

Cross-border movement of waste: don't let waste laws catch you off guard



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Nick Rock, a Partner in the Energy & Natural Resources group of Reed Smith LLP in London, is experienced, among other matters, in environmental impact assessment, offshore pollution and transboundary movement of waste. He gives guidance below in this tricky field.

- Many businesses in the onshore and offshore supply chain are unaware that routine activities have the potential to fall foul of international, regional and local waste laws.
- The law tends to find that an intention to dispose of waste arises much more easily, and earlier, than many people realise.
- Members should take steps to ensure a sufficient level of knowledge among relevant staff to understand when they could inadvertently be dealing with waste products.

Many businesses in the onshore and offshore supply chain are unaware that routine activities have the potential to fall foul of international, regional and local waste laws. These rules will typically either prohibit international movement of waste outright, or require prior informed consent to be obtained from regulators in the states of export, import and transit. Whilst movement of waste applies to decommissioning, it is also of much broader relevance. Getting it wrong is a criminal offence that can lead to severe fines and have a significant impact on a company's reputation.

What is waste?

The Basel Convention and EU Regulations only apply if the cargo in question is classified as 'waste'.

The definition of waste in both regimes is very similar:

- Under Basel, waste means "substances or objects which are disposed of or are *intended to be disposed of* or are required to be disposed of by the provisions of national law".
- Under the EU Regulations, waste means "any substance or object... which the holder discards or *intends* or is required to discard".

Key legislation:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as amended, to which 183 countries are party.
- Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (as amended).
- OECD Decision C(2001)107/FINAL.
- Local waste law requirements in the states of export, import and transit.

One of the main areas of uncertainty is the point at which sufficient 'intention' to dispose or discard arises. The legal position is that the instant the holder decides to discard (or dispose) of the substance, it is waste.

The law tends to find that an intention to dispose of waste arises much more easily, and earlier, than many people realise. And once classified as waste, it is very hard for the classification to be removed.

The precise requirements of the law on transboundary movement of waste vary depending on, among other things:

- the country of origin/export of the waste;
- the country of destination/import;
- the laws of any and all countries of transit;
- whether waste is 'hazardous' or 'non-hazardous';
- whether the waste is destined for 'recovery' or 'disposal';
- whether one or more exceptions apply.

The impact of local law

The Basel Convention regime is always subject to local legislation on waste shipments, so local legal advice will generally be needed for each new transport route.

The MARPOL or "normal operations of a ship" exception

Both the Basel Convention and the EU Regulations provide that, in the case of waste derived from the "normal operations of a ship", it is MARPOL that should be applied.

Understanding the scope of this exclusion is critical to knowing whether or not prior informed consent to a shipment must be obtained.

Practical recommendations

- Consider how cargoes with the potential to be waste are referred to in internal communications. Avoid unnecessarily characterising cargoes as 'waste', 'hazardous' or 'destined for disposal'.
- Consider whether trading terms deal appropriately with the situation when a cargo is rejected from a waste law perspective.
- Take steps to ensure a sufficient level of knowledge among relevant staff to understand when they could inadvertently be dealing with waste products.

