



13 December 2005

Mr Julian Segal  
Managing Director and Chief Executive Officer  
Incitec Pivot Limited  
GPO Box 1322L  
Melbourne  
Victoria 3001

Dear Mr Segal

### **Importation of phosphate mineral rock mined in Western Sahara**

I am writing to you on behalf of the Australia Western Sahara Association (AWSA) because we understand that Incitec Pivot Limited is involved in the importation into Victoria of phosphate mineral rock mined in Western Sahara.

I understand that Incitec Pivot Limited is aware that AWSA wrote to CSBP Wesfarmers in early November 2005, urging it to desist from importing phosphate from the Western Sahara region because that activity is illegal as a matter of international law. The phosphate is sourced from a non-governing territory, Western Sahara. Morocco, which exports the phosphate, has no right to exploit these natural resources.

You may have noted the story about the Furness Karumba which was loaded with Western Saharan phosphate at the port at El Aaiun (Laayoune) which is in Western Sahara, not Morocco. That ship arrived at Kwinana WA in early November 2005. Two Moroccan stowaways died on it, 'fleeing Laayoune for a better life overseas'<sup>1</sup>.

### **International law**

As you may be aware Morocco (and Mauritania) invaded Western Sahara in 1975 as Spain was abandoning its colony there. The people of Western Sahara, the Saharawis opposed that invasion with force, defeating the Mauritians and preventing the Moroccans from taking over all of their country. There has been a ceasefire in place since 1991, brokered by the United Nations and the organisation now called the African Union. The UN has in place a mission, MINURSO, charged with the responsibility of organizing the referendum on self-determination for the people of the Western Sahara.

Articles 1.1 and 1.2 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights provide:

1. All people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international

economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

The UN Under Secretary for Legal Affairs, Hans Corell, has noted the following in an opinion given in relation to Western Sahara:

“The principle that the interests of the peoples of Non-Self-Governing Territories are paramount, and their well-being and development is the "sacred trust" of their respective administering Powers, was established in the Charter of the United Nations and further developed in General Assembly by resolutions on the question of decolonization and economic activities in Non-Self-Governing Territories. In recognizing the inalienable rights of the peoples of Non-Self-Governing Territories to the natural resources in their territories, the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of these territories and deprive them of their legitimate rights over their natural resource. It recognized, however, the value of economic activities which are undertaken in accordance with the wishes of the peoples of those territories, and their contribution to the development of such territories.”

Western Sahara is a non-self-governing territory, as already noted. Not only is the importation illegal as a matter of international law, AWSA understands from information provided to us that there is a high of concentration of the trace element cadmium in the phosphate mineral rock mined in Western Sahara. We are concerned that this could present a health risk to Australians if too much of it enters the food chain as a result of the use of the fertiliser containing it.

### **Trade with Morocco**

We wish to make it clear that our concern relates only to phosphate mineral rock or other natural resources that come from Western Sahara. We have no concerns about the importation from Morocco of material, including phosphate mineral rock, provided it comes from sources situated inside the internationally recognised borders of Morocco and does not pose a health risk to Australians. We are not seeking to dissuade in any way legitimate trade with Morocco. However, we note that no country recognises Morocco’s sovereignty over any part of the territory of Western Sahara. Indeed, in 1975, just before King Hassan II ordered the invasion of Western Sahara, the International Court of Justice gave an advisory opinion stating that Morocco (and Mauritania) had never had sovereignty over Western Sahara. King Hassan himself had requested an advisory opinion of the Court.

### **Position of Incitec Pivot**

AWSA has been pursuing this issue with the Australian authorities, including writing to the Minister for Foreign Affairs. We are now asking Incitec Pivot Limited to investigate the source of the phosphate which is used by Incitec Pivot in the manufacture of its fertilizers and to ensure that this activity conforms to international law. Furthermore, Incitec Pivot should appreciate that by trading in Western Saharan natural resources it is contributing to the worsening plight of the

Western Saharawi people, because it encourages Morocco to continue to plunder the natural resources of these people.

The situation is already very harsh for those who have been in exile in refugee camps in Algeria for almost 30 years. In that part of Western Sahara occupied by Morocco, the human rights of the Saharawis who demonstrate peacefully in favour of the UN referendum for self-determination are abused. The Moroccan invaders torture and imprison demonstrators. Last month the Moroccan police bashed 21 year-old Hamdi Lambarki. He died of his injuries. Details of these types of events are corroborated by organisations such as the Red Cross and Amnesty International.

The need for the referendum of self-determination is pressing for the Western Saharawis. It is in everyone's best interests to hold it as soon as possible – most particularly the Saharawis. However, it is also in the interests of companies such as yours who want to trade in their natural resources. It is also in the interests of countries like Australia that want to increase their trade with the countries of the area and those countries themselves that make up the Greater Maghreb. For them the unresolved Western Sahara issue is a barrier to amicable trading and other relations between them. I have included this information in order that Incitec Pivot Limited understands that the issue of Western Saharan phosphate has ethical, legal and political dimensions. Indeed Western Sahara is often referred to as 'Africa's East Timor'.

We look forward to your reply.

Yours sincerely

Nick O'Neill

**President**