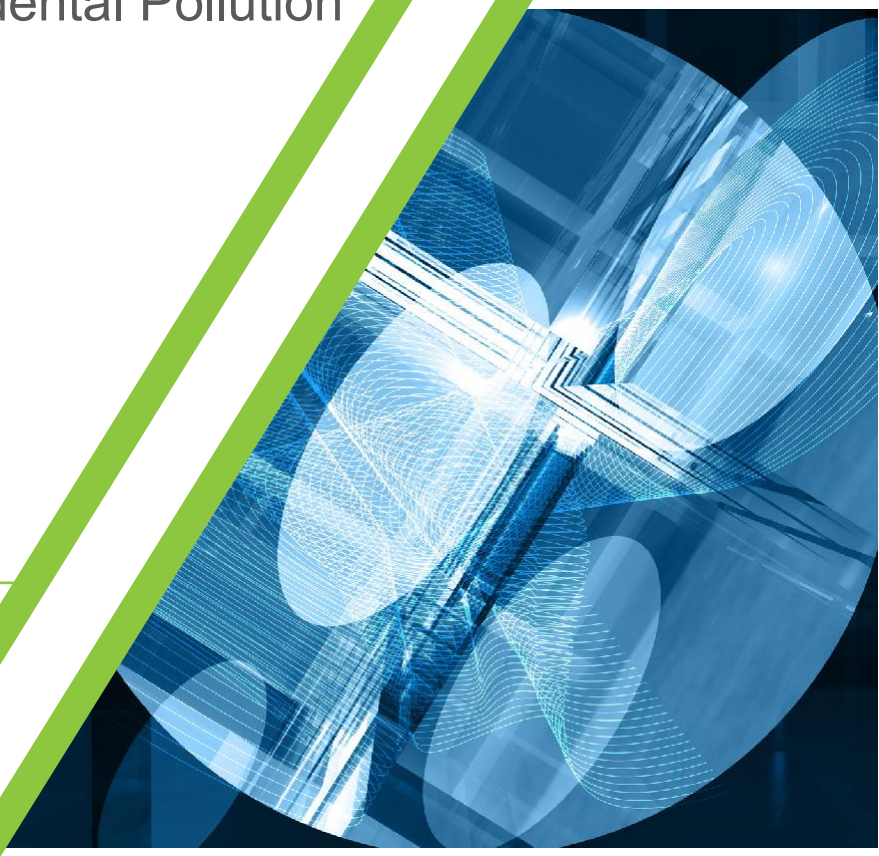
Recommendation of the Council concerning the Application of the Polluter-Pays Principle to Accidental Pollution



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Background Information

The Recommendation concerning the Application of the Polluter-Pays Principle to Accidental Pollution was adopted by the OECD Council on 7 July 1989 on the proposal of the Environment Committee. The Recommendation calls on Adherents to apply the Polluter-Pays Principle (PPP) in the case of accidental pollution at “hazardous installations”. Most importantly, this implies that the costs of reasonable measures to prevent and control the accidental pollution should be borne by the operators of the hazardous facilities or by those who are at the origin of the accident. The Recommendation recognises that in order for accident prevention to be more effective, neither the risk nor the consequences of accidental pollution should be paid from public funds.

THE COUNCIL,

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

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

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

HAVING REGARD to the Recommendation of the Council of 28 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 9 and 10 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 harmonisation 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

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 26 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 14 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 minimizing 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 accidents occuring at hazardous installations and to control accidental 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 fees), the proceeds of which are 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.

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[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 2 a) 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 14 November 1974 on the Implementation of the Polluter Pays Principle [C(74)223].

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