

## Environment - Switzerland

Legislation on industrial waste management and trade

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Serious environmental disasters occurred in the 1980s and 1990s. They were caused by, among other things, the movement and disposal of hazardous waste. Consequently, the regulation of the cross-border movement of hazardous waste has been brought into focus by international organisations.

Switzerland is party to the Basel Convention on the Control of Cross-Border Movements of Hazardous Waste and its Disposal,<sup>(1)</sup> and must therefore take all necessary measures to ensure that the management of hazardous waste and other waste, including cross-border movement and disposal, is consistent with the protection of human health and the environment. By enacting and amending various statutes and ordinances in the last three decades, the legislature has created a legal framework for industrial waste management and waste disposal. It ensures both: (i) the protection of human health and the environment; and (ii) a free market system in an area that has been neglected by the industry and commerce in the past.

In November 2009 the Swiss Federal Council decided to amend the Ordinance on the Movement of Waste,<sup>(2)</sup> effective on January 1 2010. In the same month, the Federal Office for the Environment reported that the requirements for the import, export and deposition of waste had been formulated more precisely.

### Legal framework for industrial waste management

At an international level, Switzerland is committed to comply with:

- the European Agreement Concerning the International Carriage of Dangerous Goods by Road;<sup>(3)</sup>
- the Basel Convention;
- Organisation for Economic Cooperation and Development (OECD) resolutions;
- General Agreement on Tariffs and Trade (GATT) rules; and
- World Trade Organisation (WTO) rules.

For example, the OECD Resolution on the Cross-Border Movements of Waste for Disposal<sup>(4)</sup> defines the so-called 'traffic light system'. This system classifies waste according to its hazardousness into three lists – green, yellow and red. In comparison to the Basel Convention, this traffic light system helps industry with respect to waste listed on the green and yellow lists. This is now explicitly stated in the harmonised OECD Resolution C (2001)107/FINAL.<sup>(5)</sup> However, in the context of international waste trade, contradictions may arise between national import and/or export restrictions on the one hand, and GATT/WTO rules on the other. According to GATT/WTO rules, in principle waste is classified as goods that are freely tradable among states. Under GATT/WTO rules, restrictions on the trade of waste are possible only if general public interest justifies them.

At a national level, the legal framework for the production, trade and management of waste comprises, among others, the following statutes and ordinances. This legal framework applies in particular to waste producers, such as industrial companies, waste carriers and waste disposal companies which run dumping sites.

- The Federal Act on the Protection of the Environment<sup>(6)</sup> outlines the main principles applicable to waste, such as prevention, disposal, financing, recycling and the clean-up of contaminated sites.

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- The Technical Ordinance on Waste<sup>(7)</sup> cements the principles of the Federal Act on the Protection of the Environment, and primarily sets out the rules on waste disposal and requirements for dumping sites.
- The Ordinance on the Movement of Waste regulates the import, export and movement of waste in Switzerland.
- The Ordinance on the Carriage of Dangerous Goods by Road<sup>(8)</sup> implements the European Agreement Concerning the International Carriage of Dangerous Goods by Road and complements the Ordinance on the Movement of Waste.
- The Ordinance on the Risk Prevention Officer for the Carriage of Dangerous Goods by Roads, Railroads and Waterways<sup>(9)</sup> lays down the tasks and training of persons that are responsible for preventing and reducing environment-related dangers caused by packaging, loading, transporting and unloading of dangerous goods.
- The Ordinance on the Lists regarding Movements of Waste<sup>(10)</sup> classifies the different kinds of waste and defines different kinds of disposal procedure.
- Cantonal and communal statutes and ordinances on waste also apply.

### Implementation of disposal obligations

Depending on the particular category of waste, the obligations of waste producers vary with regard to disposal, transportation and dumping. For example, with respect to the obligation to dispose of waste, the provisions of the Federal Act on the Protection of the Environment distinguish between municipal waste and other waste.

'Municipal waste' is mainly produced by households and service companies, but rarely by industrial companies. Cantons are responsible for the proper disposal of municipal waste.

'Other waste' encompasses industrial waste. The owners of such waste (ie, industrial companies producing it) must take the necessary measures to dispose of such waste properly. For this purpose, the owners may contract either with communities and their publicly owned waste disposal companies, or with private waste disposers. Instead of placing orders with a private waste disposal contractor, the owners of industrial waste may use a specific market platform<sup>(11)</sup> to find the most cost-efficient way to dispose of waste. The purpose of this platform is to facilitate waste disposal based on the principles of the free market system. Comparable to a stock exchange, waste disposal companies – as demanders of waste – tender bids for a certain amount of waste and waste producers accept the best price. As a result, the accepted price reflects the market price of waste disposal.

The Federal Act on the Protection of the Environment not only governs municipal and other waste, but also contains rules for special waste, which is also governed by the Ordinance on the Movement of Waste. The statutes define different categories of waste depending on the level of its hazardousness. For instance, certain waste, such as dioxin that is produced by industrial companies, requires comprehensive high standard disposal measures. Other less dangerous waste that is produced by industrial companies and by households also requires particular disposal measures, but of a lower standard.

In view of the legally defined waste categories, Swiss industrial companies must consider all specific obligations set forth by the applicable laws when they organise their waste management and the disposal of their waste. Among others, the Swiss regulations impose the following obligations on the producers of waste:

- Waste producers must dispose of special waste in an environmentally friendly way and are not allowed to mix it with other types of waste.
- Prior to transferring waste, the owner must clarify whether it is special waste or whether it falls into another category of particular waste.
- Waste producers must transfer special waste and other waste of a particular category to companies which have permission to obtain such waste.
- Waste producers and, as the case may be, waste disposal companies must use, for each transport of special waste, certain accompanying documents containing specific information on the concerned waste. International accompanying documents that are in line with the Basel Convention and OECD rules must be used for cross-border movements (import, export and transit).
- Waste producers must label packages and containers with special waste in a particular way.
- Waste producers must give additional information on the composition of waste to waste carriers and to waste disposal companies, if such information is necessary to protect employees and the environment, and to enable the involved parties to dispose of special waste in an environmentally friendly manner.

The costs to comply with such obligations are part of the waste producers' waste management costs. These costs are included in the calculations of the market price of waste disposal. In other words, the 'polluter pays' principle applies to waste disposal that is organised under the rules of a free market. Therefore, waste producers bear the costs of appropriate waste disposal and also the costs of preventing environmental

damage from inappropriate waste disposal.

## Responsibility and liability of industrial waste producers

With regard to the domestic and cross-border transport of special waste, waste producers, waste carriers and waste disposal companies must comply with the obligations provided for by the applicable Swiss laws and international treaties. The majority of these obligations are mandatory. A contractual transfer of such obligations is not legally possible. Private law agreements over waste, such as purchase or transport contracts, do not release waste producers, carriers or disposers from their legal obligations.

Under the above-mentioned market platform, industrial waste producers may dispose of their waste in a cost-efficient way and based on private law agreements. By doing so, however, they are not automatically released from their responsibilities and liabilities under public laws on waste disposal. Consequently, should such waste cause environmental damage, the 'polluter pays' principle would apply and the producer of the concerned waste might be liable. Depending on the particular case, the waste producer might be able to recourse to its contracting parties, such as waste carriers and disposers, if they did not carry out their obligations properly.

Finally, the laws governing waste disposal provide for penalties in the case of non-compliance. For instance, if special waste is not labelled properly for its transfer or if it is transferred to a company that is not authorised to receive such waste, the transferor can be fined. The same applies if, for instance, dangerous goods are transferred without prior clarification that the transport of special waste fulfils all requirements of the applicable laws (in particular of the Ordinance on the Carriage of Dangerous Goods by Road) and neglects specific security and documentation obligations.

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## Endnotes

- (1) *Basler Übereinkommen über die Kontrolle der grenzüberschreitenden Verbringung gefährlicher Abfälle und ihrer Entsorgung* (SR 0.814.05).
- (2) *Verordnung über den Verkehr mit Abfällen* (SR 814.610).
- (3) *Europäisches Übereinkommen über die internationale Beförderung gefährlicher Güter auf der Strasse* (SR 0.741.621).
- (4) Resolution C (92)39/FINAL, March 30 1992.
- (5) *OECD-Ratsbeschluss C(2001)107/FINAL betreffend die Änderung des Beschlusses C(92)39/FINAL über die Kontrolle grenzüberschreitender Verbringungen von Abfällen, die zur Verwertung bestimmt sind* (SR 0.814.052).
- (6) *Bundesgesetz über den Umweltschutz (Umweltschutzgesetz)* (SR 814.01).
- (7) *Technische Verordnung über Abfälle* (SR 814.600).
- (8) *Verordnung über die Beförderung gefährlicher Güter auf der Strasse* (SR 741.621).
- (9) *Verordnung über Gefahrgutbeauftragte für die Beförderung gefährlicher Güter auf Strasse, Schiene und Gewässern (Gefahrgutbeauftragtenverordnung)* (SR 741.622).
- (10) *Verordnung des UVEK über Listen zum Verkehr mit Abfällen* (SR 814.610.1).
- (11) *Abfallbörse schweiz.ch AG* ([www.abfallboerse.ch](http://www.abfallboerse.ch)).

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