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Ordinance on the Charge for the Remediation of Contaminated Sites (OCRCS)

of 26 September 2008 (Status as of 1 January 2012)

Please note: this translation does not yet include the amendments of 01.01.2016

The Swiss Federal Council,

on the basis of Article 32e paragraphs 1, 2 and 5 of the Environmental Protection Act of 7 October 1983¹ (EPA)

and of Article 57 paragraph 2 of the Government and Administration Organisation Act of 21 March 1997²,

ordains:

Chapter 1: Subject Matter

Art. 1

This Ordinance regulates:

- a. the levying of a charge for the deposit of waste in a landfill in Switzerland and on the export of waste for deposit in a landfill abroad;
- b. the use of the income from the charge to provide payments for:
 1. the investigation, monitoring and remediation of polluted sites,
 2. the investigation of sites that are not found to be polluted.

Chapter 2: Charge

Art. 2 Obligation to pay the charge

¹ The holders of landfills must pay a charge on the deposit of waste in a landfill in Switzerland.

² Any person who exports waste for deposit in a landfill must pay a charge. The obligation to pay the charge also applies to waste that is deposited in a landfill

AS 2008 4771

¹ SR 814.01

² SR 172.010

abroad following its export for recovery or treatment. The charge is not due if the waste deposited in the landfill is less than 15 per cent of the quantity of waste exported.

³ Unpolluted excavation material, quarried material and spoil are not subject to the obligation to pay the charge if deposited in a landfill or exported for deposit in a landfill in:

- a. landfills in which only unpolluted excavation material, rubble and spoil is deposited;
- b. other landfills if the unpolluted excavation material, rubble and spoil is separated from the other waste such that pollutant exchange is not possible.

Art. 3 Charge rates

¹ The charge rate for waste deposited in a landfill in Switzerland is:

- a. in the case of landfills for inert waste: CHF 3 per tonne;
- b. in the case of landfills for stabilised residues: CHF 17 per tonne;
- c. in the case of bioactive landfills: CHF 15 per tonne.

² The charge rate for waste deposited in a landfill abroad is:

- a. in the case of underground landfills: CHF 22 per tonne;
- b. in the case of other landfills: as much as would be charged for the deposit of waste in a landfill in Switzerland.

³ The Federal Department of the Environment, Transport, Energy and Communications (DETEC) shall review the charge rates at least every five years.

Art. 4 Origin of the right to claim the charge

The charge shall become due at the time of deposit in a landfill in Switzerland or at the time of export.

Art. 5 Charge declaration

¹ Persons required to pay the charge must by the 28 February of each year submit a charge declaration to the Federal Office for the Environment (FOEN) in respect of the charge due for the previous calendar year.

² The declaration must contain all the information required to determine the amount of the charge due. It shall be made on an official form; the FOEN may permit other forms. Holders of landfills must send the canton a copy of the declaration.

³ The declaration serves as the basis for determining the charge due; the right to conduct an official assessment is reserved.

⁴ The persons liable to pay the charge must retain the documents relating to the declaration for a minimum of ten years.

⁵ In the case of a delayed or incomplete declaration, default interest of 3.5 per cent per annum is payable on the amount of the charge due.

Art. 6 Charge assessment and period allowed for payment

¹ The FOEN shall determine the amount of the charge in a ruling.

² Payment must be made within 30 days.

³ If payment is not made within the period allowed, default interest of 3.5 per cent per annum becomes due.

Art. 7 Additional claim

If the FOEN has erroneously assessed the charge at an amount that is too low, it shall claim the shortfall within two years of issuing its ruling.

Art. 8 Limitation period

¹ The right to claim the charge is limited to ten years from the end of the calendar year in which it arises.

² The limitation period shall be interrupted and begin to run again:

- a. if the person required to pay the charge acknowledges the right to claim the charge;
- b. following any official act by which the right to claim the charge is asserted against the person required to pay the charge.

³ The right to claim the charge is in every case limited to 15 years from the end of the calendar year in which it arises.

Chapter 3: Subsidies

Section 1: Subsidy Requirements

Art. 9 Principle

¹ The Confederation shall pay subsidies to the cantons under Article 32e paragraphs 3 and 4 EPA for:

- a. the investigation, monitoring and remediation of polluted sites;
- b. the investigation, monitoring and remediation of polluted sites at shooting ranges; and
- c. the investigation of sites that are not found to be polluted.

² It shall also pay subsidies for a clearly defined area of a polluted site if that area fulfils the requirements for a subsidy and further measures are not made more difficult or impossible.

Art. 10 Special subsidy requirements for investigation and monitoring measures

¹ For measures for the investigation and monitoring of polluted sites, subsidies shall be paid only if:

- a. the measures were begun after 1 July 1997;
- b. an application for a subsidy for a measure carried out before 1 November 2006 is submitted to the FOEN by 31 December 2010.

² If the person responsible for causing a polluted site cannot be identified or if he is unable to pay (Art. 32e para. 3 let. b no 1 EPA), subsidies shall be paid for investigation and monitoring measures:

- a. if the allowable investigation or monitoring costs amount to over 250 000 francs, provided a legally-binding ruling on the allocation of the costs is submitted;
- b. if the allowable investigation or monitoring costs amount to 250 000 francs or less, provided proper legal justification for the allocation of the costs is provided.

³ For measures for the investigation of sites that are not found to be polluted, subsidies shall be paid only if the investigations were begun after 1 November 2006.

Art. 11 Special subsidy requirements for remediation measures

¹ The Confederation shall pay subsidies for remediation measures only if:

- a. the measures were begun after 1 July 1997;
- b. an application for a subsidy for a measure carried out before 1 November 2006 is submitted to the FOEN by 31 December 2010.

² If the person responsible for causing a polluted site cannot be identified or if he is unable to pay (Art. 32e para. 3 let. b no 1 EPA), subsidies shall be paid for remediation measures:

- a. if the allowable remediation costs amount to over 250 000 francs, provided a legally-binding ruling on the allocation of the costs is submitted;
- b. if the allowable remediation costs amount to 250 000 francs or less, provided proper legal justification for the allocation of the costs is provided.

Section 2: Chargeable Costs**Art. 12** Chargeable costs in the case of sites not in need of remediation

¹ In the case of sites not in need of remediation, the costs of the following measures are deemed to be chargeable investigation costs:

- a. establishing that a site is not polluted where that site is already entered in the Register or its entry in the Register is planned;

- b. the preliminary investigation of a site requiring investigation under Article 7 the Contaminated Sites Ordinance of 26 August 1998³ (CSO).

² In the case of sites not in need of remediation, the costs of the following measures under Article 13 paragraph 1 CSO are deemed to be chargeable monitoring costs:

- a. planning the monitoring measures;
- b. construction, operation, maintenance and dismantling of the monitoring equipment;
- c. sampling and analysis.

Art. 13 Chargeable costs in the case of sites in need of remediation

In the case of sites in need of remediation, the costs of the following measures are deemed to be chargeable remediation costs:

- a. a preliminary investigation (Art. 7 CSO⁴) and detailed investigation (Art. 14 CSO) as well as monitoring (Art. 13 para. 2 let. b CSO) in accordance with Article 12 paragraph 2;
- b. preparation of a remediation project (Art. 17 CSO);
- c. decontamination including disposal of waste (Art. 16 let. a CSO);
- d. construction, operation, maintenance and dismantling of installations and equipment for the long-term prevention and monitoring of the diffusion of environmentally hazardous substances (Art. 16 let. b CSO);
- e. proof that the remediation objectives have been achieved (Art. 19 para. 1 CSO).

Section 3: Procedure

Art. 14 Consultation of the FOEN

¹ The canton shall consult the FOEN before it orders an investigation, monitoring or remediation measure.

² The FOEN need not be consulted in accordance with paragraph 1 if any one of the requirements of Article 16 paragraph 3 is fulfilled.

Art. 15 Application for a subsidy

The canton shall submit any application for a subsidy to the FOEN. This must contain:

- a. proof that the measures fulfil the requirements of Articles 9–11;
- b. the main principles and elements of the project;

³ SR 814.680

⁴ SR 814.680

- c. the official assessment of whether the measures are environmentally compatible and cost-effective and correspond to the state of the art;
- d. the probable costs of the measures and the probable chargeable costs;
- e. a copy of the ruling on the allocation of the costs or if applicable proper legal justification for the allocation of the costs if the person responsible cannot be identified or is unable to pay

Art. 16 Confirmation and payment of subsidy

¹ If the requirements for the subsidy are fulfilled, the FOEN shall confirm that the subsidy will be paid within the scope of the available resources and shall indicate the probable amount of the subsidy.

² It shall order that the subsidies be paid if:

- a. it has received a summary audited by the canton of the total of the chargeable costs of the measures actually incurred;
- b. the income from the charge covers the resources required.

³ If the implementation of the measures has begun before confirmation is issued, the FOEN may in application of Article 26 paragraph 3 second sentence of the Subsidies Act of 5 October 1990⁵ grant a subsidy in particular if:

- a. the investigation, monitoring or remediation measure costs less than 250 000 francs, or
- b. new information comes to light during the implementation of structural measures or other measures under the CSO⁶ about the level of pollution at the site or about the costs of the measures required.

⁴ If the income from the charge does not cover all the resources required, the FOEN shall when paying subsidies consider as a priority projects that were urgently required for reasons of environmental protection or in which a substantial ecological benefit was achieved when compared to the cost. Projects that have been postponed shall be given first priority in the following years.

Chapter 4: Enforcement

Art. 17 Responsibilities

¹ The FOEN shall enforce this Ordinance and shall provide information each year on the charges levied and the subsidies.

² It may delegate the official assessment of the charge declaration (Art. 5 para. 3) wholly or in part to suitable public corporations or private entities. This assessment shall be funded from the income from the charge.

⁵ SR 616.1

⁶ SR 814.680

³ The cantons shall support the FOEN in the enforcement of this Ordinance. In particular, they shall notify the FOEN without delay if they establish that persons obliged to pay the charge have provided incomplete or false information.

Art. 18⁷

Chapter 5: Final Provisions

Art. 19 Repeal and amendment of current legislation

The repeal and amendment of the current legislation is regulated in the Annex.

Art. 20 Transitional provision

¹ This Ordinance applies to proceedings that were begun before this Ordinance comes into force but which have not yet been finally concluded.

² The following activities are not subject to the obligation to pay the charge:

- a. the deposit in a landfill and the export for deposit in a landfill of unpolluted excavated material, rubble and spoil in landfills for inert waste up to and including 31 December 2013;
- b. the export of waste that is deposited in a landfill of abroad following its export for recovery or treatment up to and including 31 December 2009.

Art. 21 Commencement

This Ordinance comes into force on 1 January 2009.

⁷ Repealed by No. I 7.3 of the Ordinance of 9 Nov. 2011, with effect from 1 January 2012 (AS 2011 5227).

Annex
(Art. 19)

Repeal and Amendment of Current Legislation

I

The Ordinance of 5 April 2000⁸ on the Charge for the Remediation of Contaminated Sites is repealed.

II

The following Ordinances are amended as follows:

...⁹

⁸ [AS 2000 1398, 2007 4525 No. II 6]

⁹ The amendments may be consulted under AS 2008 4771.