, for instance by means of insurance or within a special compensation or pollution control fund, is consistent with the Polluter-Pays Principle.

Exceptions

14. Exceptions to the Polluter-Pays Principle could be made under special

circumstances such as the need for the rapid implementation of stringent measures for accident prevention, provided this does not lead to significant distortions in international trade and investment. In particular, any aid to be granted to operators for prevention or control of accidental pollution should be limited and comply with the conditions set out previously.

(5) In the case of existing hazardous installations, compensatory payments or measures for changes in zoning decisions in the framework of the local land use plan might be envisaged with a view to facilitating the relocation of these installations so as to lessen the risks for the exposed population.

15. Likewise, exceptions to the above Guiding Principles could be made in the event of accidental pollution if strict and prompt implementation of the Polluter-Pays Principle would lead to severe socio-economic consequences.
16. The allocation to the person at the origin of the accident or the operator, as the case may be, of the cost of reasonable measures taken by public authorities to control accidental pollution does not affect the possibility under domestic law of requiring the same person to pay other costs connected with the public authorities' response to an accident (e.g., the supply of potable water) or with the occurrence of the accident. In addition, public authorities may, as appropriate, seek compensation from the party liable for the accident for costs incurred by them as a result of the accident when such costs have not yet been paid to the authorities.

Notes

1. Hazardous installations covered by this Recommendation are as defined in the law applicable in the country of the

installation (domestic law and in some instances, European Community law). Countries are not prevented from making provisions under their national laws to the effect that the Guiding Principles also apply to installations excluded under subparagraph 2a of this Appendix.

2. The concept of operator is defined in the law applicable in the country of the installation, in which attention may be given to criteria such as ownership of certain hazardous substances or possession of a license or permit.
3. In cases where a party other than the operator has, under the law applicable in the country of the installation, strict

liability for an accident, the cost of reasonable control measures taken by the authorities would be charged to that party, not to the operator.

Whenever national laws provide a regime of strict liability, this regime would be applied in respect of the reimbursement of costs of control measures taken after the accident.

4. Concluding Statement of the OECD Conference on Accidents Involving Hazardous Substances, C(88)83.
5. Recommendation of the Council of 14th November 1974 on the Implementation of the Polluter-Pays Principle, C(74)223.

Environment Chapter in the Revised OECD Guidelines for Multinational Enterprises*

(Adopted by the Council on 5th June 1991)

Environmental Protection

"Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and recalling the provisions of paragraph 9 of the Introduction to the Guidelines that, inter alia, multinational and domestic enterprises are subject to the same expectations in respect of their conduct whenever the Guidelines are relevant to both, take due account of the need to protect the environment and avoid creating environmentally-related health problems. In particular, enterprises, whether multinational or domestic, should:

- 1) Assess, and take into account in decision making, foreseeable environmental and environmentally-related health consequences of their activities, including siting decisions, impact on indigenous national resources and foreseeable environmental and environmentally-related health risks of products as well as from the generation, transport and disposal of waste;
- 2) Co-operate with competent authorities, inter alia, by providing adequate and timely information regarding the potential impacts on the environment and environmentally-related health aspects of all their activities and by providing the relevant expertise available in the enterprise as a whole;

- 3) Take appropriate measures in their operations to minimise the risk of accidents and damage to health and the environment, and to co-operate in mitigating adverse effects, in particular:
 - a) by selecting and adopting those technologies and practices which are compatible with these objectives;
 - b) by introducing a system of environmental protection at the level of the enterprise as a whole including, where appropriate, the use of environmental auditing;
 - c) by enabling their component entities to be adequately equipped, especially by providing them with adequate knowledge and assistance;
 - d) by implementing education and training programmes for their employees;
 - e) by preparing contingency plans; and
 - f) by supporting, in an appropriate manner, public information and community awareness programmes."

* The Guidelines for Multinational Enterprises are contained in Annex I to The OECD Declaration and Decisions on International Investment and Multinational Enterprises- Basic Texts (OECD, Paris, 1992).

**Some Other OECD Publications Related to Chemical Accident
Prevention, Preparation and Response**

*Users Guide to Hazardous Substance Data Banks
Available in OECD Member Countries.*

*Users Guide to Information Systems Useful to
Emergency Planners and Responders Available in
OECD Member Countries.*

*International Directory of Emergency Response
Centres (OECD Environment Monograph No. 43;
UNEP-IE/PAC Technical Report No. 8).*

*Workshop on Emergency Preparedness
and Response and on Research in Accident
Prevention, Preparedness and Response
(OECD Environment Monograph No. 31).*

*Workshop on the Role of Public Authorities
in Preventing Major Accidents and in Major
Accident Land-Use Planning (OECD
Environment Monograph No. 30).*

*Workshop on the Provision of Information
to the Public and on the Role of Workers
in Accident Prevention and Response (OECD
Environment Monograph No. 29).*

*Workshop on the Prevention of Accidents
Involving Hazardous Substances: Good
Management Practice (OECD Environment
Monograph No. 28).*

*Accidents Involving Hazardous Substances
(OECD Environment Monograph No. 24).*

Available to the public at no charge from:

***OECD Environment Directorate,
Environmental Health and Safety Division,
2, rue André-Pascal, 75775 Paris Cedex 16, France***

Telex: 62 01 60 Fax: (33) (1) 45 24 16 75