408 Transboundary Management of Hazardous Waste

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Faculty Biographies

Jeffrey I. Butvinik

Jeffrey I. Butvinik is counsel in the law department of Exxon Mobil Corporation located in Fairfax, VA. He provides legal counsel and regulatory advice to the corporation and its operating affiliates, concentrating on matters involving waste management and chemical/product regulation (product stewardship).

Before becoming a corporate counsel with Mobil Oil Corporation, Mr. Butvinik was in private practice in Washington, DC, specializing in environmental, health and safety law, including matters under RCRA, Clean Air Act, Clean Water Act, TSCA, FIFRA, OSHA, and FDA regulation. He presented a "Top Ten List of Do's and Don'ts for EPA Inspectors," to the EPA RCRA Inspector Institute, Washington, DC (July 1997). He co-authored "When Science and Law Collide: Judges as Gatekeepers," which was published in the Environmental Law Institute's *The Environmental Forum* (January/February 1994), and was a coauthor of "Toxic Substances Control Act," which is a chapter in the multivolume treatise *Environmental Law Practice Guide*, published by Matthew Bender (1993).

Mr. Butvinik received his BS from Duke University, his MS in Chemistry from Rutgers University, and his JD with high honors from Rutgers University School of Law-Camden. He was an environmental/analytical chemist with Mobil Oil Corporation for several years before beginning his legal career.

Debra Sabatini Hennelly

Debra Sabatini Hennelly is corporate counsel, regulatory and compliance for Avaya Inc. (formerly the Enterprise Networks Group of Lucent Technologies Inc.) in Basking Ridge, New Jersey. Ms. Hennelly provides advice and counsel for the company's Ethics and Compliance Program, as well as on regulatory compliance in the areas of environment and safety, global trade, FCPA, antitrust, and data privacy. Prior to Avaya's spin-off from Lucent Technologies, Ms. Hennelly supported the company's indirect sales channels and the Y2k compliance program.

Ms. Hennelly's focus for AT&T and Lucent, from 1993 to 1999, had been environmental and safety counseling, including supporting the Lucent Microelectronics Group (now Agere Systems Inc.) in the design and implementation of a global, business-wide ISO 14001 environmental management system. Ms. Hennelly co-led Lucent's project under USEPA's Project XL to link regulatory flexibility with this environmental management system, involving government and non-governmental stakeholders in its implementation.

Prior to joining AT&T, Ms. Hennelly's professional experience included construction and underground tank engineering for Exxon Co., USA, and practicing environmental law with Bryan Cave in Washington, DC, and with Riker, Danzig, et al. in New Jersey.

Ms. Hennelly was recently named to the board of trustees for the Electronic Industries Foundation, which supports philanthropic and educational programs to improve student

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achievement in math and science. She is also vice chair of ACCA's Environmental Steering Committee.

Ms. Hennelly earned her BSE *magna cum laude* from Duke University and her JD from the University of Virginia School of Law, where she has served two terms on the Alumni Board.

Lawrence C. Paulson

Lawrence C. Paulson has been corporate counsel for Philip Services Corporation (PSC) in Troy, Michigan, for seven years. PSC provides diversified industrial outsourcing services, together with by products management and metals services, to all major industry sectors throughout North America. Mr. Paulson provides advice on general legal matters with special emphasis on intellectual property, environmental, international, and contractual matters.

Prior to joining PSC, Mr. Paulson served for 10 years as assistant general counsel and assistant secretary for Wolverine World Wide, Inc., where he provided general corporate advice with emphasis in SEC matters, intellectual property, and international matters.

He served as a judge advocate on active duty with the U.S. Air Force and is currently the state judge advocate for the Michigan Air National Guard. He is also active in the international law section of the State Bar of Michigan.

Mr. Paulson received his BA, MA, and JD from the University of Michigan.

Todd W. Rallison

Todd W. Rallison is senior corporate attorney for Intel Corporation, located in Chandler, Arizona. His responsibilities include providing legal counsel on environmental, health, and safety issues for Intel's worldwide operations. Although his responsibilities encompass all environmental, health, and safety issues, his current focus for the corporation includes the air quality, waste, and hazardous materials transportation areas.

Prior to joining Intel, Mr. Rallison worked as senior attorney for Pinnacle West Capital Corporation, EHS attorney for Motorola, Inc., and shareholder in the law firm of Gallagher & Kennedy, P.A., where he provided counsel on a variety of environmental, health, and safety issues, including air quality and water quality permitting, hazardous waste management, and occupational safety and health compliance.

He is currently a member of the environmental and natural resources section of the Arizona Bar Association and the environmental law section of the California Bar Association.

Mr. Rallison received both his BA and JD from the University of Utah.

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Transboundary Management of Hazardous Waste

Jeffrey I. Butvinik
ExxonMobil Law Department
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Overview of Presentation

- International Waste Management - Treaties, including Analysis of Basel Convention
- Discussion of U.S. Laws Governing International Waste Transport and Recycling/Disposal Issues
- Examples

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International Waste Law Development - Background

- 1980's -- Tightening of waste regulation in industrialized nations (including U.S.)
- Increased shipments of hazardous wastes to developing countries and Eastern Europe to avoid regulation
- Tension between economic development and environmental justice issues

International Waste Law Development - Basel Convention

- Negotiations began in 1987
  - Arose from dumping cases
  - Disposal costs in developing countries lower than in developed countries
- Convention held in 1989
  - 118 countries signed treaty, including U.S.
  - Treaty establishes framework for controlling "transboundary" movement of wastes
  - Calls for "prior informed consent"

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International Waste Law Development - Basel Convention

- Three main objectives of the Basel Convention
  - Reduce transboundary movements of hazardous waste
  - Treat and dispose of wastes as close as possible to their source of generation in an "environmentally sound manner"
  - Minimize waste generation

How is "Hazardous Waste" Defined Under the Basel Convention?

- Definition is very broad
- Includes materials destined for:
  - Disposal
  - Recycling
- Two categories of waste (Annex I):
  - Specific Waste Streams (45 specific waste streams)
    - Waste oil/water hydrocarbons/water mixtures, emulsions (Y9)
    - Organic Solvents (Y42)
  - Wastes containing specific constituents
    - Asbestos
    - Metals (e.g., Zn, Cr+6, Pb, As, Hg, Cd)

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How is "Hazardous Waste" Defined Under the Basel Convention? (con't)

- Wastes can be excluded from Annex I if waste not hazardous by "characteristic" (Annex III)
- In 1998, Parties adopted concept of presumption of waste characteristic:
  - List A (Annex VIII)
    - Presumed to be hazardous waste (e.g., waste oil/water mixtures)
    - Can use Annex III to demonstrate waste is not hazardous
  - List B (Annex IX)
    - Presumed to be nonhazardous waste (e.g., certain spent catalysts)
    - If waste meets Annex III characteristic, then hazardous
- No established international test methods under Annex III

Note: Catch-all provision states that any other waste is a hazardous waste if it is a hazardous waste under domestic legislation of exporting, importing, or in-transit countries.

Basel Convention Member States

- Currently, 146 Member States
- Members include (among others):

Argentina	Columbia	Japan	Panama
Australia	Republic of Congo	Jordan	Peru
Brazil	Italy	Korea	Philippines
Bulgaria	France	Kuwait	Romania
Belgium	Germany	Malaysia	Singapore
Canada	Greece	Mexico	Switzerland
Chile	India	The Netherlands	Turkey
China	Iran	New Zealand	United Kingdom
Ecuador	Ireland	Norway	Venezuela

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Some Countries that are not Member States of Basel Convention

Angola Haiti Fiji

United States Holy See (Vatican)

What have Member States agreed to?

- Ensure that international movements of hazardous waste are reduced and are environmentally sound
- Recognize and observe the rights of countries to prohibit importation of hazardous waste
- Prohibit import or export of hazardous waste to or from a non-party*
  - Shipment may be transported through a non-party country
  - Notification to the non-party must be made prior to shipment
- Permit movement of wastes only when exporting country does not have technical capacity to dispose of waste or materials are required by importing country as a raw material for recycling, or transport and disposal is environmentally sound

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What have Member States agreed to? (con't)

- Use of UNEP manifest form is required
- Labelling and packaging must conform to int'l standards
- All transboundary waste movements must be subject to a disposal contract and by financial guarantee (e.g., insurance, bond)
  - Contracts should be drafted as being "subject to authorization"
- Obtain prior informed consent from importing State and States of transit (60 day review period)
- Disposal facility must issue "certification of disposal"
- Re-import waste that cannot be properly managed by importing country
- Impose criminal sanctions for illegal hazardous waste trafficking (Article 9, ¶ 1)

Some Other Basel Issues

- Article 11 - Shipment to Non-parties
- Basel Ban
- Liability and Compensation

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Transboundary Movement of Hazardous Waste

Todd Rallison
Intel Corporation

Legal Controls on Transboundary Movement of Hazardous Waste

- Basel Convention
- OECD Council Decision
- Regional agreements
- Bilateral agreements
- European Union regulations
- National import/export laws/regulations

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Article 11 -- Shipments to Non-Parties

- Basel Convention prohibits shipments of regulated wastes from countries that are Parties to the Convention to non-Parties, such as the U.S.
- Article 11 of the Basel Convention allows Parties to ship wastes to and from non-Party countries if:
  - Parties have separate waste treaty/agreement
  - Agreement provides for "environmentally sound management" of hazardous waste
- U. S. has such separate agreements with:

  Canada (1986) Mexico (1986)
  OECD (1992) Malaysia (1995)
  Costa Rica (1997)

Canada-U.S. Bilateral Agreement

- Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste (Oct. 28, 1986)
  - Amended in 1992 to include "other wastes," such as household wastes
- Exporting country is required to provide notification and importing country has 30 days from the date it received notice to consent/object to the proposed shipment
- If the importing country does not object within 30 days of receiving notice, it is deemed to have tacitly consented to the import and the shipment may proceed
- Exporting country must re-import any shipment of hazardous waste that is returned by the importing country

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Mexico-U.S. Bilateral Agreement

- Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances (Nov. 12, 1986)
- By Presidential Decree, shipment of hazardous wastes into Mexico for disposal is prohibited
  - Only can ship waste into Mexico for recycling
- Exporting country is required to provide proper notification 45 days in advance of the planned day of export
- Importing country to respond to notification and provide consent/objection within 45 days
- Requires country of import to provide consent before a shipment may proceed

OECD Council Decision

- Decision of the Council Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations (Mar. 30, 1992)
- OCED Council Decision allows OECD member countries that are Parties to the Basel Convention to continue trading in wastes with OECD members who have not ratified the Basel Convention
- Only applies to wastes destined for recovery, including activities that lead to resource recovery (*e.g.,* recycling, reclamation, direct re-use, etc.)
- The waste classification (red, amber, green) determines notice and consent requirements

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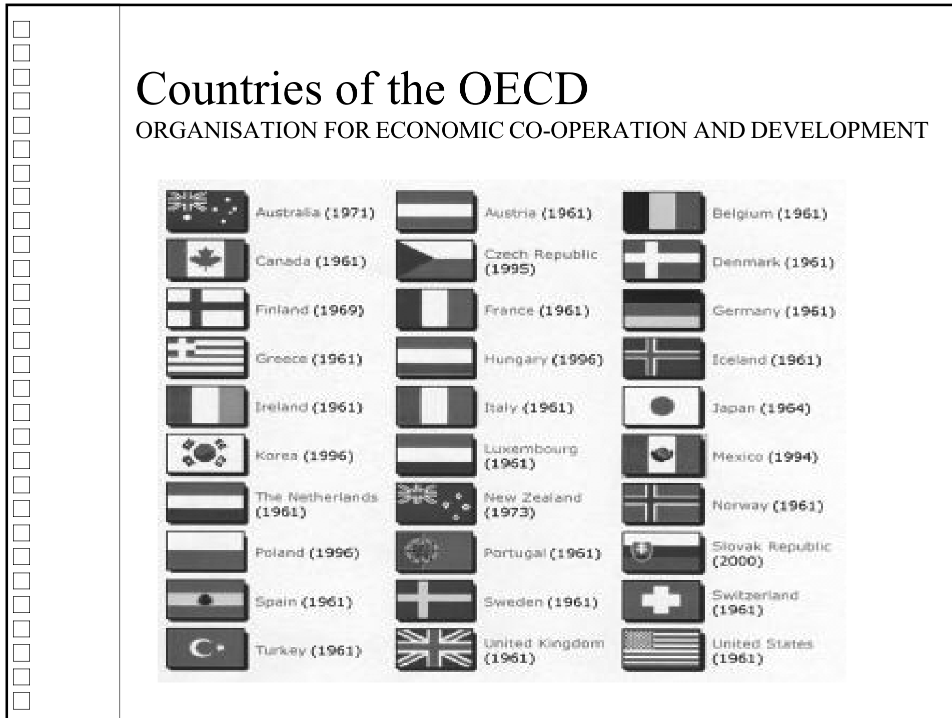

Malaysia-U.S. Bilateral Agreement

- Agreement Between the Government of the United States of America and the Government of Malaysia Concerning the Transboundary Movement of Hazardous Wastes from Malaysia to the United States (1995)
- Only covers imports from Malaysia to the U.S.
- Malaysia must provide notice of an export to the U.S.
- U.S. will use "best efforts" to approve/object in writing within 30 days of receipt of the notice
- Written U.S. approval is required before a shipment may proceed
- U.S. written approval is not required for a shipment of a waste that would not be hazardous under U.S. law

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Costa Rica-U.S. Bilateral Agreement

- Agreement Between the Government of the United States and the Government of Costa Rica on the Transboundary Movement of Hazardous Waste (1998)
- Only covers imports from Costa Rica to the U.S.
- Costa Rica must provide notice of an export to the U.S.
- U.S. will use "best efforts" to approve/object in writing within 30 days of receipt of the notice
- Written U.S. approval is required before a shipment may proceed
- U.S. written approval is not required for a shipment of a waste that would not be hazardous under U.S. law

Changes to Basel Convention

- Basel Ban
- Basel Protocol on Liability and Compensation for Damages

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"Basel Ban" Closing a Basel Loophole

- "Basel Ban" passed in 1994.
- Basel Ban forbids shipment of hazardous waste from OECD countries to non-OECD countries effective January 1, 1998.
- Although countries have signed Basel Ban, has not yet been ratified by required 62 countries. Only 25 have ratified as of June 2001.
- Query - Does Basel Ban override Article 11?
  - Australia - Yes
  - European Union - No

Separate Ban Treaties Arising from the Basel Ban

- Ban treaty:
  - "Regional Agreement on the Transboundary Movement of Hazardous Wastes" (1992)
    - Intended to ban import of hazardous waste into Central America
    - Costa Rica; El Salvador; Guatemala; Honduras; Nicaragua; Panama
- Drafted, but not in force:
  - "Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa" (1991; 23 African Nations)
  - "Waigani Convention to Ban the Importation of Hazardous Waste into Forum Island Countries" (1995; South Pacific Region)
  - "Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal" (1996; 20 countries)

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Basel Protocol on Liability and Compensation for Damages
(Not in force -- 13 signatories of required 20)

- Concepts of Strict and Joint/Several Liability apply
- "Right of recourse" (i.e., contribution) from other responsible parties, if
  - Other party liable under law
  - Other party responsible pursuant to contract
- Financial Limits on Liability
- Basel Protocol on Liability does not limit potential liability under other bilateral or regional agreements
- Ten year statute of limitation for claims, but must also bring claim within five years of obtaining knowledge of (or "should have known of") the damage

Basel Protocol on Liability and Compensation for Damages

- Claims for compensation may be brought only in court in the country where:
  - The damage was suffered; or
  - The incident occurred; or
  - The defendant has his habitual residence, or has his principal place of business
- A judgment in the court of one country will be given effect in the courts of other Convention countries

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Future of the Basel Convention

- First ten years established the foundation
- Future will focus on:
  - Enforcement against illegal traffic
  - "Environmentally Sound Management" (ESM)
    - Minimize waste generation
    - Integrated life-cycle approach
    - Development of "best practices"
  - Promotion and use of cleaner technologies and production methods (minimize waste generation)
  - Reduced movement of hazardous and other wastes between countries
  - Development of training centers to assist in technology transfer to developing countries

U.S. Status of Basel Convention

- Signed by U.S. in 1989
- U.S. Senate consented to ratification in 1992
- Congress has not adopted implementing legislation
- Implementing legislation must be in place before the U.S. can formally ratify the Convention
- Implementing legislation being drafted by U.S. Environmental Protection Agency
  - Will require amendment to U.S. environmental laws (*e.g.,* Resource Conservation and Recovery Act)
  - Probably will not include "Basel Ban"

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Transboundary Management of Hazardous Waste - US/Canada/Mexico

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Quantities of Waste That Cross Borders

- Availability/sources of data
- United States
- US/Canada
- US/Mexico

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US International Waste Regulation

RCRA Section 3017

Imports: 40 C.F.R. 262.60

Exports: 40 C.F.R. 262.50

US Regulatory Requirements - Exports (§§ 262.50 et. seq.)

- Pre-Notification
- Acknowledgement of Consent
- Manifests
- Exception Reports
- Annual Reports

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US Regulatory Requirements - Imports (§§ 262.60 et. seq.)

- Use of Manifests
  - include foreign generator and importer's name, address and EPA identification numbers

US/OECD Waste Rules

- Apply only to US (RCRA) Hazardous Waste destined for recovery operations in designated OECD countries.
  - Do not cover Mexico and Canada
  - Do not cover exports for incineration or disposal

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Waste Definitions - US (RCRA)

- Listing - 40 C.F.R. Part 261
- Characteristics (physical hazards, adverse health effects)
  - Ignitable
  - Corrosive
  - Reactive
  - Toxic

TIP

Once a waste, always a waste

Waste Definitions - US (RCRA) Statutory

- Statutory - "The term 'solid waste' means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities." 42 USC 6903(27)

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Waste Definitions - US (RCRA) Statutory

- "discarded" means
  - abandoned
  - recycled
  - "inherently wastelike"
- Exemptions

RCRA Exempt wastes

- Household waste
- Agricultural wastes used as fertilizers
- Mining overburden returned to mine site
- Drilling fluids, produced waters, and other oil exploration and development wastes
- Scrap metal
- Lead acid batteries that are being reclaimed
- Etc.

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Waste Definitions - OECD

- Green List
- Amber List
- Red List

Waste Definitions - US/OECD

- US: Green list - commercial controls apply, unless hazardous under US law, then subject to amber list controls
- If not hazardous under US (RCRA) law - "deemed Green list"
  - even if on amber or red lists
  - e.g. PCB's (but TOCA applies)
- Regulations - labeling
- household waste, incinerator ash

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US/OECD Notifications and Consent

- Green list / US (RCRA) non-hazardous ; only controls for commercial goods
- Amber list - Notice, tacit consent if no objection 30 days after receipt of notice
- Red list - Notice, requires prior written consent of importing country.

US/OECD General Transportation Conditions

- Requires tracking document (Manifest)
- Requires written contract:
  - name & EPA ID# of
    - generator
    - each person with physical custody
    - each person with legal control
    - recovery facility

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US/OECD General Transportation Conditions

- Written contract continued:
  - Alternative dispute resolution provisions
  - Notification prior to re-export
  - Financial guarantees
    - if required by any country concerned
    - US itself does not require

Canada

- Canadian Environmental Protection Act
- Transportation of Dangerous Goods Act
- Export and Import of Hazardous Waste Regulations (EIHW Regs)

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US - Canada Hazardous Waste Treaty - 1986

- Hazardous as defined by exporting country
- "Pre-Notes" - Consent implied if no objection in 30 days

US - Mexico Hazardous Waste Treaty

- La Paz Environmental Cooperation Treaty - 1984
- Annex III - re Transboundary Shipments of hazardous wastes
- Border XXI Program - 1996
  - 9 workgroups
  - Hazardous Waste and Solid Waste Workgroup

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US-Mexican Hazardous Waste Activities

- 1988 Mexican Ban
- Bag-house dust
- Maquiladora Program
  - Export wastes from materials imported duty-free into Mexico for manufacturing

US Customs Treatment of Waste

- Harmonized Tariff Schedule (HTSUSA) eliminated categories for "waste" provided under Tariff Schedules (TSUS)
- Valuation
  - Transaction Value
  - Transaction Value of Identical Merchandise
  - Deductive Value
  - Computed Value

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US Customs Treatment of Waste

- Use of disposal cost as value of "goods"
- Import specialist used "all reasonable ways and means in his power"
- "that value, the disposal fee is the only available information which can be quantitatively documented"

POP's

- Convention on Persistent Organic Pollutants
  - Signed by US and 90+ other countries on May 23, 2001
  - twelve chemicals - DDT, PCB's dioxin, etc.
  - goal is eventual ban on use and production

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Transboundary Movement of Hazardous Waste

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October 16, 2001

Internet Links to Relevant Documents and Web Sites

United Nations

United Nations Environmental Program (UNEP) Home Page:
http://www.unep.ch/basel/ or http://www.basel.int/

Organisation for Economic Co-Operation and Development (OECD)

OECD Environment Home Page: http://www.oecd.org/env/

OECD Work on Waste: http://www.oecd.org/ehs/waste/index.htm or http://www.oecd.org/env/waste/index.htm

United States Regulations

Exports of Hazardous Waste – 40 CFR Part 262, Subpart E (40 CFR 262.50 et. seq.): http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1

Imports of Hazardous Waste – 40 CFR Part 262, Subpart F (40 CFR 262.60 et. seq.): http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1

Transfrontier Shipments of Hazardous Waste for Recovery within the OECD – 40 CFR Part 262, Subpart H (40 CFR 262.80 et. seq.):
http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html#page1

Canada: Ministry of the Environment,

Transboundary Movement Division: http://www.ec.gc.ca/tmd/tmdhp.htm

Export-Import Regulations: http://www.ec.gc.ca/tmd/enotice.htm

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Transboundary Waste Movement Agreements

Text of the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal (Basel Convention): http://www.unep.ch/basel/text/text.html

Text of the Central American Regional Agreement regarding Transboundary Movement of Hazardous Waste (1992; Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama) (Spanish): http://www.unep.ch/basel/Misclinks/Centroamerica.html

Text of the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa (1991; 23 African Nations): http://www.unep.ch/basel/Misclinks/bamako.html

Text of the Waigani Convention to Ban the Importation of Hazardous Waste into Forum Island Countries" (1995; South Pacific Region): http://www.unep.ch/basel/Misclinks/waigani.html

Text of the Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (1996; 20 Countries) (Izmir Protocol): http://www.unep.ch/basel/Misclinks/Izmir.html

EPA La Paz Agreement (Mexico) Resources

La Paz Agreement and U.S.-Mexico Border Enforcement and Compliance Program
OECA works with Mexico to better enforce and promote compliance with respective laws and to resolve mutual environmental problems caused by noncompliance: http://es.epa.gov/oeca/ofa/iecd/agreement/usmex.html

La Paz Agreement
Text of the La Paz Agreement, including Annex I-V: http://yosemite.epa.gov/oia/MexUSA.nsf/La+Paz+Agreement+-+Web?OpenView&ExpandView

Environmental Treaties Generally

Treaty Texts: 169 environmental treaties (searchable database): http://sedac.ciesin.org/entri/texts-home.html

Additional links, mostly through the Consortium for International Earth Science Information Network: http://www.wcl.american.edu/pub/iel/treaty.htm#waste

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Other Sources of Information

Basel Action Network: A non-profit organization whose goal is the ratification and implementation of the Basel Convention and the Basel Ban. The site provides a non-governmental organization (NGO) perspective on the Basel Ban, and is kept fairly up-to-date with information concerning Basel Convention meetings, Basel Ban ratification status, and alleged incidents of transboundary waste mismanagement: http://www.ban.org

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Basel Convention

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989)

US Regulations

Exports of Hazardous Waste – 40 CFR Part 262, Subpart E (40 CFR 262.50 et. seq.)

Imports of Hazardous Waste – 40 CFR Part 262, Subpart F (40 CFR 262.60 et. seq.)

Transfrontier Shipments of Hazardous Waste for Recovery within the OECD – 40 CFR Part 262, Subpart H (40 CFR 262.80 et. seq.)

Polycholorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions – Excerpts from 40 CFR Part 761 concerning exports

Canada:

Agreement Between the Government of the United States of America and Canada Concerning the Transboundary Movement of Hazardous Waste

Mexico:

Agreement Between the United States of America and Mexico, Signed at La Paz, August 13, 1983

Organization for Economic Cooperation and Development (OECD):

WASTE OECD: A COMPREHENSIVE WASTE MANAGEMENT POLICY
(Recommendation adopted on 28th September, 1976)
C(76)155 (Final)

OECD: DECISION OF THE COUNCIL CONCERNING THE CONTROL OF TRANSFRONTIER MOVEMENTS OF WASTES DESTINED FOR RECOVERY OPERATIONS*
(adopted by the Council at its 778th Session on 30th March 1992)
* Japan abstained

DECISION-RECOMMENDATION OF THE COUNCIL on Further Measures for the Protection of the Environment by Control of Polychlorinated Biphenyls
(Adopted by the Council at its 656th Session on 13th February 1987)

OECD: DECISION-RECOMMENDATION OF THE COUNCIL on the Reduction of Transfrontier Movements of Wastes
(adopted by the Council at its 750th Session on 31st January 1991)

OECD: PROTECTION OF THE ENVIRONMENT BY CONTROL OF POLYCHLORINATED BIPHENYLS
(Decision adopted on 13th February, 1973)
C(73)1(Final)

Convention on Persistent Organic Pollutants:

EPA Press Release, May 23,2001

US Customs Headquarters Rulings

HQ 547147, March 23, 1999
HQ 574061, March 19, 1999
HQ 545017, August 19, 1994

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BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL (1989)

Entered into Force May 5, 1992

PREAMBLE

The Parties to this Convention,

Aware of the risk of damage to human health and the environment caused by hazardous wastes and other wastes and the transboundary movement thereof,

Mindful of the growing threat to human health and the environment posed by the increased generation and complexity, and transboundary movement of hazardous wastes and other wastes,

Mindful also that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential,

Convinced that States should take necessary measures to ensure that the management of hazardous wastes and other wastes including their transboundary movement and disposal is consistent with the protection of human health and the environment whatever the place of their disposal,

Noting that States should ensure that the generator should carry out duties with regard to the transport and disposal of hazardous wastes and other wastes in a manner that is consistent with the protection of the environment, whatever the place of disposal,

Fully recognizing that any State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory,

Recognizing also the increasing desire for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially developing countries,

Convinced that hazardous wastes and other wastes should, as far as is compatible with environmentally sound and efficient management, be disposed of in the State where they were generated,

Aware also that transboundary movements of such wastes from the State of their generation to any other State should be permitted only when conducted under conditions which do not endanger human health and the environment, and under conditions in conformity with the provisions of this Convention,

Considering that enhanced control of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement,

Convinced that States should take measures for the proper exchange of information on and control of the transboundary movement of hazardous wastes and other wastes from and to those States,

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Noting that a number of international and regional agreements have addressed the issue of protection and preservation of the environment with regard to the transit of dangerous goods,

Taking into account the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by decision 14/30 of 17 June 1987, the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), relevant recommendations, declarations, instruments and regulations adopted within the United Nations system and the work and studies done within other international and regional organizations,

Mindful of the spirit, principles, aims and functions of the World Charter for Nature adopted by the General Assembly of the United Nations at its thirty-seventh session (1982) as the rule of ethics in respect of the protection of the human environment and the conservation of natural resources,

Affirming that States are responsible for the fulfilment of their international obligations concerning the protection of human health and protection and preservation of the environment, and are liable in accordance with international law,

Recognizing that in the case of a material breach of the provisions of this Convention or any protocol thereto the relevant international law of treaties shall apply,

Aware of the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good house-keeping and management systems with a view to reducing to a minimum the generation of hazardous wastes and other wastes,

Aware also of the growing international concern about the need for stringent control of transboundary movement of hazardous wastes and other wastes, and of the need as far as possible to reduce such movement to a minimum,

Concerned about the problem of illegal transboundary traffic in hazardous wastes and other wastes,

Taking into account also the limited capabilities of the developing countries to manage hazardous wastes and other wastes,

Recognizing the need to promote the transfer of technology for the sound management of hazardous wastes and other wastes produced locally, particularly to the developing countries in accordance with the spirit of the Cairo Guidelines and decision 14/16 of the Governing Council of UNEP on Promotion of the transfer of environmental protection technology,

Recognizing also that hazardous wastes and other wastes should be transported in accordance with relevant international conventions and recommendations

Convinced also that the transboundary movement of hazardous wastes and

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other wastes should be permitted only when the transport and the ultimate disposal of such wastes is environmentally sound, and

Determined to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes,

HAVE AGREED AS FOLLOWS:

Article 1
Scope of the Convention

1. The following wastes that are subject to transboundary movement shall be "hazardous wastes" for the purposes of this Convention:

(a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and

(b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.

2. Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be "other wastes" for the purposes of this Convention.

3. Wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials, are excluded from the scope of this Convention.

4. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.

Article 2
Definitions

For the purposes of this Convention:

1. "Wastes" are 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;

2. "Management" means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;

3. "Transboundary movement" means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;

4. "Disposal" means any operation specified in Annex IV to this Convention;

5. "Approved site or facility" means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to

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operate for this purpose by a relevant authority of the State where the site or facility is located;

6. "Competent authority" means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think tit, for receiving the notification of a transboundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification, as provided in Article 6;

7. "Focal point" means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 16;

8. "Environmentally sound management of hazardous wastes or other wastes" means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;

9. "Area under the national jurisdiction of a State" means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;

10. "State of export" means a Party from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;

11. "State of import" means a Party to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;

12. "State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;

13. "States concerned" means Parties which are States of export or import, or transit States, whether or not Parties;

14. "Person" means any natural or legal person;

15. "Exporter" means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;

16. "Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;

17. "Carrier" means any person who carries out the transport of hazardous wastes or other wastes;

18. "Generator" means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;

19. "Disposer" means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes;

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20. "Political and/or economic integration organization" means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;

21. "Illegal traffic" means any transboundary movement of hazardous wastes or other wastes as specified in Article 9.

Article 3
National Definitions of Hazardous Wastes

1. Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the convention of the wastes, other than those listed in Annexes I and II, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.

2. Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1.

3. The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2.

4. Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 available to their exporters.

Article 4
General Obligations

1.(a) Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.

(b) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.

(c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.

2. Each Party shall take the appropriate measures to:

(a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;

(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;

(c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent

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pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

(e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting.

(f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;

(g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;

(h) Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic;

3. The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal.

4. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.

5. A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.

6. The Parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60 degrees South latitude, whether or not such wastes are subject to transboundary movement.

7. Furthermore, each Party shall:

(a) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations;

(b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported

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in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices;

(c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.

8. Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere. Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting.

9. Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:

(a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or

(b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or

(c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.

10. The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.

11. Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order better to protect human health and the environment.

12. Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.

13. Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.

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Article 5
Designation of Competent Authorities and Focal Point

To facilitate the implementation of this Convention, the Parties shall:

1. Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.

2. Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.

3. Inform the Secretariat, within one month of the date of decision, of any changes regarding the designation made by them under paragraph 2 above.

Article 6
Transboundary Movement between Parties

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.

2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.

3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:

(a) The notifier has received the written consent of the State of import; and

(b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

4. Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of

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transit, the State of export may allow the export to proceed through the State of transit.

5. In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only:

(a) By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively;

(b) By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or

(c) By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.

6. The State of export may, subject to the written consent of the States concerned, allow the generator or the exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the State of export via the same customs office of entry of the State of import, and, in the case of transit, via the same customs office of entry and exit of the State or States of transit.

7. The States concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes or other wastes to be shipped.

8. The general notification and written consent referred to in paragraphs 6 and 7 may cover multiple shipments of hazardous wastes or other wastes during a maximum period of 12 months.

9. The Parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.

10. The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.

11. Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party.

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Article 7
Transboundary Movement from a Party through
States which are not Parties

Paragraph 2 of Article 6 of the Convention shall apply mutatis mutandis to transboundary movement of hazardous wastes or other wastes from a Party through a State or States which are not Parties.

Article 8
Duty to Re-import

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

Article 9
Illegal Traffic

1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:

(a) without notification pursuant to the provisions of this Convention to all States concerned; or

(b) without the consent pursuant to the provisions of this Convention of a State concerned; or

(c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or

(d) that does not conform in a material way with the documents; or

(e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law, shall be deemed to be illegal traffic.

2. In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:

(a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,

(b) are otherwise disposed of in accordance with the provisions of this Convention,

within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may

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agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.

3. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.

4. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article.

Article 10
International Co-operation

1. The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.

2. To this end, the Parties shall:

(a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;

(b) Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;

(c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;

(d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;

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(e) Co-operate in developing appropriate technical guidelines and/or codes of practice.

3. The Parties shall employ appropriate means to cooperate in order to assist developing countries in the implementation of subparagraphs a, b, c and d of paragraph 2 of Article 4.

4. Taking into account the needs of developing countries, co-operation between Parties and the competent international organizations is encouraged to promote, inter alia, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

Article 11
Bilateral, Multilateral and Regional Agreements

1. Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.

2. Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.

Article 12
Consultations on Liability

The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

Article 13
Transmission of Information

1. The Parties shall, whenever it comes to their knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those states are immediately informed.

2. The Parties shall inform each other, through the Secretariat, of:

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(a) Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5;

(b) Changes in their national definition of hazardous wastes, pursuant to Article 3; and, as soon as possible,

(c) Decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;

(d) Decisions taken by them to limit or ban the export of hazardous wastes or other wastes;

(e) Any other information required pursuant to paragraph 4 of this Article.

3. The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information:

(a) Competent authorities and focal points that have been designated by them pursuant to Article 5;

(b) Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including:

(i) The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;

(ii) The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;

(iii) Disposals which did not proceed as intended;

(iv) Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;

(c) Information on the measures adopted by them in implementation of this Convention;

(d) Information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;

(e) Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;

(f) Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;

(g) Information on disposal options operated within the area of their national jurisdiction;

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(h) Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and

(i) Such other matters as the Conference of the Parties shall deem relevant.

4. The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, are sent to the Secretariat when a Party considers that its environment may be affected by that transboundary movement has requested that this should be done.

Article 14
Financial Aspects

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.

2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.

Article 15
Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.

2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.

4. The Parties at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine environment in the context of this Convention.

5. The Conference of the Parties shall keep under continuous review and

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evaluation the effective implementation of this Convention, and, in addition, shall:

(a) Promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes and other wastes;

(b) Consider and adopt, as required, amendments to this Convention and its annexes, taking into consideration, inter alia, available scientific, technical, economic and environmental information;

(c) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11;

(d) Consider and adopt protocols as required; and

(e) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.

6. The United Nations, its specialized agencies, as well as any State not party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the conference of the Parties.

7. The Conference of the Parties shall undertake three years after the entry into force of this Convention, and at least every six years thereafter, an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes and other wastes in light of the latest scientific, environmental, technical and economic information.

Article 16
Secretariat

1. The functions of the Secretariat shall be:

(a) To arrange for and service meetings provided for in Articles 15 and 17;

(b) To prepare and transmit reports based upon information received in accordance with Articles 3, 4, 6, 11 and 13 as well as upon information derived from meetings of subsidiary bodies established under Article 15 as well as upon, as appropriate, information provided by relevant intergovernmental and non-governmental entities;

(c) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;

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(d) To ensure the necessary coordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;

(e) To communicate with focal points and competent authorities established by the Parties in accordance with Article 5 of this Convention;

(f) To compile information concerning authorized national sites and facilities of Parties available for the disposal of their hazardous wastes and other wastes and to circulate this information among Parties;

(g) To receive and convey information from and to Parties on;
-- sources of technical assistance and training;
-- available technical and scientific know-how;
-- sources of advice and expertise; and
-- availability of resources

with a view to assisting them, upon request, in such areas as:

-- the handling of the notification system of this Convention;
-- the management of hazardous wastes and other wastes;
-- environmentally sound technologies relating to hazardous wastes and other wastes, such as low- and non-waste technology;
-- the assessment of disposal capabilities and sites;
-- the monitoring of hazardous wastes and other wastes; and
-- emergency responses;

(h) To provide Parties, upon request, with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them to examine a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes or other wastes with the relevant notification, and/or the fact that the proposed disposal facilities for hazardous wastes or other wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an environmentally sound manner. Any such examination would not be at the expense of the Secretariat;

(i) To assist Parties upon request in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;

(j) To co-operate with Parties and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and

(k) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.

2. The secretariat functions will be carried out on an interim basis by UNEP until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15.

3. At its first meeting, the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organizations which have signified their willingness to carry out the

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secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.

Article 17
Amendment of the Convention

1. Any Party may propose amendments to this Convention and any Party to a protocol may propose amendments to that protocol. Such amendments shall take due account, inter alia, of relevant scientific and technical considerations.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval, formal confirmation or acceptance.

4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that protocol present and voting at the meeting shall suffice for their adoption.

5. Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depositary of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted the amendments to the protocol concerned, except as may otherwise be provided in such protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.

6. For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 18
Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto.

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Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:

(a) Annexes to this Convention and its protocols shall be proposed and adopted according to the procedure laid down in Article 17, paragraphs 2, 3 and 4;

(b) Any Party that is unable to accept an additional annex to this Convention or an annex to any protocol to which it is party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;

(c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned, which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendments thereto shall take due account, inter alia, of relevant scientific and technical considerations.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol enters into force.

Article 19
Verification

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.

Article 20
Settlement of Disputes

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol thereto, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute through the means

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mentioned in the preceding paragraph, the dispute, if the parties to the dispute agree, shall be submitted to the International Court of Justice or to arbitration under the conditions set out in Annex VI on Arbitration. However, failure to reach common agreement on submission of the dispute to the International Court of Justice or to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.

3. When ratifying, accepting, approving, formally confirming or acceding to this Convention, or at any time thereafter, a State or political and/or economic integration organization may declare that it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:

(a) submission of the dispute to the International Court of Justice; and/or

(b) arbitration in accordance with the procedures set out in Annex VI. Such declaration shall be notified in writing to the Secretariat which shall communicate it to the Parties.

Article 21
Signature

This Convention shall be open for signature by States, by Namibia represented by the United Nations Council for Namibia and by political and/or economic integration organizations, in Basel on 22 March 1989, at the Federal Department of Foreign Affairs of Switzerland in Berne from 23 March 1989 to 30 June 1989, and at United Nations Headquarters in New York from 1 July 1989 to 22 March 1990.

Article 22
Ratification, Acceptance, Formal Confirmation or Approval

1. This Convention shall be subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia and to formal confirmation or approval by political and/or economic integration organizations. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of formal confirmation or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who will inform the Parties of any substantial modification in the extent of their competence.

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Article 23
Accession

1. This Convention shall be open for accession by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organizations from the day after the date on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

3. The provisions of Article 22 paragraph 2, shall apply to political and/or economic integration organizations which accede to this Convention.

Article 24
Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention shall have one vote.

2. Political and/or economic integration organizations, in matters within their competence, in accordance with Article 22, paragraph 3, and Article 23, paragraph 2, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 25
Entry into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.

2. For each State or political and/or economic integration organization which ratifies, accepts, approves or formally confirms this Convention or accedes thereto after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, formal confirmation or accession, it shall enter into force on the ninetieth day after the date of deposit by such State or political and/or economic integration organization of its instrument of ratification, acceptance, approval, formal confirmation or accession.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a political and/or economic integration organization shall not be counted as additional to those deposited by member States of such organization.

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Article 26
Reservations and Declarations

1. No reservation or exception may be made to this Convention.

2. Paragraph 1 of this Article does not preclude a State or political and/or economic integration organizations, when signing, ratifying, accepting, approving, formally confirming or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.

Article 27
Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Withdrawal shall be effective one year from receipt of notification by the Depositary, or on such later date as may be specified in the notification.

Article 28
Depository

The Secretary-General of the United Nations shall be the Depository of this Convention and of any protocol thereto.

Article 29
Authentic texts

The original Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at   on the day of   1989

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Annex I
CATEGORIES OF WASTES TO BE CONTROLLED

Waste Streams

- Y1 Clinical wastes from medical care in hospitals, medical centers and clinics
- Y2 Wastes from the production and preparation of pharmaceutical products
- Y3 Waste pharmaceuticals, drugs and medicines
- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals
- Y5 Wastes from the manufacture, formulation and use of wood preserving chemicals
- Y6 Wastes from the production, formulation and use of organic solvents
- Y7 Wastes from heat treatment and tempering operations containing cyanides
- Y8 Waste mineral oils unfit for their originally intended use
- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment
- Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish
- Y13 Wastes frorn production, formulation and use of resins, latex, plasticizers, glues/adhesives
- Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known
- Y15 Wastes of an explosive nature not subject to other legislation
- Y16 Wastes from production, formulation and use of photographic chemicals and processing materials
- Y17 Wastes resulting from surface treatment of metals and plastics
- Y18 Residues arising from industrial waste disposal operations

Wastes having as constituents:

- Y19 Metal carbonyls
- Y20 Beryllium; beryllium compounds
- Y21 Hexavalent chromium compounds
- Y22 Copper compounds
- Y23 Zinc compounds
- Y24 Arsenic; arsenic compounds
- Y25 Selenium, selenium compounds
- Y26 Cadmium; cadmium compounds
- Y27 Antimony; antimony compounds
- Y28 Tellurium; tellurium compounds
- Y29 Mercury; mercury compounds
- Y30 Thallium; thallium compounds
- Y31 Lead, lead compounds
- Y32 Inorganic fluorine compounds excluding calcium fluoride
- Y33 Inorganic cyanides
- Y34 Acidic solutions or acids in solid form
- Y35 Basic solutions or bases in solid form
- Y36 Asbestos (dust and fibres)
- Y37 Organic phosphorous compounds

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Y38 Organic cyanides
Y39 Phenols; phenol compounds including chlorophenols
Y40 Ethers
Y41 Halogenated organic solvents
Y42 Organic solvents excluding halogenated solvents
Y43 Any congenor of polychlorinated dibenzo-furan
Y44 Any congenor of polychlorinated dibenzo-p-dioxin
Y45 Organohalogen compounds other than substances referred to in this Annex (e.g. Y39, Y41, Y42, Y43, Y44).

Annex II
CATEGORIES OF WASTES REQUIRING SPECIAL CONSIDERATION

Y46 Wastes collected from households
Y47 Residues arising from the incineration of household

Annex III
LIST OF HAZARDOUS CHARACTERISTICS

UN Class*	Code	Characteristics
1	H1	Explosive An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.
3	H3	Flammable liquids The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5 deg. C, closed-cup test, or not more than 65.6 deg C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such differences would be within the spirit of this definition.)
4.1	H4.1	Flammable solids Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.
4.2	H4.2	Substances or wastes liable to spontaneous combustion Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.
1.3	H4.2	Substances or wastes which, in contact with water emit flammable gases

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		Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.
5.1	H5.1	Oxidizing Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen cause, or contribute to, the combustion of other materials.
5.2	H5.2	Organic Peroxides Organic substances or wastes which contain the bivalent-o-o-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
6.1	H6.1	Poisonous (Acute) Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.
6.2	H6.2	Infectious substances Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.
8	H8	Corrosives Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or, in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.
9	H10	Liberation of toxic gases in contact with air or water Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
9	H11	Toxic (Delayed or chronic) Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
9	H12	Ecotoxic Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.
9	H13	Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

Tests

The potential hazards posed by certain types of wastes are not yet fully documented; tests to define quantitatively these hazards do not exist. Further research is necessary in order to develop means to characterize potential hazards posed to man and/or the environment by these wastes. Standardized tests have been derived with respect to pure substances and materials. Many countries have developed national tests which can be applied to materials listed in Annex 1, in order to decide if these materials exhibit any of the characteristics listed in this Annex.

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*Corresponds to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/Rev.5, United Nations, New York, 1988).

Annex IV
DISPOSAL OPERATIONS

A. OPERATIONS WHICH DO NOT LEAD TO THE POSSIBILITY OF RESOURCE RECOVERY, RECYCLING, RECLAMATION, DIRECT RE-USE OR ALTERNATIVE USES

Section A encompasses all such disposal operations which occur in practice.

D1 Deposit into or onto land, (e.g., landfill, etc.)
D2 Land treatment, (e.g., biodegradation of liquid or sludgy discards in soils, etc.)
D3 Deep injection, (e.g., injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)
D4 Surface impoundment, (e.g., placement of liquid or sludge discards into pits, ponds or lagoons, etc.)
D5 Specially engineered landfill, (e.g., placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
D6 Release into a water body except seas/oceans
D7 Release into seas/oceans including sea-bed insertion
D8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A
D9 Physico chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A, (e.g., evaporation, drying, calcination, neutralisation, precipitation, etc.)
D10 Incineration on land
D11 Incineration at sea
D12 Permanent storage (e.g., emplacement of containers in a mine, etc.)
D13 Blending or mixing prior to submission to any of the operations in Section A
D14 Repackaging prior to submission to any of the operations in Section A
D15 Storage pending any of the operations in Section A

B. OPERATIONS WHICH MAY LEAD TO RESOURCE RECOVERY, RECYCLING, RECLAMATION, DIRECT RE-USE OR ALTERNATIVE USES

Section B encompasses all such operations with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in Section A

R1 Use as a fuel (other than in direct incineration) or other means to generate energy
R2 Solvent reclamation/regeneration
R3 Recycling/reclamation of organic substances which are not used as solvents
R4 Recycling/reclamation of metals and metal compounds
R5 Recycling/reclamation of other inorganic materials
R6 Regeneration of acids or bases

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R7 Recovery of components used for pollution abatement
R8 Recovery of components from catalysts
R9 Used oil re-refining or other reuses of previously used oil
R10 Land treatment resulting in benefit to agriculture or ecoological improvement
R11 Uses of residual materials obtained from any of the operations numbered R1-R10
R12 Exchange of wastes for submission to any of the operations numbered R1-R11
R13 Accumulation of material intended for any operation in Section B

Annex V A
INFORMATION TO BE PROVIDED ON NOTIFICATION

1. Reason for waste export
2. Exporter of the waste/1
3. Generator(s) of the waste and site of generation/1
4. Disposer of the waste and actual site of disposal/1
5. Intended carrier(s) of the waste or their agents, if known/1
6. Country of export of the waste
   Competent authority/2
7. Expected countries of transit
   Competent authority/2
8. Country of import of the waste
   Competent authority/2
9. General or single notification
10. Projected date(s) of shipment(s) and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit)/3
11. Means of transport envisaged (road, rail, sea, air, inland waters)
12. Information relating to insurance/4
13. Designation and physical description of the waste including Y number and UN number and its compositions/5 and information on any special handling requirements including emergency provisions in case of accidents
14. Type of packaging envisaged (e.g. bulk, drummed, tanker)
15. Estimated quantity in weight/volume/6
16. Process by which the waste is generated/7
17. For wastes listed in Annex III, classifications from Annex II: hazardous characteristic, H number, and UN class.
18. Method of disposal as per Annex IV
19. Declaration by the generator and exporter that the information is correct
20. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import.
21. Information concerning the contract between the exporter and disposer.

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Notes
1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.
2/ Full name and address, telephone, telex or telefax number.
3/ In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.
4/ Information is to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.
5/ The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.
6/ In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.
7/ Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

Annex V B
INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT

1. Exporter of the waste/1
2. Generator(s) of the waste and site of generation/1
3. Disposer of the waste and actual site of disposal/1
4. Carrier(s) of the waste/1 or his agent(s)
5. Subject of general or single notification
6. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste
7. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated
8. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable)
9. Information on special handling requirements including emergency provision in case of accidents
10. Type and number of packages
11. Quantity in weight/volume
12. Declaration by the generator or exporter that the information is correct
13. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned which are Parties.
14. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.

Notes
The information required on the movement document shall where possible be integrated in one document with that required under transport rules. Where this is not possible the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instructions as to who is to provide information and fill-out any form.

1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.

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Annex VI
ARBITRATION

Article 1

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

Article 2

The claimant party shall notify the Secretariat that the parties have agreed to submit the dispute to arbitration pursuant to paragraph 2 or paragraph 3 of Article 20 and include, in particular, the Articles of the Convention the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

Article 3

The arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either party, designate him within a further two months' period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

Article 5

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.

2. Any arbitral tribunal constituted under the provisions of this Annex shall draw up its own rules of procedure.

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Article 6

1. The decisions of the arbitral tribunal both on procedure and on substance, shall be taken by majority vote of its members.

2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one or the parties, recommend essential interim measures of protection.

3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.

4. The absence or default of a party in the dispute shall not constitute an impediment to the proceedings.

Article 7

The tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

Article 9

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 10

1. The tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.

2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.

3. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

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THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED JULY 1, 2001
Excerpts from
40 CFR - CHAPTER I - PART 262

Subpart E – Exports of Hazardous Waste

§ 262.50 Applicability.

This subpart establishes requirements applicable to exports of hazardous waste. Except to the extent § 262.58 provides otherwise, a primary exporter of hazardous waste must comply with the special requirements of this subpart and a transporter transporting hazardous waste for export must comply with applicable requirements of part 263. Section 262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

§ 262.51 Definitions.

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart:
Consignee means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.
EPA Acknowledgement of Consent means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.
Primary Exporter means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR part 262, subpart B, or equivalent State provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.
Receiving country means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).
Transit country means any foreign country, other than a receiving country, through which a hazardous waste is transported.
[53 FR 27164, July 19, 1988]

§ 262.52 General requirements.

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subpart and part 263. Exports of hazardous waste are prohibited unless:
(a) Notification in accordance with § 262.53 has been provided;
(b) The receiving country has consented to accept the hazardous waste;
(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).
(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

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§ 262.53 Notification of intent to export.

(a) A primary exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:
(1) Name, mailing address, telephone number and EPA ID number of the primary exporter;
(2) By consignee, for each hazardous waste type:
(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR part 261, subparts C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR parts 171 through 177;
(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.
(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);
(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;
(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));
(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);
(vii) The name and site address of the consignee and any alternate consignee; and
(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;
(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export."
(c) Except for changes to the telephone number in paragraph (a)(1) of this section, changes to paragraph (a)(2)(v) of this section and decreases in the quantity indicated pursuant to paragraph (a)(2)(iii) of this section when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to paragraph (a)(2)(viii) of this section and in the ports of entry to and departure from transit countries pursuant to paragraph (a)(2)(iv) of this section) has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

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(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.
(e) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.
(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of § 262.54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.
[51 FR 28682, Aug. 8, 1986, as amended at 56 FR 43705, Sept. 4, 1991; 61 FR 16309, Apr. 12, 1996]

§ 262.54 Special manifest requirements.
A primary exporter must comply with the manifest requirements of 40 CFR 262.20 through 262.23 except that:
(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;
(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.
(c) In Special Handling Instructions and Additional Information, the primary exporter must identify the point of departure from the United States;
(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";
(e) In lieu of the requirements of § 262.21, the primary exporter must obtain the manifest form from the primary exporter's State if that State supplies the manifest form and requires its use. If the primary exporter's State does not supply the manifest form, the primary exporter may obtain a manifest form from any source.
(f) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 40 CFR 264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.
(g) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:
(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with § 262.53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or
(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and
(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

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(h) The primary exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA Acknowledgment of Consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA Acknowledgment of Consent to the shipping paper.
(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with § 263.20(g)(4).

§ 262.55 Exception reports.
In lieu of the requirements of § 262.42, a primary exporter must file an exception report with the Administrator if:
(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;
(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;
(c) The waste is returned to the United States.

§ 262.56 Annual reports.
(a) Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:
(1) The EPA identification number, name, and mailing and site address of the exporter;
(2) The calendar year covered by the report;
(3) The name and site address of each consignee;
(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR part 261, subpart C or D), DOT hazard class, the name and US EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;
(5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to § 262.41, in even numbered years:
(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
(ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.
(6) A certification signed by the primary exporter which states:
I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

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(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC.
[51 FR 28682, Aug. 8, 1986, as amended at 56 FR 43705, Sept. 4, 1991; 61 FR 16309, Apr. 12, 1996]

§ 262.57 Recordkeeping.
(a) For all exports a primary exporter must:
(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;
(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;
(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and
(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.
(b) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.58 International agreements.
(a) Any person who exports or imports hazardous waste subject to Federal manifest requirements of Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to State requirements analogous to 40 CFR Part 273, to or from designated member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to Subpart H of this part. The requirements of Subparts E and F do not apply.
(1) For the purposes of this Subpart, the designated OECD countries consist of Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.
(2) For the purposes of this Subpart, Canada and Mexico are considered OECD member countries only for the purpose of transit.
(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD member country for purposes other than recovery (*e.g.,* incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of subparts E and F of this part.
[61 FR 16310, Apr. 12, 1996]

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40 CFR - CHAPTER I - PART 262

Subpart F – Imports of Hazardous Waste

§ 262.60 Imports of hazardous waste.
(a) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.
(b) When importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that:
(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.
(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.
(c) A person who imports hazardous waste must obtain the manifest form from the consignment State if the State supplies the manifest and requires its use. If the consignment State does not supply the manifest form, then the manifest form may be obtained from any source.
[51 FR 28685, Aug. 8, 1986]

40 CFR - CHAPTER I - PART 262

Subpart H – Transfrontier Shipments of Hazardous Waste for Recovery Within the OECD

§ 262.80 Applicability.
(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in § 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if it meets the Federal definition of hazardous waste in 40 CFR 261.3 and it is subject to either the Federal manifesting requirements at 40 CFR Part 262, Subpart B, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.
(b) Any person (notifier, consignee, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any notifier duties, if applicable, under this subpart.

§ 262.81 Definitions.
The following definitions apply to this subpart.
(a) *Competent authorities* means the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.
(b) *Concerned countries* means the exporting and importing OECD member countries and any OECD member countries of transit.

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(c) *Consignee* means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.
(d) *Country of transit* means any designated OECD country in § 262.58(a)(1) and (a)(2) other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.
(e) *Exporting country* means any designated OECD member country in § 262.58(a)(1) from which a transfrontier movement of wastes is planned or has commenced.
(f) *Importing country* means any designated OECD country in § 262.58(a)(1) to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.
(g) *Notifier* means the person under the jurisdiction of the exporting country who has, or will have at the time the planned transfrontier movement commences, possession or other forms of legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the exporting country, notifier is interpreted to mean a person domiciled in the U.S.
(h) *OECD area* means all land or marine areas under the national jurisdiction of any designated OECD member country in § 262.58. When the regulations refer to shipments to or from an OECD country, this means OECD area.
(i) *Recognized trader* means a person who, with appropriate authorization of concerned countries, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transfrontier movements of wastes destined for recovery operations.
(j) *Recovery facility* means an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.
(k) *Recovery operations* means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, (available from the Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203 (Docket # F-94-IEHF-FFFFF) and the Organisation for Economic Co-operation and Development, Environment Direcorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France) which include: R1 Use as a fuel (other than in direct incineration) or other means to generate energy R2 Solvent reclamation/regeneration R3 Recycling/reclamation of organic substances which are not used as solvents R4 Recycling/reclamation of metals and metal compounds R5 Recycling/reclamation of other inorganic materials R6 Regeneration of acids or bases R7 Recovery of components used for pollution control R8 Recovery of components from catalysts R9 Used oil re-refining or other reuses of previously used oil R10 Land treatment resulting in benefit to agriculture or ecological improvement R11 Uses of residual materials obtained from any of the operations numbered R1-R10 R12 Exchange of wastes for submission to any of the operations numbered R1-R11 6R13 Accumulation of material intended for any operation in Table 2.B
(l) *Transfrontier movement* means any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country.

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§ 262.82 General conditions.
(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to a green, amber, or red list and by U.S. national procedures as defined in § 262.80(a). The green, amber, and red lists are incorporated by reference in § 262.89 (e).
(1) Wastes on the green list are subject to existing controls normally applied to commercial transactions, except as provided below:
(i) Green-list wastes that are considered hazardous under U.S. national procedures are subject to amber-list controls.
(ii) Green-list waste that are sufficiently contaminated or mixed with amber-list wastes, such that the waste or waste mixture is considered hazardous under U.S. national procedures, are subject to amber-list controls.
(iii) Green-list wastes that are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under U.S. national procedures must be handled in accordance with the red-list controls.
(2) Wastes on the amber list that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the amber-list controls of this Subpart.
(i) If amber-list wastes are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under U.S. national procedures, the wastes must be handled in accordance with the red-list controls.
(ii) [Reserved].
(3) Wastes on the red list that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the red-list controls of this subpart.
Note to paragraph (a)(3): Some wastes on the amber or red lists are not listed or otherwise identified as hazardous under RCRA (*e.g.,* polychlorinated biphenyls) and therefore are not subject to the amber- or red-list controls of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) may restrict certain waste imports or exports. Such restrictions continue to apply without regard to this Subpart.
(4) Wastes not yet assigned to a list are eligible for transfrontier movements, as follows:
(i) If such wastes are considered hazardous under U.S. national procedures as defined in § 262.80(a), these wastes are subject to the red-list controls; or
(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes may move as though they appeared on the green list.
(b) *General conditions applicable to transfrontier movements of hazardous waste.*
(1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;
(2) The transfrontier movement must be in compliance with applicable international transport agreements; and
Note to paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).
(3) Any transit of waste through a non-OECD member country must be conducted in compliance with all applicable international and national laws and regulations.
(c) *Provisions relating to re-export for recovery to a third country.*
(1) Re-export of wastes subject to the amber-list control system from the U.S., as the importing country, to a third country listed in § 262.58(a)(1) may occur only after a notifier in the U.S.

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provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification must comply with the notice and consent procedures in § 262.83 for all concerned countries and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned countries have 30 days to object to the proposed movement.
(i) The 30-day period begins once the competent authorities of both the initial exporting country and new importing country issue Acknowledgements of Receipt of the notification.
(ii) The transfrontier movement may commence if no objection has been lodged after the 30-day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.
(2) Re-export of waste subject to the red-list control system from the original importing country to a third country listed in § 262.58(a)(1) may occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by a notifier in the original importing country in accordance with § 262.83. The transfrontier movement may not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.
(3) In the case of re-export of amber or red-list wastes to a country other than those in § 262.58(a)(1), notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in paragraphs (c)(1) and (c)(2) of this section in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country.

§ 262.83 Notification and consent.
(a) *Applicability.* Consent must be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to this Subpart. Hazardous wastes subject to amber-list controls are subject to the requirements of paragraph (b) of this section; hazardous wastes subject to red-list controls are subject to the requirements of paragraph (c) of this section; and wastes not identified on any list are subject to the requirements of paragraph (d) of this section.
(b) *Amber-list wastes.* The export from the U.S. of hazardous wastes as described in § 262.80(a) that appear on the amber list is prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.
(1) Transactions requiring specific consent:
(i) *Notification.* At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in paragraph (e) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

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(ii) *Tacit consent.* If no objection has been lodged by any concerned country (*i.e.,* exporting, importing, or transit countries) to a notification provided pursuant to paragraph (b)(1)(i) of this section within 30 days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the importing country, the transfrontier movement may commence. Tacit consent expires one calendar year after the close of the 30 day period; renotification and renewal of all consents is required for exports after that date.
(iii) *Written consent.* If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transfrontier movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.
(2) Shipments to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:
(i) The notifier must provide EPA the information identified in paragraph (e) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with the words "OECD Export Notification -- Pre-approved Facility" prominently displayed on the envelope.
(ii) Shipments may commence after the notification required in paragraph (b)(1)(i) of this section has been received by the competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.
(c) *Red-list wastes.* The export from the U.S. of hazardous wastes as described in § 262.80(a) that appear on the red list is prohibited unless notice is given pursuant to paragraph (b)(1)(i) of this section and the notifier receives *written* consent from the importing country and any transit countries prior to commencement of the transfrontier movement.
(d) *Unlisted wastes.* Wastes not assigned to the green, amber, or red list that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the notification and consent requirements established for red-list wastes in accordance with paragraph (c) of this section. Unlisted wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a) are not subject to amber or red controls when exported or imported.
(e) *Notification information.* Notifications submitted under this section must include:
(1) Serial number or other accepted identifier of the notification form;
(2) Notifier name and EPA identification number (if applicable), address, and telephone and telefax numbers;
(3) Importing recovery facility name, address, telephone and telefax numbers, and technologies employed;
(4) Consignee name (if not the owner or operator of the recovery facility) address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;
(5) Intended transporters and/or their agents;

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(6) Country of export and relevant competent authority, and point of departure;
(7) Countries of transit and relevant competent authorities and points of entry and departure;
(8) Country of import and relevant competent authority, and point of entry;
(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;
(10) Date foreseen for commencement of transfrontier movement;
(11) Designation of waste type(s) from the appropriate list (amber or red and waste list code), descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type; and
(12) Certification/Declaration signed by the notifier that states:
I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement. Name: Signature: Date:
Note to paragraph (e)(12): The U.S. does not currently require financial assurance; however, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

§ 262.84 Tracking document.
(a) All U.S. parties subject to the contract provisions of § 262.85 must ensure that a tracking document meeting the conditions of § 262.84(b) accompanies each transfrontier shipment of wastes subject to amber-list or red-list controls from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or exchanged by the consignee prior to shipment to the final recovery facility, except as provided in §§ 262.84(a)(1) and (2).
(1) For shipments of hazardous waste within the U.S. solely by water (bulk shipments only) the generator must forward the tracking document with the manifest to the last water (bulk shipment) transporter to handle the waste in the U.S. if exported by water, (in accordance with the manifest routing procedures at § 262.23(c)).
(2) For rail shipments of hazardous waste within the U.S. which originate at the site of generation, the generator must forward the tracking document with the manifest (in accordance with the routing procedures for the manifest in § 262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the U.S. if exported by rail.
(b) The tracking document must include all information required under § 262.83 (for notification), and the following:
(1) Date shipment commenced.
(2) Name (if not notifier), address, and telephone and telefax numbers of primary exporter.
(3) Company name and EPA ID number of all transporters.
(4) Identification (license, registered name or registration number) of means of transport, including types of packaging.
(5) Any special precautions to be taken by transporters.
(6) Certification/declaration signed by notifier that no objection to the shipment has been lodged as follows:
I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any

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applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement, and that:
1. All necessary consents have been received; OR
2. The shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period; OR
3. The shipment is directed at a recovery facility pre-authorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the concerned countries. (delete sentences that are not applicable) Name: Signature: Date:
(7) Appropriate signatures for each custody transfer (e.g. transporter, consignee, and owner or operator of the recovery facility).
(c) Notifiers also must comply with the special manifest requirements of 40 CFR 262.54(a), (b), (c), (e), and (i) and consignees must comply with the import requirements of 40 CFR part 262, subpart F.
(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the tracking document (*e.g.* transporter, consignee, and owner or operator of the recovery facility).
(e) Within 3 working days of the receipt of imports subject to this Subpart, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

§ 262.85 Contracts.
(a) Transfrontier movements of hazardous wastes subject to amber or red control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the notifier and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.
(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of:
(1) The generator of each type of waste;
(2) Each person who will have physical custody of the wastes;
(3) Each person who will have legal control of the wastes; and
(4) The recovery facility.
(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if its disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:
(1) The person having actual possession or physical control over the wastes will immediately inform the notifier and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

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(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging their return to the original country of export.
(d) Contracts must specify that the consignee will provide the notification required in § 262.82(c) prior to re-export of controlled wastes to a third country.
(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements. >
Note to paragraph (e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The U.S. does not require such financial guarantees at this time; however, some OECD countries do. It is the responsibility of the notifier to ascertain and comply with such requirements; in some cases, transporters or consignees may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.
(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.
(g) Upon request by EPA, U.S. notifiers, consignees, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.
Note to paragraph (g): Although the U.S. does not require routine submission of contracts at this time, OECD Council Decision C(92)39/FINAL allows members to impose such requirements. When other OECD countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD countries may deny consent for the proposed movement.

§ 262.86 Provisions relating to recognized traders.
(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal laws.
(b) A recognized trader acting as a notifier or consignee for transfrontier shipments of waste must comply with all the requirements of this Subpart associated with being a notifier or consignee.

§ 262.87 Reporting and recordkeeping.
(a) *Annual reports.* For all waste movements subject to this Subpart, persons (*e.g.*, notifiers, recognized traders) who meet the definition of primary exporter in § 262.51 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an

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annual report for waste exports that are not covered under this Subpart, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section). Such reports shall include the following:
(1) The EPA identification number, name, and mailing and site address of the notifier filing the report;
(2) The calendar year covered by the report;
(3) The name and site address of each final recovery facility;
(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR part 261, subpart C or D), designation of waste type(s) from OECD waste list and applicable waste code from the OECD lists, DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this Subpart, and number of shipments pursuant to each notification;
(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:
(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and
(6) A certification signed by the person acting as primary exporter that states:
I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.
(b) *Exception reports.* Any person who meets the definition of primary exporter in § 262.51 must file an exception report in lieu of the requirements of § 262.42 with the Administrator if any of the following occurs:
(1) He has not received a copy of the tracking documentation signed by the transporter stating point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;
(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the notifier has not received written confirmation from the recovery facility that the hazardous waste was received;
(3) The waste is returned to the United States.
(c) *Recordkeeping.* (1) Persons who meet the definition of primary exporter in § 262.51 shall keep the following records: § 262.89
(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of concerned countries for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;
(ii) A copy of each annual report for a period of at least three years from the due date of the report; and

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(iii) A copy of any exception reports and a copy of each confirmation of delivery (*i.e.*, tracking documentation) sent by the recovery facility to the notifier for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable.
(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.88 Pre-approval for U.S. Recovery Facilities (Reserved).

§ 262.89 OECD Waste Lists.
(a) *General.* For the purposes of this Subpart, a waste is considered hazardous under U.S. national procedures, and hence subject to this Subpart, if the waste:
(1) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and
(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, to the universal waste management standards of 40 CFR part 273, or to State requirements analogous to 40 CFR part 273.
(b) If a waste is hazardous under paragraph (a) of this section and it appears on the amber or red list, it is subject to amber- or red-list requirements respectively;
(c) If a waste is hazardous under paragraph (a) of this section and it does not appear on either amber or red lists, it is subject to red-list requirements.
(d) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in § 262.82.
(e) The OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations) are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on July 11, 1996. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at: the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC; the U.S. Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203 (Docket # F-94-IEHF-FFFFF) and may be obtained from the Organisation for Economic Co-operation and Development, Environment Direcorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.

Appendix to Part 262 -- Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)

U.S. EPA Form 8700-22
Read all instructions before completing this form.
This form has been designed for use on a 12-pitch (elite) typerwriter; a firm point pen may also be used -- press down hard.
Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to use this form (8700-22)

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and, if necessary, the continuation sheet (Form 8700-22A) for both inter and intrastate transportation.
Federal regulations also require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage and disposal facilities to complete the following information:

The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:
Public reporting burden for this collection of information is estimated to average: 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage and disposal facilities. This includes time for reviewing instructions, gathering data, and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.
GENERATORS Item 1. Generator's U.S. EPA ID Number -- Manifest Document Number
Enter the generator's U.S. EPA twelve digit identification number and the unique five digit number assigned to this Manifest (e.g., 00001) by the generator. Item 2. Page 1 of -- --
Enter the total number of pages used to complete this Manifest, i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA Form 8700-22A), if any. Item 3. Generator's Name and Mailing Address
Enter the name and mailing address of the generator. The address should be the location that will manage the returned Manifest forms. Item 4. Generator's Phone Number
Enter a telephone number where an authorized agent of the generator may be reached in the event of an emergency. Item 5. Transporter 1 Company Name
Enter the company name of the first transporter who will transport the waste. Item 6. U.S. EPA ID Number
Enter the U.S. EPA twelve digit identification number of the first transporter identified in item 5. Item 7. Transporter 2 Company Name
If applicable, enter the company name of the second transporter who will transport the waste. If more than two transporters are used to transport the waste, use a Continuation Sheet(s) (EPA Form 8700-22A) and list the transporters in the order they will be transporting the waste. Item 8. U.S. EPA ID Number
If applicable, enter the U.S. EPA twelve digit identification number of the second transporter identified in item 7.
Note: If more than two transporters are used, enter each additional transporter's company name and U.S. EPA twelve digit identification number in items 24-27 on the Continuation Sheet (EPA Form 8700-22A). Each Continuation Sheet has space to record two additional transporters. Every transporter used between the generator and the designated facility must be listed.
Item 9. Designated Facility Name and Site Address
Enter the company name and site address of the facility designated to receive the waste listed on this Manifest. The address must be the site address, which may differ from the company mailing address. Item 10. U.S. EPA ID Number

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Enter the U.S. EPA twelve digit identification number of the designated facility identified in item 9. Item 11. U.S. DOT Description [Including Proper Shipping Name, Hazard Class, and ID Number (UN/NA)]
Enter the U.S. DOT Proper Shipping Name, Hazard Class, and ID Number (UN/NA) for each waste as identified in 49 CFR 171 through 177.
Note: If additional space is needed for waste descriptions, enter these additional descriptions in item 28 on the Continuation Sheet (EPA Form 8700-22A).
Item 12. Containers (No. and Type)
Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container. Table I -- Types of Containers
DM=Metal drums, barrels, kegs
DW=Wooden drums, barrels, kegs
DF=Fiberboard or plastic drums, barrels, kegs
TP=Tanks portable
TT=Cargo tanks (tank trucks)
TC=Tank cars
DT=Dump truck
CY=Cylinders
CM=Metal boxes, cartons, cases (including roll-offs)
CW=Wooden boxes, cartons, cases
CF=Fiber or plastic boxes, cartons, cases
BA=Burlap, cloth, paper or plastic bags Item 13. Total Quantity
Enter the total quantity of waste described on each line. Item 14. Unit (Wt./Vol.)
Enter the appropriate abbreviation from Table II (below) for the unit of measure. Table II -- Units of Measure
G=Gallons (liquids only)
P=Pounds
T=Tons (2000 lbs)
Y=Cubic yards
L=Liters (liquids only)
K=Kilograms
M=Metric tons (1000 kg)
N=Cubic meters Item 15. Special Handling Instructions and Additional Information
Generators may use this space to indicate special transportation, treatment, storage, or disposal information or Bill of Lading information. States may not require additional, new, or different information in this space. For international shipments, generators must enter in this space the point of departure (City and State) for those shipments destined for treatment, storage, or disposal outside the jurisdiction of the United States. Item 16. Generator's Certification
The generator must read, sign (by hand), and date the certification statement. If a mode *other than* highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space below. If another mode *in addition to* the highway mode is used, enter the appropriate additional mode (e.g., *and rail*) in the space below.
Primary exporters shipping hazardous wastes to a facility located outside of the United States must add to the end of the first sentence of the certification the following words "and conforms to the terms of the EPA Acknowledgment of Consent to the shipment."

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In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements.
Generators may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator certifications.
Note: All of the above information *except* the handwritten signature required in item 16 may be preprinted.
TRANSPORTERS Item 17. Transporter 1 Acknowledgement of Receipt of Materials
Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt. Item 18. Transporter 2 Acknowledgement of Receipt of Materials
Enter, if applicable, the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.
Note: International Shipments -- Transporter Responsibilities.
Exports -- Transporters must sign and enter the date the waste left the United States in item 15 of Form 8700-22. *Imports* -- Shipments of hazardous waste regulated by RCRA and transported into the United States from another country must upon entry be accompanied by the U.S. EPA Uniform Hazardous Waste Manifest. Transporters who transport hazardous waste into the United States from another country are responsible for completing the Manifest (40 CFR 263.10(c)(1)).
Owners and Operators of Treatment, Storage, or Disposal Facilities Item 19. Discrepancy Indication Space
The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any significant discrepancy between the waste described on the Manifest and the waste actually received at the facility.
Owners and operators of facilities located in unauthorized States (i.e., the U.S. EPA administers the hazardous waste management program) who cannot resolve significant discrepancies within 15 days of receiving the waste must submit to their Regional Administrator (see list below) a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (40 CFR 264.72 and 265.72).
Owners and operators of facilities located in authorized States (i.e., those States that have received authorization from the U.S. EPA to administer the hazardous waste program) should contact their State agency for information on State Discrepancy Report requirements. EPA Regional Administrators
Regional Administrator, U.S. EPA Region I, J.F. Kennedy Fed. Bldg., Boston, MA 02203
Regional Administrator, U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278
Regional Administrator, U.S. EPA Region III, 6th and Walnut Sts., Philadelphia, PA 19106
Regional Administrator, U.S. EPA Region IV, 345 Courtland St., NE., Atlanta, GA 30365
Regional Administrator, U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604
Regional Administrator, U.S. EPA Region VI, 1201 Elm Street, Dallas, TX 75270
Regional Administrator, U.S. EPA Region VII, 324 East 11th Street, Kansas City, MO 64106
Regional Administrator, U.S. EPA Region VIII, 1860 Lincoln Street, Denver, CO 80295
Regional Administrator, U.S. EPA Region IX, 215 Freemont Street, San Francisco, CA 94105

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Regional Administrator, U.S. EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101 Item 20. Facility Owner or Operator: Certification of Receipt of Hazardous Materials Covered by This Manifest Except as Noted in Item 19
Print or type the name of the person accepting the waste on behalf of the owner or operator of the facility. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.
Items A-K are not required by Federal regulations for intra- or interstate transportation. However, States may require generators and owners or operators of treatment, storage, or disposal facilities to complete some or all of items A-K as part of State manifest reporting requirements. Generators and owners and operators of treatment, storage, or disposal facilities are advised to contact State officials for guidance on completing the shaded areas of the Manifest.

Instructions -- Continuation Sheet, U.S. EPA Form 8700-22A

Read all instructions before completing this form.
This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used -- press down hard.
This form must be used as a continuation sheet to U.S. EPA Form 8700-22 if:
&sbull; More than two transporters are to be used to transport the waste;
&sbull; More space is required for the U.S. DOT description and related information in Item 11 of U.S. EPA Form 8700-22.
Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700-22) and, if necessary, this continuation sheet (EPA Form 8700-22A) for both inter- and intrastate transportation. GENERATORS Item 21. Generator's U.S. EPA ID Number -- Manifest Document Number
Enter the generator's U.S. EPA twelve digit identification number and the unique five digit number assigned to this Manifest (e.g., 00001) as it appears in item 1 on the first page of the Manifest. Item 22. Page -- --
Enter the page number of this Continuation Sheet. Item 23. Generator's Name
Enter the generator's name as it appears in item 3 on the first page of the Manifest. Item 24. Transporter -- -- Company Name
If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter *3* Company Name. Each Continuation Sheet will record the names of two additional transporters. Item 25. U.S. EPA ID Number
Enter the U.S. EPA twelve digit identification number of the transporter described in item 24. Item 26. Transporter -- -- Company Name
If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet will record the names of two additional transporters. Item 27. U.S. EPA ID Number

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Enter the U.S. EPA twelve digit identification number of the transporter described in item 26. Item 28. U.S. DOT Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)

Refer to item 11. Item 29. Containers (No. and Type)

Refer to item 12. Item 30. Total Quantity

Refer to item 13. Item 31. Unit (Wt./Vol.)

Refer to item 14. Item 32. Special Handling Instructions

Generators may use this space to indicate special transportation, treatment, storage, or disposal information or Bill of Lading information. States are *not* authorized to require additional, new, or different information in this space. TRANSPORTERS Item 33. Transporter -- -- Acknowledgement of Receipt of Materials

Enter the same number of the Transporter as identified in item 24. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in item 24. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt. Item 34. Transporter -- -- Acknowledgement of Receipt of Materials Enter the same number as identified in item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt. OWNERS AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES Item 35. Discrepancy Indication Space

Refer to item 19.

Items L-R are not required by Federal regulations for intra- or interstate transportation. However, States may require generators and owners or operators of treatment, storage, or disposal facilities to complete some or all of items L-R as part of State manifest reporting requirements. Generators and owners and operators of treatment, storage, or disposal facilities are advised to contact State officials for guidance on completing the shaded areas of the manifest.

[49 FR 10501, Mar. 20, 1984, as amended at 51 FR 28685, Aug. 8, 1986; 51 FR 35192, Oct. 1, 1986; 53 FR 45091, Nov. 8, 1988; 62 FR 1834, Jan. 14, 1997]

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THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED JULY 1, 2001

Excerpts from
40 CFR
Protection of Environment
CHAPTER I
ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER R -- TOXIC SUBSTANCES CONTROL ACT

PART 761 -- POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

Subpart A -- General

§761.3 Definitions.
For the purpose of this part:

* * *

Non-liquid PCBs means materials containing PCBs that by visual inspection do not flow at room temperature (25 °C or 77 °F) or from which no liquid passes when a 100 g or 100 ml representative sample is placed in a mesh number 60 ± 5 percent paint filter and allowed to drain at room temperature for 5 minutes.
Non-PCB Transformer means any transformer that contains less than 50 ppm PCB; except that any transformer that has been converted from a PCB Transformer or a PCB-Contaminated Transformer cannot be classified as a non-PCB Transformer until reclassification has occurred, in accordance with the requirements of §761.30(a)(2)(v).

* * *

PCB and *PCBs* means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. Refer to §761.1(b) for applicable concentrations of PCBs. PCB and PCBs as contained in PCB items are defined in §761.3. For any purposes under this part, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.
PCB Article means any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.
PCB Article Container means any package, can, bottle, bag, barrel, drum, tank, or other device used to contain PCB Articles or PCB Equipment, and whose surface(s) has not been in direct contact with PCBs.
PCB bulk product waste means waste derived from manufactured products containing PCBs in a non-liquid state, at any concentration where the concentration at the time of designation for disposal was   50 ppm PCBs. PCB bulk product waste does not include PCBs or PCB Items regulated for disposal under §761.60(a) through (c), §761.61, §761.63, or §761.64. PCB bulk product waste includes, but is not limited to:

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(1) Non-liquid bulk wastes or debris from the demolition of buildings and other man-made structures manufactured, coated, or serviced with PCBs. PCB bulk product waste does not include debris from the demolition of buildings or other man-made structures that is contaminated by spills from regulated PCBs which have not been disposed of, decontaminated, or otherwise cleaned up in accordance with subpart D of this part.
(2) PCB-containing wastes from the shredding of automobiles, household appliances, or industrial appliances.
(3) Plastics (such as plastic insulation from wire or cable; radio, television and computer casings; vehicle parts; or furniture laminates); preformed or molded rubber parts and components; applied dried paints, varnishes, waxes or other similar coatings or sealants; caulking; adhesives; paper; Galbestos; sound deadening or other types of insulation; and felt or fabric products such as gaskets.
(4) Fluorescent light ballasts containing PCBs in the potting material.
PCB Capacitor means any capacitor that contains   500 ppm PCB. Concentration assumptions applicable to capacitors appear under §761.2.
PCB Container means any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.
PCB-Contaminated means a non-liquid material containing PCBs at concentrations   50 ppm but <500 ppm; a liquid material containing PCBs at concentrations   50 ppm but <500 ppm or where insufficient liquid material is available for analysis, a non-porous surface having a surface concentration >10 _g/100 cm^2 but <100 _g/100 cm^2, measured by a standard wipe test as defined in §761.123.
PCB-Contaminated Electrical Equipment means any electrical equipment including, but not limited to, transformers (including those used in railway locomotives and self-propelled cars), capacitors, circuit breakers, reclosers, voltage regulators, switches (including sectionalizers and motor starters), electromagnets, and cable, that contains PCBs at concentrations of   50 ppm and <500 ppm in the contaminating fluid. In the absence of liquids, electrical equipment is PCB-Contaminated if it has PCBs at >10 _g/100 cm^2 and <100 _g/100 cm^2 as measured by a standard wipe test (as defined in §761.123) of a non-porous surface.
PCB Equipment means any manufactured item, other than a PCB Container or a PCB Article Container, which contains a PCB Article or other PCB Equipment, and includes microwave ovens, electronic equipment, and fluorescent light ballasts and fixtures.
PCB field screening test means a portable analytical device or kit which measures PCBs. PCB field screening tests usually report less than or greater than a specific numerical PCB concentration. These tests normally build in a safety factor which increases the probability of a false positive report and decreases the probability of a false negative report. PCB field screening tests do not usually provide: an identity record generated by an instrument; a quantitative comparison record from calibration standards; any identification of PCBs; and/or any indication or identification of interferences with the measurement of the PCBs. PCB field screening test technologies include, but are not limited to, total chlorine colorimetric tests, total chlorine x-ray fluorescence tests, total chlorine microcoulometric tests, and rapid immunoassay tests.
PCB household waste means PCB waste that is generated by residents on the premises of a temporary or permanent residence for individuals (including individually owned or rented units of a multi-unit construction), and that is composed primarily of materials found in wastes generated by consumers in their homes. PCB household waste includes unwanted or discarded non-commercial vehicles (prior to shredding), household items, and appliances or appliance parts

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and wastes generated on the premises of a residence for individuals as a result of routine household maintenance by or on behalf of the resident. Bulk or commingled liquid PCB wastes at concentrations of   50 ppm, demolition and renovation wastes, and industrial or heavy duty equipment with PCBs are not household wastes.
PCB Item means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

* * *

Subpart F -- Transboundary Shipments of PCBs for Disposal

§ 761.91 Applicability.
This subpart establishes requirements under section 6 of TSCA applicable to the transboundary shipments of PCBs and PCB Items into and out of the United States for disposal. Nothing in this subpart is intended to obviate or otherwise alter obligations applicable to imported or exported PCBs and PCB Items under foreign laws, international agreements or arrangements, other United States statutes and regulations, other sections of TSCA (e.g., sections 13 and 14), or laws of the various States of the United States. No provision of this section shall be construed to affect or limit the applicability of any requirement applicable to transporters of PCB waste under regulations issued by the U.S. Department of Transportation (DOT) and set forth at 49 CFR parts 171-180.

§761.93 Import for disposal.
(a) *General provisions*. No person may import PCBs or PCB Items for disposal without an exemption issued under the authority of TSCA section 6(e)(3).
(b) [Reserved]
[63 FR 35460, June 29, 1998]

§761.97 Export for disposal.
(a) General provisions. No person may export PCBs or PCB Items for disposal without an exemption, except that:
(1) PCBs and PCB Items at concentrations <50 ppm (or <10 _g PCB/100 cm^2 if no free-flowing liquids are present) may be exported for disposal.
(2) For the purposes of this section, PCBs and PCB Items of unknown concentrations shall be treated as if they contain   50 ppm.
(b) [Reserved]
[61 FR 11107, Mar. 18, 1996, as amended at 63 FR 35460, June 29, 1998]

§761.99 Other transboundary shipments.
For purposes of this subpart, the following transboundary shipments are not considered exports or imports:
(a) PCB waste generated in the United States, transported outside the Customs Territory of the United States (including any residuals resulting from cleanup of spills of such wastes in transit) through another country or its territorial waters, or through international waters, and returned to the United States for disposal.

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(b) PCB waste in transit, including any residuals resulting from cleanup of spills during transit, through the United States (e.g., from Mexico to Canada, from Canada to Mexico).
(c) PCB waste transported from any State to any other State for disposal, regardless of whether the waste enters or leaves the customs territory of the United States, provided that the PCB waste or the PCBs from which the waste was derived were present in the United States on January 1, 1979, and have remained within the United States since that date.
[63 FR 35461, June 29, 1998, as amended at 66 FR 17478, Mar. 30, 2001]

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Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Wastes

Place and Date of Signature Ottawa, 28.10.1986
Date of Entry into Force 08.11.1986
The Government of the United States of America (the United States), and the Government of Canada (Canada), hereinafter called "The Parties":
Recognizing that severe health and environmental damage may result from the improper treatment, storage, and disposal of hazardous waste;
Seeking to ensure that the treatment, storage, and disposal of hazardous waste are conducted so as to reduce the risks to public health, property, and environmental quality;
Recognizing that the close trading relationship and the long common border between the United States and Canada engender opportunities for a generator of hazardous waste to benefit from using the nearest appropriate disposal facility, which may involve the transboundary shipment of hazardous waste;
Recognizing further that the most effective and efficient means of achieving environmentally sound management procedures for hazardous waste crossing the United States-Canada border is through cooperative, efforts and coordinated regulatory schemes;
Believing that a bilateral agreement is needed to facilitate the control of transboundary shipments of hazardous waste between the United States and Canada;
Reaffirming Principle 21 of the 1972 Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm, which asserts that states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction;
Taking Into Account OECD Council Decisions and Recommendations on transfrontier movements of hazardous wastes, the UNEP Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Waste, and resolutions of the London Dumping Convention,
Have agreed as follows:
Article 1
DEFINITIONS
For the purposes of this Agreement:
(a) "Designated Authority" means, in the case of the United States of America, the Environmental Protection Agency and, in the case of Canada, the Department of the Environment.
(b) "Hazardous Waste" means with respect dangerous goods, and with respect to States, hazardous waste subject to a requirement in the United States, as respective national legislations and regulations.
(c) "Country-of Export" means the country from which the shipment of hazardous waste originated.

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(d) "Country of Import" means the country to which hazardous waste is sent for the purpose of treatment, storage (with the exception of short-term storage incidental to transportation) or disposal.
(e) "Country of Transit" means the country which is neither the country of export nor the country of import, through whose land territory or internal waters hazardous waste is transported, or in whose ports such waste is unloaded for further transportation.
(f) "Consignee" means the treatment, storage (with the exception of short-term storage incidental to transportation) or disposal facility in the country of import and the name of the person operating the facility.
(g) "Exporter" means, in the case of the United States, the person defined as exporter, and in the case of Canada, the person defined as consignor, under their respective national laws and regulations governing hazardous waste.

Article 2

GENERAL OBLIGATION

The Parties shall permit the export, import, and transit of hazardous waste across their common border for treatment, storage, or disposal pursuant to the terms of their domestic laws, regulations and administrative practices, and the provisions of this Agreement.

Article 3

NOTIFICATION TO THE IMPORTING COUNTRY

(a) The designated authority of the country of export shall notify the designated authority of the country of import of proposed transboundary shipments of hazardous waste.
(b) The notice referred to in paragraph (a) of this article may cover an individual shipment or a series of shipments extending over a twelve month or lesser period and shall contain the following information:
(i) The exporter's name, address and telephone number, and if required in the country of export, the identification number.
(ii) For each hazardous waste type and for each consignee:
(1) A description of the hazardous waste to be exported, as identified by the waste identification number, the classification and the shipping name as required on the manifest in the country of export;
(2) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;
(3) The estimated total quantity of the hazardous waste in units as specified by the manifest required in the country of export;
(4) The point of entry into the country of import;
(5) The name and address of the transporters and the means of transportation, such as the mode of transportation (air, highway, rail, water, etc.) and type(s) of container (drums, boxes, tanks, etc.);
(6) A description of the manner in which the waste will be treated, stored or disposed of in the importing country;
(7) The name and site address of the consignee;
(8) An approximate date of the first shipment to each consignee, if available.
(c) The designated authority of the country of import shall have 30 days from the date of receipt of the notice provided pursuant to paragraphs (a) and (b) of this article to respond to such notice, indicating its consent (conditional or not) or its objection to the export. Such response will be transmitted to the designated authority of the country of export. The date of receipt of the notice

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will be identified in an acknowledgement of receipt made immediately by the designated authority of the country of import to the country of export.
(d) If no response is received by the designated authority of the country of export within the 30 day period referred to in paragraph (c) of this article, the country of import shall be considered as having no objection to the export of hazardous waste described in the notice and the export may take place conditional upon the persons importing the hazardous waste complying with all the applicable laws of the country of import.
(e) The country of import shall have the right to amend the terms of the proposed shipments as described in the notice.
(f) The consent of the country of import, whether express, tacit, or conditional, provided pursuant to paragraphs (c) and (d) of this article, may be withdrawn or modified for good cause. The Parties will withdraw or modify such consent insofar as possible at the most appropriate time for the persons concerned.

Article 4

NOTIFICATION TO THE TRANSIT COUNTRY

(a) The designated authority of the country of export shall notify the designated authority of the country of transit of the proposed shipment of hazardous waste at least 7 days prior to the date of the shipment. The notice shall include the information specified in paragraph (b) of Article 3, with the following exceptions:
(i) The points of entry into and departure from the country of transit shall be provided in lieu of the entry point(s) into the country of import; and
(ii) A description of the approximate length of time the hazardous waste will remain in the country of transit and the nature of its handling while there shall be submitted instead of a description of the treatment, storage, or disposal of the waste in the country of import.

Article 5

COOPERATIVE EFFORTS

1. The Parties will cooperate to ensure, to the extent possible, that all transboundary shipments of hazardous waste comply with the manifest requirements of both countries.
2. The Parties will cooperate in monitoring and spot-checking transboundary shipments of hazardous waste to ensure, to the extent possible, that such shipments conform to the requirements of the applicable legislation and of this Agreement.
3. To the extent any implementing regulations are necessary to comply with this Agreement, the Parties will act expeditiously to issue such regulations consistent with domestic law. Pending such issuance, the Parties will make best efforts to provide notification in accordance with this Agreement where current regulatory authority is insufficient. The Parties will provide each other with a diplomatic note upon the issuance and the coming into effect of any such regulations.

Article 6

READMISSION OF EXPORTS

The country of export shall readmit any shipment of hazardous waste that may be returned by the country of import or transit.

Article 7

ENFORCEMENT

The Parties shall ensure, to the extent possible, that within their respective jurisdictions, their domestic laws and regulations are enforced with respect to the transportation, storage, treatment and disposal of transboundary shipments of hazardous waste.

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Article 8
PROTECTION OF CONFIDENTIAL INFORMATION
If the provision of technical information pursuant to articles 3 and 4 would require the disclosure of information covered by agreements of confidentiality between a Party and an exporter, the country of export shall make every effort to obtain the consent of the concerned person for the purpose of conveying any such information to the country of import or transit. The country of import or transit shall make every effort to protect the confidentiality of such information conveyed.
Article 9
INSURANCE
The Parties may require, as a condition of entry, that any transboundary movement of hazardous waste be covered by insurance or other financial guarantee in respect to damage to third parties caused during the entire movement of hazardous waste, including loading and unloading.
Article 10
EFFECTS ON INTERNATIONAL AGREEMENTS
Nothing in this Agreement shall be deemed to diminish the obligations of the Parties with respect to disposal of hazardous waste at sea contained in the 1972 London Dumping Convention.
Article 11
DOMESTIC LAW
The provisions of this Agreement shall be subject to the applicable laws and regulations of the Parties.
Article 12
AMENDMENT
This Agreement may be amended by mutual written consent of the Parties or their authorized representatives.
Article 13
ENTRY INTO FORCE
This Agreement shall enter into force on November 8, 1986 and continue in force for five years. It will automatically be renewed for additional five year periods unless either Party gives written notice of termination to the other at least three months prior to the expiration of any five year period. In any five year period, this Agreement may be terminated upon one year written notice given by one Party to the other.
IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed this Agreement.
DONE at Ottawa in duplicate, in the this 26th day of October, 1986, in the English and French languages, both texts being equally authentic.

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TREATIES AND OTHER INTERNATIONAL ACTS SERIES 10827

ENVIRONMENTAL COOPERATION

Agreement Between the

UNITED STATES OF AMERICA and MEXICO

Signed at La Paz August 14, 1983

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)-

". . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agree-ments other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

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Washington, DC 20402

MEXICO
Environmental Cooperation

Agreement signed at La Paz August 14, 1983;
Entered into force February 16, 1984.

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AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ON COOPERATION FOR THE PROTECTION AND IMPROVEMENT OF THE ENVIRONMENT IN THE BORDER AREA

The United States of America and the United Mexican States,

RECOGNIZING the importance of a healthful environment to the long-term economic and social well-being of present and future generations of each country as well as of the global community;

RECALLING that the Declaration of the United Nations Conference on the Human Environment, proclaimed in Stockholm in 1972,['] called upon nations to collaborate to resolve environmental problems of common concern;

NOTING previous agreements and programs providing for environmental cooperation between the two countries;
BELIEVING that such cooperation is of mutual benefit in coping with similar environmental problems in each country;

ACKNOWLEDGING the important work of the International Boundary and Water Commission and the contribution of the agreements concluded between the two countries relating to environmental affairs;

REAFFIRMING their political will to further strengthen and demonstrate the importance attached by both Governments to cooperation on environmental protection and in furtherance of the principle of good neighborliness;

Have agreed as follows:

1 *Department of state Bulletin* July 24,1972, P. 116.

ARTICLE 1

The United States of America and the United Mexican States, here inafter referred to as the Parties, agree to cooperate in the field of environmental protection in the border area on the basis of equality, reciprocity and mutual benefit. The objectives of the present Agreement are to establish the basis for cooperation between the Parties for the protection, improvement and conservation of the environment and the problems which affect it, as well as to agree on necessary measures to prevent and control pollution in the border area, and to provide the framework for development of a system of notification for emergency situations. Such objectives shall be pursued without prejudice to the cooperation which the Parties may agree to undertake outside the border area.

ARTICLE 2

The Parties undertake, to the fullest extent practical, to adopt the appropriate measures to prevent, reduce and eliminate sources of pollution in their respective territory which affect the border area of the other.

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Additionally, the Parties shall cooperate in the solution of the environmental problems of mutual concern in the border area, in accordance with the provisions of this Agreement.

ARTICLE 3

Pursuant to this Agreement, the Parties may conclude specific ar-rangements for the solution of common problems in the border area, which may be annexed thereto. Similarly, the Parties may also agree upon annexes to this Agreement on technical matters.

ARTICLE 4

For the purposes of this Agreement, it shall be understood that the "border area" refers to the area situated 100 kilometers on either side of the inland and maritime boundaries between the Parties.

ARTICLE 5

The Parties agree to coordinate their efforts, in conformity with their own national legislation and existing bilateral agreements to Address problems of air, land and water pollution in the border area.

ARTICLE 6

To implement this Agreement, the Parties shall consider and, as appropriate, pursue in a coordinated manner practical, legal, institutional and technical measures for protecting the quality of the envi-ronment in the border area. Forms of cooperation may include: coordination of national programs; scientific and educational exchanges; environmental monitoring; environmental impact assessment; and periodic exchanges of information and data on likely sources of pollution in their respective territory which may produce environmentally polluting incidents, as defined in an annex to this Agreement.

ARTICLE 7

The Parties shall assess, as appropriate in accordance with their

respective national laws, regulations and policies, projects that have significant impacts on the environment of the border area, that appropriate measures may be considered to avoid or mitigate adverse environmental effects.

ARTICLE 8

Each Party designates a national coordinator whose principal functions will be to coordinate and monitor implementation of this Agreement, make recommendations to the Parties, and organize the annual meetings referred to in Article 10, and the meetings of the experts referred to in Article 11. Additional responsibilities of the national coordinators may be agreed to in an annex to this Agreement.

In the case of the United States of America the national coordinator shall be the Environmental Protection Agency, and in the case of Mexico it shall be the Secretaría de Desarrollo Urbano y Ecología, through the Subsecretaría de Ecología.

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ARTICLE 9

Taking into account the subjects to be examined jointly, the na-tional coordinators may invite, as appropriate, representatives of federal, state and municipal governments to participate in the meetings provided for in this Agreement. By mutual agreement they may also in-vite representatives of international governmental or non-governmental organizations who may be able to contribute some element of expertise on problems to be solved.

The national coordinators will determine by mutual agreement the form and manner of participation of non-governmental entities.

ARTICLE 10

The Parties shall hold at a minimum an annual high level meeting to review the manner in which this Agreement is being implemented. These meetings shall take place alternately in the border area of Mexico and the United States of America.

The composition of the delegations which represent each Party, both in these annual meetings as well as in the meetings of experts referred to in Article 11, will be communicated to the other Party through diplomatic channels.

ARTICLE 11

The Parties may, as they deem necessary, convoke meetings of ex-perts for the purposes of coordinating their national programs referred to in Article 6, and of preparing the drafts of the specific arrange-ments and technical annexes referred to in Article 3.

These meetings of experts may review technical subjects. The opinions of the experts in such meetings shall be communicated by them to on the national coordinators, and will serve to advise the Parties technical matters.

ARTICLE 12

Each Party shall ensure that its national coordinator is informed of activities of its cooperating agencies carried out under this Agreement. Each Party shall also ensure that its national coordinator is informed of the implementation of other agreements concluded between the two Governments concerning matters related to this Agreement. The national coordinators of both Parties will present to the annual meet-ings a report on the environmental aspects of all joint work conducted under this Agreement and on implementation of other relevant agree-ments between the Parties, both bilateral and multilateral.

Nothing in this Agreement shall prejudice or otherwise affect the functions entrusted to the International Boundary and Water Commission, in accordance with the Water Treaty of 1944.[']

1 Treaty relating to the utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande. Signed at Washington Feb. 3, 1944 and supplementary protocol signed Nov. 14, 1944. TS 994; 59 Stat. 1219.

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ARTICLE 13

Each Party shall be responsible for informing its border states and for consulting them in accordance with their respective constitu-tional systems, in relation to matters covered by this Agreement.

ARTICLE 14

Unless otherwise agreed, each Party shall bear the cost of its participation in the implementation of this Agreement, including the expenses of personnel who participate in any activity undertaken on the basis of it.

For the training of personnel, the transfer of equipment and the construction of installations related to the implementation of this Agreement, the Parties may agree on a special modality of financing, taking into account the objectives defined in this Agreement.

ARTICLE 15

The Parties shall facilitate the entry of equipment and personnel related to this Agreement, subject to the laws and regulations of the receiving country.

In order to undertake the monitoring of polluting activities in the border area, the Parties shall undertake consultations relating to the measurement and analysis of polluting elements in the border area.

ARTICLE 16

All technical information obtained through the implementation of this Agreement will be available to both Parties. Such information may be made available to third parties by the mutual agreement of the Parties to this Agreement.

ARTICLE 17

Nothing in this Agreement shall be construed to prejudice other existing or future agreements concluded between the two Parties, or affect the rights and obligations of the Parties under international agreements to which they are a party.

ARTICLE 18

Activities under this Agreement shall be subject to the availability of funds and other resources to each Party and to the applicable laws and regulations in each country.

ARTICLE 19

The present Agreement shall enter into force upon an exchange of Notes stating that each Party has completed its necessary internal procedures.

ARTICLE 20

The present Agreement shall remain in force indefinitely unless one of the Parties notifies the other, through diplomatic channels, of its desire to denounce it, in which case the Agreement will terminate six months after the date of such written notification. Unless otherwise agreed, such termination shall not affect the validity of any arrange-ments made under this Agreement.

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ARTICLE 21

This Agreement may be amended by the agreement of the Parties.

ARTICLE 22

The adoption of the annexes and of the specific arrangements provided for in Article 3, and the amendments thereto, will be effected by an exchange of Notes.[1]

ARTICLE 23

This Agreement supersedes the exchange of Notes, concluded on June 19, 1978 with the attached Memorandum of Understanding between the Environmental Protection Agency of the United States and the Subsecretariat for Environmental Improvement of Mexico for Coopera-tion on Environmental Programs and Transboundary Problems.[2]

DONE in duplicate, in the city of La Paz, Baja California, Mexi-co, on the 14th of August of 1983, in the English and Spanish lan-guages, both texts being equally authentic.

1 Annexes subsequently agreed to by the parties are on file in the Office of Treaty Affairs, Department of State.
2 TIAS 9264; 30 UST 1574.
3 Ronald Reagan.
4 George P. Shultz.
5 De la Madrid.
6 B. Sepulveda.

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ANNEX I TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ON COOPERATION FOR THE PROTECTION AND IMPROVEMENT OF THE ENVIRONMENT IN THE BORDER AREA

AGREEMENT OF COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES FOR SOLUTION OF THE BORDER SANITATION PROBLEM AT SAN DIEGO, CALIFORNIA - TIJUANA, BAJA CALIFORNIA

[annex not reproduced here]

ANNEX II TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ON COOPERATION FOR THE PROTECTION AND IMPROVEMENT OF THE ENVIRONMENT IN THE BORDER AREA

AGREEMENT OF COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES REGARDING POLLUTION OF THE ENVIRONMENT ALONG THE INLAND INTERNATIONAL BOUNDARY BY DISCHARGES OF HAZARDOUS SUBSTANCES

The Government of the United States Of America and the Government of the United Mexican States;

In recognition of Article 3 of the Agreement between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area;

Aware of the importance of preserving the environment along the joint inland international boundary;

Recognizing that pollution by hazardous substances causes or may cause damage to the environment along the joint inland boundary and may constitute a threat to the public health and welfare;

Have agreed as follows:

ARTICLE I
For the purpose of this Agreement:

(a) "A polluting incident" means a discharge or the threat of a discharge of any hazardous substance on one side of the inland international boundary of a magnitude which causes, or threatens to cause, imminent and substantial adverse effects on the public health, welfare, or the environment.

(b) "Environment" means the atmosphere, land, and surface and ground water, including the natural resources therein, such as fish, wildlife, forests, crop and rangeland, rivers, streams, aquifers and all other components of the ecosystem.

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(c) "Hazardous substances" means elements and compounds which if discharged present or may present an imminent and substantial danger to the public health, welfare or the environment according to the laws of each party and the determination of the Joint Response Team (JRT.). The JRT and its responsibilities are defined in Appendix II.

(d) "Border area along the joint inland international boundary" means the non-maritime area which is the area situated 100 km on either side of the inland international boundary.

ARTICLE II

The Parties agree to establish the "United States-Mexico Joint Contingency Plan" (hereafter, "The Plan") regarding polluting incidents of the border area along the joint inland international boundary of discharges of hazardous substances. The object of the Plan is to provide cooperative measures to deal effectively with polluting incidents.

ARTICLE III

The Parties, consistent with their means, commit themselves to the development of response plans designed to permit detection of the existence or the imminent possibility of the occurrence of polluting incidents, within their respective areas and to provide adequate response measures to eliminate to the extent possible the threat posed by such incidents and to minimize any adverse effects on the environment and the public health and welfare.

ARTICLE IV

The coordinating authority for the Plan for the United States of America is the United States Environmental Protection Agency. The coordinating authority for the Plan for the United Mexican States is the Secretaría de Desarrollo Urbano y Ecología.

ARTICLE V

The Parties will consult and exchange up-to-date information under the Plan.

ARTICLE VI

A joint response with respect to a polluting incident will be implemented upon agreement of the Parties in accordance with the plan. When a joint response is implemented, the measures necessary to respond to the polluting incident will also be determined by agreement of the Parties in accordance with the Plan.

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ARTICLE VII

Nothing in this Agreement shall be construed to prejudice other existing or future Agreements concluded between the two Parties, or affect the rights and obligations of the Parties under international agreements to which they are a party.

Nothing in this Agreement shall prejudice or otherwise affect the functions entrusted to the International Boundary and Water Commission, in accordance with the Water Treaty of 1944.

ARTICLE VIII

The Parties may, through an exchange of notes, add technical Appendices to this Agreement, or amend existing Appendices. The Appendices to this Agreement and any additional agreed Appendices shall form an integral part of the Agreement.

ARTICLE IX

Pursuant to this Agreement, the Parties may conclude specific arrangements for the solution of common problems in the border area.

ARTICLE X

The National Coordinators shall be responsible for the development of an implementation schedule and putting the Plan into effect.

ARTICLE XI

(1) This Agreement shall enter into force upon the date of an exchange of notes informing each Party that the other Party has completed its necessary internal procedures.

(2) The present Agreement shall remain in force indefinitely unless one of the Parties notifies the other, through diplomatic channels, of its desire to denounce it, in which case the Agreement will terminate six months after the date of such written notification. Unless otherwise agreed, such termination shall not affect the validity of any arrangements made under this Agreement.

Done at San Diego on this 18 day of July, 1985 in duplicate, in the English and Spanish languages, both texts being equally authentic.

Name
For the United States of America:
Name
For the United Mexican
States:

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JOINT CONTINGENCY PLAN
APPENDIX I

1. On-scene Coordinator

1.1. An soon as the Agreement enters into force each Party will designate, without waiting for a polluting incident to occur, officials responsible for exercising in its territory the functions and responsibilities described in section 1.2. Said officials will have the title of "On-Scene Coordinator (OSC). Each Party will also designate officials who will have advisory and liaison functions. Said officials will have the title of "Advisory and Liaison Coordinator" (ALC). Each Party will divide its territory into areas and will designate OSCs and ALCs for each of those areas.

1.2 The functions and responsibilities of the On-Scene Coordinator will be:

(a) To coordinate and direct measures related to the detection of polluting incidents;

(b) To coordinate and direct response measures;

(c) To authorize the use of dispersants and other chemical products in accordance with their respective laws and national policy, provided that such use:

(I) prevents or substantially reduces the risk to human life and health or the risk of fire;
(ii) prevents or reduces a threat to the environment; or
(iii) appears to be the most effective method to reduce the overall adverse effects of the polluting incident.

(d) To determine the facts concerning the polluting incident, including the nature, quantity and location of the pollutant the direction and probable time of travel of the pollutant; the available resources and those required and the potential impacts on public health an welfare and on the environment;

(e) To determine priorities and to decide when to initiate a joint response in accordance with this Agreement;

(f) To notify immediately the two Chairmen of the Joint Response Team (JRT) (see Appendix II) about every polluting incident which has occurred, or which is in imminent danger of occurring, which in the judgement of the OSC may require the initiation of a joint response.

(g) To recommend to the Chairman of the JRT of his country that he formally propose to the Chairman of the JRT of the other Party the initiation of the joint response envisaged in Article VI, for a specific pollution incident;

(h) To make detailed situation reports to the Joint Response Team (JRT) described in

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Appendix II about all aspects of the polluting incident and of the response operation.

(I) To keep a journal of the events occurring during the polluting incident which will be available to the JRT.

(j) To recommend to the Co-Chairmen of the JRT, after consultation with the ALC, the termination of a joint response action;

(k) To prepare and submit to the JRT, with the advice of the ALC, a final report on each polluting incident, which includes any recommendation for the handling of future incidents;

1.3 If response action is required in the territories of both Parties, the OSC's of both Parties will coordinate the measures to be adopted through the collaboration of both ALC's.

1.4 In accordance with national legislation and as soon as the Agreement enters into force, special customs, immigration and other necessary authorization mechanisms will be sought by each Party.

APPENDIX II

2. Joint Response Team (JRT)

2.1. As soon as the Agreement enters into force, the coordinating authorities of each party will designate, without waiting for a polluting incident to occur, its members on the JRT and will communicate its designations to the other Party.

2.2 The United States coordinating authorities will designate the U.S. Co-Chairman of the JRT. The Mexican coordinating authorities will designate the Mexican Co-Chairman of the JRT.

2.3 When the JRT meets in the United States of America, the U.S. Co-Chairman will preside. When the JRT meets in Mexico, the Mexican Co-Chairman will preside.

2.4 As soon as the U.S. and Mexican sections of the JRT are designated, the Co-Chairmen jointly will call a first meeting to begin developing procedures for a carrying out of a joint response to a polluting incident. The JRT will meet as many times, both in periodic planning meetings and in emergency meetings, as may be decided by the Co-Chairmen.

2.5 Upon being notified of a polluting incident the Co-Chairman of the JRT will immediately acknowledge receipt of the notification. They will consult and may decide to formally propose to their respective National Coordinators the initiation of the joint response. If the National Coordinators decide to initiate a joint response, the U.S. National Coordinator shall immediately notify its decision to the United States

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Department of state and the Mexican National Coordinator shall immediately notify its decision to the Mexican Secretariat of Foreign Relations. Each Party shall promptly notify the other through diplomatic channels whether it agrees to initiate a Joint response.

2.6 When the two Parties have agreed to initiate a joint response to a polluting incident, the functions and responsibilities of the JRT will be the following:

(a) Based on the OSC's initial notification, advise the OSC under Appendix I, paragraph 1.2, about measures needed to respond to the incident and what resources under Appendix I, are available to carry out those measures.

(b) To evaluate and make recommendations concerning the measures taken by the OSC.

(c) To provide continuing advice to the OSC.

(d) To consider the journal and reports of the OSC and recommend to the National Coordinators improvements needed in the Plan.

(e) Based on the reports of the OSC, to assess the possible impacts of though polluting incident and to recommend measures necessary to mitigate the adverse effects of such incident.

(f) To take measures to coordinate and use to the maximum the resources which agencies or persons of the United States of America, or of the United Mexican States, or of a third party can contribute.

2.7. The JRT wilt make decisions by the agreement of the Co-Chairmen.

2.8. Upon the recommendation of the OSC and the ALC to terminate the joint response, the Co-Chairmen shalt consult with the National Coordinators and the joint response may be terminated by mutual agreement. The U.S. National Coordinator shall immediately notify the decision to the U.S. Department of State and the Mexican National Coordinator to the Mexican Secretariat of Foreign Relations.

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ANNEX III TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ON COOPERATION FOR THE PROTECTION AND IMPROVEMENT OF THE ENVIRONMENT IN THE BORDER AREA

AGREEMENT OF COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES REGARDING THE TRANSBOUNDARY SHIPMENTS OF HAZARDOUS WASTES AND HAZARDOUS SUBSTANCES

PREAMBLE

The Government of the United States of America ("the United States'), and the Government of the United Mexican States ("Mexico") ("the Parties"),

Recognizing that health and environmental damage may result from improper activities associated with hazardous waste;

Realizing the potential risks to public health, property and the environment associated with hazardous substances;

Seeking to ensure that activities associated with the transboundary shipment of hazardous waste are conducted so as to reduce or prevent the risks to public health, property and environmental quality, by effectively cooperating in regard to their export and import;

Seeking also to safeguard the quality of public health, property and environment from unreasonable risks by effectively regulating the export and import of hazardous substances;

Considering that transboundary shipments of hazardous waste and hazardous substances between the Parties, if carried out illegally and thus without the supervision and control of the competent authorities, or if improperly managed could endanger the public health, property and environment, particularly in the United States/Mexico border area;

Recognizing that the close trading relationship and the long common border between the Parties make it necessary to cooperate regarding transboundary shipments of hazardous waste and hazardous substances without unreasonably affecting the trade of goods and services;

Reaffirming Principle 21 of the 1972 Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm, which provides that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

Recognizing that Article 3 of the Agreement between the Parties on Cooperation for the Protection and Improvement of the Environment in the Border Area of 1983 provides that the Parties may conclude specific arrangements for the solution of common problems in the border area as annexes to that Agreement;

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Have agreed as follows:

ARTICLE I
Definitions

1. "Designated Authority" means, in the case of the United States, the Environmental Protection Agency and, in the case of Mexico, the Secretariat of Urban Development and Ecology through the Subsecretariat of Ecology.

2. "Hazardous waste" means any waste, as designated or defined by the applicable designated authority pursuant to national policies, laws or regulations, which if improperly dealt with in activities associated with them, may result in health or environmental damage.

3. "Hazardous substance" means any substance, as designated or defined by the applicable national policies, laws or regulations, including pesticides or chemicals, which when improperly dealt with in activities associated with them, may produce harmful effects to public health, property or the environment, and is banned or severely restricted by the applicable designated authority.

4. "Activities" associated with hazardous waste or hazardous substances means, as applicable, their handling, transportation, treatment, recycling, storage, application, distribution, reuse or other utilization.

5. "Country of export" means the Party from which the transboundary movement of hazardous waste or hazardous substances is to be initiated.

6. "Country of Import" means the Party to which the hazardous waste or hazardous substances are to be sent. This does not include "transit", as meaning transport of hazardous waste or hazardous substances through the territory of a Party without being imported through its Customs under applicable laws and regulations.

7. "Consignee" means the facility in the country of import which will ultimately receive the hazardous waste or hazardous substances.

8. "Exporter" means the physical or juridical person, whether public or private, acting on his behalf or as a contractor or subcontractor expressly or implicitly defined as exporter under the national laws and regulations of the country of export which specifically govern hazardous waste or hazardous substances.

9. "Banned or severely restricted" means final regulatory action, as designated or defined by the applicable designated authority, pursuant to national policies, laws or regulations.

a) Prohibiting, cancelling or suspending all or virtually all registered uses of a pesticide for human health or environmental reasons.

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b) Prohibiting or severely limiting the manufacture, processing, distribution or use of a chemical for human health or environmental reasons.

ARTICLE II
General Obligations

1. Transboundary shipments of hazardous waste and hazardous substances across the common border of the Parties shall be governed by the terms of this Annex and their domestic laws and regulations.

2. Each Party shall ensure, to the extent practicable, that its domestic laws and regulations are enforced with respect to transboundary shipments of hazardous waste and hazardous substances, and other substances as the Parties may mutually agree through appendices to this Annex, that pose dangers to public health, property and the environment.

3. Each Party shall cooperate in monitoring and spot-checking transboundary shipments across the common border of hazardous waste and hazardous substances to ensure, to the extent practicable, that such shipments conform to the requirements of this Annex and its national laws and regulations. To this effect, a program of cooperation in this area should be concluded through an Appendix to this Annex, including the exchange of information resulting from the monitoring and spot-checking of transboundary shipments which may be useful to the other Party.

HAZARDOUS WASTE

ARTICLE III
Notification to the Importing Country

1. The designated authority of the country of export shall notify the designated authority of the country of import of transboundary shipments of hazardous waste for which the consent of the country of import is required under the laws or regulations of the country of export, with a copy of the notification simultaneously sent through diplomatic channels.

2. The notification referred to in paragraph 1 of this Article shall be given at least 45 days in advance of the planned date of export and may cover an individual shipment or a series of shipments extending over a twelve-month or lesser period and shall contain the following information for each shipment:

a) The exporter's name, address, telephone number, identification number and other relevant data required in the country of export.

b) By consignee, for each hazardous waste type:

I) A description of the hazardous waste to be exported, as identified by the waste identification number(s) and the shipping description(s) required in the country of export.

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ii) The estimated frequency or rate at which such waste is to be exported and the period time over which such waste is to be exported.

iii) The estimated total quantity of the hazardous waste in units as specified by the manifest or documents required in the country of export.

iv) The point of entry into the country of import.

v) The means of transportation, including the mode of transportation and the type of container involved.

vi) A description of the treatment or storage to which the waste will be subjected in the country of import.

vii) The name and site address of the consignee.

3. In order to facilitate compliance with the requirements of the importing country for the exporter to provide information and documents additional to those described in paragraph 2 of this Article, the designated authority of the exporting country will cooperate by making such requirements for information and documents known to the exporter. To that end, the country of import may list such additional required information and documents in appendices to this Annex.

4. The designated authority of the country of import shall have 45 days from the date of acknowledgement of receipt of the notification provided in paragraph 1 of this Article within which to respond to such notification, indicating its consent, with or without conditions, or its objection to the export.

5. The country of import shall have the right to amend the terms of the proposed shipment contained in the notification in order to give its consent.

6. The consent of the country of import provided pursuant to paragraphs 4 and 5 of this Article, may be withdrawn or modified at any time, pursuant to the national policies, laws or regulations of the country of import.

7. Whenever the designated authority of a country of export requires notification of or is otherwise aware of a transboundary shipment that will be transported through the territory of the other Party, it shall, in accordance with its national laws and regulations, notify that Party.

ARTICLE IV
Readmission of Exports

The country of export shall readmit any shipment of hazardous waste that may be returned for any reason by the country of import.

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HAZARDOUS SUBSTANCES

ARTICLE V
Notification of Regulatory Actions

1. When a Party has banned or severely restricted a pesticide or chemical, its designated authority shall notify the designated authority of the other Party that such action has been taken either directly or through an appropriate intergovernmental organization.

2. The notice referred to in paragraph 1 of this Article shall contain the following information, if available:

(a) the name of the pesticide or chemical that is the object of the regulatory action;

(b) a concise summary of the regulatory action taken, including the timetable for any further actions that are planned. If the regulatory action bans or restricts certain uses but allows other uses, such information should be included;

(c) a concise summary of the reason for the regulatory action, including an indication of the potential risks to human health or the environment that are the grounds for the action;

(d) information concerning registered pesticides or substitute chemicals that could be used in lieu of the banned or severely restricted pesticide or chemical;

(e) the name and address of the contact point to which a request for further information should be addressed.

ARTICLE VI
Notification of Exports

1. If the country of export becomes aware that an export of a hazardous substance to the country of import is occurring, the designated authority of the country of export shall notify the designated authority of the country of import.

2. The purpose of such notice shall be to remind the country of import of the notification regarding regulatory action provided pursuant to Article 5 and to alert it to the fact that the export is occurring.

3. The notice referred to in paragraph 1 of this ArticIe shall contain the following information, if available:

(a) the name of the exported hazardous substance;

(b) for banned or severely restricted chemicals, approximate date(s) of the export;

(c) a copy of, or reference to, the information provided at the time of the notification of the

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regulatory action;

(d) name and address of the contact point for further information.

ARTICLE VII
Timing of the Notifications

1. Notification of regulatory actions, required pursuant to Article 5, shall be transmitted as soon as practicable after the regulatory action has been taken, and in any event not later than 90 days following the taking of such action.

2. When a Party has banned or severely restricted chemicals or pesticides prior to the entry into force of this Annex, its designated authority shall provide an inventory of such prior regulatory actions to the designated authority of the other Party.

3. Notification of exports required pursuant to Article 6, shall be provided at the time the first export of a hazardous substance is occurring to the Country of import following the regulatory action and should recur at the time of the first export of the hazardous substance each subsequent year to that country.

4. When the hazardous substance being exported has been banned or severely restricted prior to the entry into force of this Annex, the first export following the regulatory action shall be considered to be the first export following the provision of the inventory referred to in paragraph 2 of this Article.

ARTICLE VIII
Compliance with Requirements in the Importing Country

In order to facilitate compliance with the requirements in the importing country for the import of hazardous substances, the designated authority of the country of export will cooperate by making such requirements, including expected information and documents, known to the exporter. To that end, the country of import may list such requirements, information and documents in appendices to this Annex.

ARTICLE IX
Readmission of Exports

The country of export shall readmit any shipment of hazardous substances that was not lawfully imported into the country of import.

GENERAL PROVISIONS

ARTICLE X
Additional Arrangements

1. The Parties shall consider and, as appropriate, establish additional arrangements to mitigate or

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avoid adverse effects on health, property and the environment from improper activities associated with hazardous waste and hazardous substances. Such arrangements may include the sharing of research data as well as the definition of criteria regarding imminent and substantial endangerment and emergency responses, and may be included in appendices to this Annex.

2. The Parties shall consult regarding experience with transboundary shipments of hazardous wastes and hazardous substances and, as problems are identified in the special circumstances of the United States-Mexico border relationship may include through appendices to this Annex, additional cooperation and mutual obligations aimed at achieving when necessary a more stringent control of transboundary shipments, such as provisions to bring uniformity in those relating to both hazardous wastes and hazardous substances regarding compulsory notification to and consent by the importing country for each transboundary shipment, as may become permitted by new national laws and regulations adopted by the Parties.

ARTICLE XI
Hazardous Waste Generated From Raw materials Admitted In-Bond

Hazardous waste generated in the processes of economic production, manufacturing, processing or repair, for which raw materials were utilized and temporarily admitted, shall continue to be readmitted by the country of origin of the raw materials in accordance with applicable national policies, laws and regulations.

ARTICLE XII
Information Exchange and Assistance

1. The Parties shall, to the extent practicable, provide to each other, mutual assistance designed to increase the capability of each Party to enforce its laws applicable to transboundary shipments of hazardous waste or hazardous substances and to take appropriate action with respect to violators of its laws.

(a) Such assistance may generally include:

(I) the exchange of information;

(ii) the provision of documents, records and reports;

(iii) the facilitating of on-site visits to treatment, storage, or disposal facilities;

(iv) assistance provided or required pursuant to any international agreements or treaties in force with respect to the Parties, or pursuant to any arrangement or practice that might otherwise be applicable;

(v) emergency notification of hazardous situations; and

(vi) other forms of assistance mutually agreed upon by the Parties.

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(b) Save in exceptional circumstances, requests for assistance made pursuant to this Article shall be submitted in writing and translated into the language of the requested State.

(c) The requested State shall provide the requesting State with copies of publicly available records of government departments and agencies in the requested State.

(d) The requested State may provide any record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own administrative, law enforcement, or judicial authorities.

2. The Parties may establish in an appendix to this Annex a cooperative program relating to the exchange of scientific, technical, and other information for purposes of the development of their own respective regulatory mechanisms controlling hazardous waste and hazardous substances

ARTICLE XIII
Protection of Confidential Information

The Parties shall adopt procedures to protect the confidentiality of proprietary or sensitive information conveyed pursuant to this Annex, when such procedures do not already exist.

ARTICLE XIV
Damages

1. The country of import may require, as a condition of entry, that any transboundary shipment of hazardous waste or hazardous substances be covered by insurance, bond or other appropriate and effective guarantee.

2. Whenever a transboundary shipment of hazardous waste or hazardous substances is carried out in violation of this Annex, of the national laws and regulations of the Parties, or of the conditions to which the authorization for import was subject, or whenever the hazardous waste or hazardous substances produce damages to public health, property or the environment in the country of import, the competent authorities of the country of export shall take all practicable measures and initiate and carry out all pertinent legal actions that they are legally competent to undertake, so that when applicable in accordance with its national laws and regulations the physical or juridical persons involved:

a) return the hazardous waste or hazardous substances to the country of export;

b) return in as much as practicable the status quo ante of the affected ecosystem;

c) repair, through compensation, the damages caused to persons, property or the environment.

The country of import shall also take, for the same purposes, all practicable measures and initiate and carry out all pertinent legal actions that its authorities are legally competent to undertake.

The country of export shall report to the country of import all measures and legal actions

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undertaken in the framework of this paragraph, and shall cooperate with the country of import, on the basis of this Annex or of other bilateral treaties and agreements in force between the Parties, and to the extent permitted by its national laws and regulations, to seek in its courts the satisfaction of those matters covered in subparagraphs a) to c) of this paragraph.

3. The provisions of this Annex shall not be deemed to abridge or prejudice the Parties' national laws concerning transboundary shipments, or liability or compensation for damages resulting from activities associated with hazardous waste and hazardous substances.

ARTICLE XV
Effect On Other Instruments

1. Nothing in this Annex shall be construed to prejudice other existing or future agreements concluded between the Parties, or affect the rights or obligations of the Parties under international agreements to which they are Party.

2. The provisions of this Annex shall, in particular not be deemed to prejudice or otherwise affect the functions entrusted to the International Boundary and Water Commission, in accordance with the 1944 Treaty on the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande.

ARTICLE XVI
Appendices

Any appendices to this Annex may be added through an exchange of diplomatic notes and shall form an integral part of this Annex.

ARTICLE XVII
Amendment

This Annex, and any appendices added hereto, may be amended by mutual agreement of the Parties through an exchange of diplomatic notes.

ARTICLE XVIII
Review

The Parties shall meet at least every two years from the date of entry into force of this Annex, at a time and place to be mutually agreed upon, in order to review the effectiveness of its implementation and to agree on whatever individual and joint measures are necessary to improve such effectiveness.

ARTICLE XIX
Entry into Force

This Annex shall enter into force upon an exchange of diplomatic notes between the Parties stating that each Party has completed its necessary internal procedures.

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Article XX
Termination

This Annex shall remain in force indefinitely, unless one of the Parties notifies the other in writing through diplomatic channels of its desire to terminate it, in which case the Annex shall terminate six months after the date of such written notification. Unless otherwise agreed, such termination shall not affect the validity of any agreements made under this Annex.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Annex.

DONE at Washington, in duplicate, this twelfth day of November, 1986 in the English and Spanish languages, both texts being equally authentic.

Names
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Names
FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

ANNEX IV TO THE AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND THE UNITED MEXICAN STATES
ON COOPERATION FOR THE PROTECTION AND IMPROVEMENT
OF THE ENVIRONMENT IN THE BORDER AREA

AGREEMENT OF COOPERATION BETWEEN
THE UNITED STATES OF AMERICA
AND THE UNITED MEXICAN STATES
REGARDING TRANSBOUNDARY AIR POLLUTION CAUSED
BY COPPER SMELTERS ALONG THEIR COMMON BORDER

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ANNEX V TO THE AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE UNITED MEXICAN STATES
ON COOPERATION FOR THE PROTECTION AND IMPROVEMENT
OF THE ENVIRONMENT IN THE BORDER AREA

AGREEMENT OF COOPERATION
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA

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AND
THE GOVERNMENT OF THE UNITED MEXICAN STATES
REGARDING INTERNATIONAL TRANSPORT OF URBAN AIR POLLUTION

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WASTE OECD: A COMPREHENSIVE WASTE MANAGEMENT POLICY

(Recommendation adopted on 28th September, 1976)
C(76)155 (Final)

OECD: DECISION OF THE COUNCIL CONCERNING THE CONTROL OF TRANSFRONTIER MOVEMENTS OF WASTES DESTINED FOR RECOVERY OPERATIONS*

(adopted by the Council at its 778th Session on 30th March 1992)
* Japan abstained

DECISION-RECOMMENDATION OF THE COUNCIL on Further Measures for the Protection of the Environment by Control of Polychlorinated Biphenyls

(Adopted by the Council at its 656th Session on 13th February 1987)

OECD: DECISION-RECOMMENDATION OF THE COUNCIL on the Reduction of Transfrontier Movements of Wastes

(adopted by the Council at its 750th Session on 31st January 1991)

OECD: PROTECTION OF THE ENVIRONMENT BY CONTROL OF POLYCHLORINATED BIPHENYLS

(Decision adopted on 13th February, 1973)
C(73)1(Final)

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WASTE OECD: A COMPREHENSIVE WASTE MANAGEMENT POLICY

(Recommendation adopted on 28th September, 1976)
C(76)155 (Final)
THE COUNCIL,
Having regard to Article 5b) of the Convention on the Organization for Economic Co-operation and Development of 14th December, 1960;
Having regard to the Recommendation of the Council of 26th May, 1972 on Guiding Principles concerning International Economic Aspects of Environmental Policies (C(72)128);
Having regard to the Recommendation of the Council of 14th November, 1974 on the Implementation of the Polluter-Pays Principle (C(74)223);
Considering that the quantities of waste to be disposed of have increased substantially in many areas;
Considering that the incorporation in waste of a wide range of hazardous materials makes waste disposal more and more difficult and expensive;
Considering that waste recycling and prevention can make a major contribution to resource saving policies and waste disposal policies;
Considering that measures taken to protect one particular sector of the environment (water, air, sea, soil) sometimes result in transferring pollution problems to another sector;
Having regard to the Report by the Environment Committee on Waste Management in OECD Member countries;
On the proposal of the Environment Committee:

I. Recommends that Member countries develop and implement, where appropriate, comprehensive waste management policies which fully satisfy the objectives of environmental protection and rational use of energy and resources while taking account of economic constraints and differences in local conditions, and that they apply in so doing the principles concerning a comprehensive waste management policy contained in this Recommendation and its Annex, which is an integral part of this Recommendation.

II. Recommends that these comprehensive waste management policies be developed and implemented in such a way that they aim at the protection of the entire environment and not of one of its constituent sectors, by taking care that measures to protect one sector do not result in transferring environmental problems to another sector.

III. Recommends that Member countries collaborate and work closely together to ensure that specific measures taken in implementation of such comprehensive waste management policies do not have a detrimental effect on other countries and in particular do not lead to distortions in international trade.

IV. Instructs the Environment Committee to pursue, taking account of the work undertaken by other OECD bodies and other international organisations, a programme of work designed to elaborate further these principles concerning a comprehensive waste management policy, make them more specific as appropriate, and facilitate their practical implementation, by promoting co-operation among Member countries.

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Annex

PRINCIPLES CONCERNING A COMPREHENSIVE WASTE MANAGEMENT POLICY

1. Definition

For the purposes of this Recommendation a "comprehensive waste management policy" means a coherent system of measures concerning the design, manufacture and use of products as well as the reclamation and disposal of waste, and aiming at the most efficient and economic reduction of the nuisances and costs generated by waste.

2. Protection of the Environment

Member countries should ensure that the necessity to protect human and natural environment is duly taken into account at every stage of the production-consumption-disposal chain, including the transformation operations designed for reclamation or recycling, especially as concerns toxic and hazardous waste.

3. Reduction at Source

Member countries should examine and, where appropriate, encourage measures aiming at avoiding or reducing the generation of waste, when beneficial on a social cost basis. These measures should concern waste generated at both the production level and the consumption level. Such measures might, in particular, concern:

- the design and marketing of products including the rational use of packaging and, where appropriate, the extension of product life;
- changes in manufacturing processes;
- the re-use of products, packaging in particular, (where appropriate through standardization);
- the use of alternative products;
- the information to, and education of, the public on the waste generating effects of different ways of consumption.

4. Reclamation and Recycling

Member countries should develop and implement appropriate measures with a view to promoting recycling in all cases where waste reclamation and upgrading is beneficial on a social cost basis taking account of the possibility of using waste for land reclamation or fertilization, the possibility of using waste as a source of raw materials or energy, and the possibility of reclaiming part of the energy value incorporated in the products. The advisability of implementing such measures should also be assessed in view of possible pollution transfer to which they may give rise, and the associated energy costs.

5. Policy Instruments and Cost Allocation

It is noted that the application of the Polluter-Pays Principle should encourage waste prevention and recycling by allowing market forces to work on a more rational basis. However, Member countries might, where appropriate, use specific policy instruments to stimulate the implementation of measures *timing* at waste prevention and recycling as defined under points 3 and 4 above, provided these instruments are in conformity with the Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies (C(72)128) and the subsequent Recommendation of the Council on the Implementation of the Polluter-Pays Principle.

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6. Access to Information
Member countries should develop and implement appropriate measures so that competent authorities can receive all necessary information to ensure that waste disposal or reclamation is realized in the most economic and judicious way with regard to environmental protection. Such measures should also apply to approved disposal firms, as concerns waste for which they take disposal responsibility on behalf of third parties. In application of such measures the necessary information might also concern the products manufactured or imported, to the extent to which these products generate waste which can be harmful to the environment.

7. Administrative Arrangements
In application of the principles defined hereabove Member countries should, where jurisdiction permits, adopt administrative arrangements designed to organise waste management on as rational a basis as possible. Such arrangements could concern, in particular:
- the inventory of types and quantities of wastes to be disposed of;
- the organisation of waste collection in order to facilitate reclamation (for example by pre-sorting, special collection schemes, 'waste markets");
- the setting up of disposal centres whose operations cover a sufficiently large geographical area to ensure that these operations are carried out under economically acceptable conditions;
- the promotion of research and development on disposal methods and low waste technology, including as appropriate financial aid to research and demonstration plants;
- the encouragement to the setting up of markets for recycled products;
- the organisation of information systems and campaigns, for both the industrialist and the public, to reduce wastage, encourage waste reclamation, and promote the use of products made of recovered materials.

Such arrangements might, inter alia, result in certain waste management responsibilities being entrusted to bodies whose competence extends beyond traditional administrative limits; they might also include the possibility of solving waste management problems by international co-operation.

OECD: DECISION OF THE COUNCIL CONCERNING THE CONTROL OF TRANSFRONTIER MOVEMENTS OF WASTES DESTINED FOR RECOVERY OPERATIONS*

(adopted by the Council at its 778th Session on 30th March 1992)
* Japan abstained

THE COUNCIL,

Having regard to Article 5a) of the Convention on the Organization for Economic Co-operation and Development of 14 December 1960;

Having regard to the Decision and Recommendation of the Council of 1 February 1984 on Transfrontier Movements of Hazardous Waste [C(83)180(Final)] which requires Member countries to control transfrontier movements of hazardous wastes;

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Having regard to the Decision of the Council of 27 May 1988 on Transfrontier Movements of Hazardous Wastes [C(88)90(Final)] which defines "wastes", identifies those wastes referred to as hazardous wastes in relevant Council Acts, and sets out a classification system for wastes subject to transfrontier movements;
Having regard to the Decision-Recommendation of the Council of 31 January 1991 on the Reduction of Transfrontier Movements of Wastes [C(90)178/FINAL] which, inter alia, calls for delineation of such controls as may be appropriate for the transfrontier movement of wastes destined for recovery operations, clarification of the definition of such wastes and characterization of those wastes which may require differing levels of control;
Having regard to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted on 22 March 1989, and noting that most Member countries and the European Economic Community have become signatories to this Convention;
Desiring to conclude an arrangement or agreement under Article 11 of that Convention;
Noting that recovery of valuable raw materials from wastes has been an integral part of the international economic system and that well established international markets exist for the collection and processing of such wastes;
Noting further that many industrial sectors are already implementing waste recovery techniques in an economically and environmentally satisfactory manner, thus protecting limited virgin sources of raw materials, and convinced that further efforts in this direction are necessary and should be encouraged;
Recognizing that efficient and environmentally sound management of wastes may justify some transfrontier movements of such wastes in order to make use of adequate recovery facilities in other countries;
Convinced however that, pursuant to the obligations set forth in the relevant Council Acts and compatible with the provisions of the Basel Convention, an appropriate system should be implemented to control transfrontier movements of those wastes destined for recovery operations;
Convinced that all persons involved in any contracts or arrangements for transfrontier movements of wastes destined for recovery operations must have the appropriate legal status to ensure environmentally sound management of these wastes; and
Recognizing that work is now in progress within the United Nations Environment Programme concerning the environmentally sound management of hazardous wastes.
On the proposal of the Environment Committee:

I. Decides that Member countries shall control transfrontier movements of wastes destined for recovery operations within the OECD area as specified in Annex 1 which is an integral part of this Decision.

II. Instructs the Environment Committee in co-operation with other relevant OECD bodies, in particular the Trade Committee, to review periodically the control system and the lists of wastes set out in Annex 1, taking into account the criteria listed in Annex 2, and to make any proposals it deems necessary for revisions of Annex 1.

III. Instructs the Environment Committee in co-operation with other relevant OECD bodies to review annually action taken by Member countries in pursuance of this Decision.

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IV. Requests the Secretary General to transmit this Decision to the Executive Director of the United Nations Environment Programme and the Interim Secretariat of the Basel Convention.

Annex 1
I. DEFINITIONS
For the purposes of this Decision:
"WASTES" are as defined in OECD Council Decision C(88)90(Final) of 27 May 1988.
"RECOVERY OPERATIONS" mean activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses as listed in Table 2B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988.
"TRANSFRONTIER MOVEMENT" means any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.
"RECOVERY FACILITY" means an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.
"INTERNATIONAL WASTE IDENTIFICATION CODE" ("IWIC") is the classification system specified and described in OECD Council Decision C(88)90(Final) of 27 May 1988.
"EXPORTING COUNTRY" means any OECD Member country from which a transfrontier movement of wastes is planned or has commenced.
"IMPORTING COUNTRY" means any OECD Member country to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.
"COUNTRY OF TRANSIT" means any OECD Member country other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.
"CONCERNED COUNTRIES" means the exporting and importing OECD Member countries and any OECD Member countries of transit.
"OECD AREA" means all land or marine areas under the national jurisdiction of any OECD Member country.
"COMPETENT AUTHORITIES" means the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.
"PERSON" means any natural or legal person whether public or private.
"NOTIFIER" means the person under the jurisdiction of the exporting country who has, or will have at the time the planned transfrontier movement commences, possession or other forms of legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations.
"CONSIGNEE" means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.
"RECOGNISED TRADER" means a person who, with appropriate authorisation of concerned countries, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transfrontier movements of wastes destined for recovery operations.
"GENERATOR" means a person whose activities create wastes.

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II. GENERAL PROVISIONS

1. All of the following conditions shall apply to transfrontier movements of wastes subject to this Decision:
(a) The wastes shall be destined for recovery operations within a facility which, under applicable domestic law, is operating or is authorized to operate in the importing country;
(b) The transfrontier movements shall be carried out under terms of applicable international transport agreements. (Appendix I contains an illustrative list of such agreements);
(c) Any transit of wastes through a non-member country shall be subject to all applicable international and national laws and regulations.

2. A three-tiered system serves to delineate controls to be applied to such transfrontier movements:
(a) "Green" tier
Wastes destined for recovery operations included on the green list shall move among OECD Member countries toward recovery operations subject to all existing controls normally applied in commercial transactions. These provisions shall not apply to wastes on this list which are contaminated by other materials to an extent which increases the risks associated with the wastes sufficiently to render them appropriate for inclusion in the amber or red lists, when taking into account the criteria in Annex 2.
(b) "Amber" tier
Wastes destined for recovery operations included in the amber list shall be subject to the control system set out in Section IV of this Annex.
(c) "Red" tier
Wastes destined for recovery operations included in the red list shall be subject to the controls indicated in Section V of this Annex.

3. The criteria listed in Annex 2 must be taken into account for evaluating wastes for inclusion on the green, amber or red lists. In accord with provisions of this Decision, items may be added, altered or deleted periodically. Subject to Section III (2) no single criterion shall be used in isolation in assigning wastes to the lists.

4. While the lists are intended to be exclusive, a specific waste included in either the amber or red lists might not be legally defined or considered to be a hazardous waste in the exporting country because the competent authorities of that country are satisfied that it does not exhibit any of the hazardous characteristics listed in Table 5 of OECD Council Decision C(88)90(Final) as determined using national procedures*. If, however, this waste is legally defined or considered to be a hazardous waste by the importing country, then all of the requirements set forth in Section IV or Section V whichever is applicable - shall apply as follows: the importing country shall assume the obligations of the exporting country under these Sections, in particular as regards the notification requirements. A copy of the notification form must be transmitted to the competent authorities of the exporting country. Member countries operating under provisions of this paragraph shall promptly inform the OECD Secretariat of the waste(s) involved and applicable legislative requirements.

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5. Member countries who prescribe the use of certain tests and testing procedures in order to determine whether a waste exhibits one or more of the hazardous characteristics listed in Table 5 of OECD Council Decision C(88)90(Final) shall inform the OECD Secretariat concerning which tests and testing procedures are being so utilized; and, if possible, which wastes would or would not be legally defined or considered to be hazardous wastes based upon application of these national procedures.

6. This Decision does not prejudice the right of Member countries to control certain wastes which have been assigned to the green list as if those wastes had been assigned to one of the other lists, in conformity with domestic [Legislation and the rules of international law, in order to protect human health and the environment. In such cases, Member countries exercising this right shall immediately inform the OECD secretariat citing the specific waste(s) and applicable legislative requirements.

7. Wastes which are destined for recovery operations but have not yet been assigned to the green, amber or red lists shall be eligible for transfrontier movements pursuant to this Decision subject to the following conditions:
a) Member countries shall identify such wastes and bring them to the attention of the review mechanism established by operative paragraphs II and III of this Decision;
b) such wastes shall be promptly examined by the Review Mechanism in order to assign them to the appropriate list;
c) pending assignment to a list, such wastes shall be subject to the controls required for the transfrontier movements of wastes by the domestic legislation of the concerned countries in order that no country is obliged to enforce laws other than its own;
d) however, if such wastes exhibit a hazardous characteristic listed in Table 5 of OECD Council Decision C(88)90(Final) as determined using national procedures and any applicable international agreements, such wastes shall be subject to controls applicable to the red tier.

8. If two or more lots of wastes are mixed and/or otherwise subjected to physical or chemical transformation operations, the person who performs these operations shall be deemed to be the generator of the new wastes resulting from these operations.

III. GREEN TIER

1. Specific items included in the green list are shown under their corresponding main categories. Only the items specified under a main category and not the main categories themselves are part of the green list.

2. Wastes may not be included in the green list if they exhibit any of the hazardous characteristics listed in Table 5 of OECD Council Decision C(88)90(Final). The procedures in force in each Member country for determining whether a specific waste does or does not exhibit one or more of these characteristics are taken into account in placing or not placing a waste onto the green list.

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3. If green list wastes are re-exported, responsibilities of the exporting country under other relevant agreements or conventions shall transfer to the country initiating the re-export, and shall not apply to the original exporting country.

4. Green list of wastes
The green list of wastes is set out at Appendix 3.

IV. AMBER TIER

1. Conditions
Transfrontier movements of wastes under the amber control system may only occur under the terms of a valid written contract, or chain of contracts, or equivalent arrangements between facilities controlled by the same legal entity, starting with the notifier and terminating at the recovery facility. All persons involved in the contracts, or arrangements shall have appropriate legal status.
Such contracts shall include provisions for financial guarantees in accordance with applicable national or international law requirements. Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. These contracts shall also specify which party to the contract shall assume responsibility for alternate management of the wastes. These contracts shall also specify and, as the case may be, require from the consignee the notification required in 3(a) below (Re-export to a Third Country).
In such cases:
a) the person having actual possession or physical control over the wastes shall immediately inform the notifier and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country;
b) the person specified in the contract shall assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, their return. The competent authorities of the concerned countries shall require that the necessary actions are carried out within a limited period of time, and shall not oppose, hinder or prevent the return of those wastes to the exporting country.

2. Control System
Procedures are provided under the amber control system for the following two cases:
a) transactions which require consent for specific shipments to a recovery facility; and
b) transactions involving specific recovery facilities to which the competent authorities having jurisdiction over such recovery facilities have granted general pre-consent concerning the reception of certain wastes.
Case (1): Provisions concerning transactions requiring specific consent.
(a) Prior to commencement of the transfrontier movement, the notifier shall provide written notification to the competent authorities of the concerned countries; this notification shall include all of the information listed in Appendix 2.A. The competent authorities of the exporting country may, in accord with domestic laws, decide to transmit this notification instead of the notifier.
(b) The competent authorities of the importing country, upon receipt of the completed notification referred to in paragraph (a) above, shall transmit an acknowledgement to the notifier

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with a copy to the competent authorities of other concerned countries within three (3) working days of their receiving the notification.
(c) The competent authorities of the exporting and importing countries shall have thirty (30) days to object in accord with their respective domestic laws to the proposed transfrontier movement. The 30-day period shall commence upon issuance of the acknowledgement referred at paragraph (b) above.
(d) Countries of transit may, in accord with domestic laws, object to the transfrontier movement entering their territory.
(e) Any objection by any of the concerned countries must be provided in writing to the notifier and to the competent authorities of other concerned countries within the 30-day period.
(f) If no objection has been lodged, the transfrontier movement may commence after the 30-day period has passed. Tacit consent, however, expires within one (1) calendar year from that date.
(g) The competent authorities of the concerned countries may decide to provide written consent in a period less than the 30 days. The transfrontier movement may commence immediately after all necessary consents are received.
(h) Written consent or objection may be provided by post, or by telefax followed by post. Such consent shall expire within one (1) calendar year unless otherwise specified.
(i) Each transfrontier movement shall be accompanied by a tracking document which includes the information listed in Appendix 2.
(j) Within three (3) days of the receipt of the wastes by the recovery facility, the recovery facility shall provide a signed copy of the tracking document to the notifier and to the competent authorities of the concerned countries. The recovery facility shall retain the original of the tracking document for three (3) years.
(k) In cases where essentially similar wastes (e.g. those having essentially similar physical and chemical characteristics) are to be sent periodically to the same recovery facility by the same notifier, the competent authorities of the concerned countries may elect to accept one notification for these wastes for a period of up to one year:
i) Such acceptance may be renewed for further periods of up to one year each;
ii) Revocation of this acceptance may be accomplished by means of official notice to the notifier from any of the competent authorities of the concerned countries. Notice of revocation of acceptance for shipments previously granted under this provision shall be given to the competent authorities of all concerned countries by the competent authorities of the country that revokes such acceptance.
<u>Case (2)</u>: Provisions relating to pre-consent by competent authorities for shipments to specific recovery facilities.
(a) Competent authorities having jurisdiction over specific recovery facilities may decide not to raise objections concerning shipments of certain types of wastes to a specific recovery facility. Such decisions can be limited to a specified period of time; however, they may be revoked at any time.
(b) Competent authorities who elect this option shall inform the OECD Secretariat of the recovery facility name, address, technologies employed, waste types to which the pre-consent applies, and the period covered. Any revocations must also be notified to the OECD Secretariat.
(c) All proposed transfrontier movements to such facilities shall require notification; the notifier shall provide to the competent authorities of the concerned countries the information listed in Appendix 2.A. Such notification shall arrive prior to the time the shipment is dispatched.

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(d) The competent authorities of the exporting and transit country may, in accord with their domestic laws, prohibit or otherwise restrict any such transfrontier movement.
(e) In instances where competent authorities acting under terms of their domestic laws are required to review the contracts referred to in (1) above (Conditions), these authorities shall so inform the OECD Secretariat. In such cases, the notification information plus the contract(s) or portions thereof to be reviewed must arrive seven (7) days prior to the time the shipment is dispatched in order that such review may be
(f) Paragraphs (i), (j) and (k) of Case (1) shall apply.

3. Additional provisions relating to re-export to a third country
(a) Re-export from an importing country of wastes subject to the amber control system may only occur following notification by a notifier in the importing country to the competent authorities of the initial exporting country, which shall be acknowledged within three (3) working days of receipt. The competent authorities of the initial exporting country shall have thirty (30) days to object to the proposed movement. The 30-day period shall commence upon issue of the acknowledgement referred to above. If no objection has been lodged, the transfrontier movement may commence after the 30-day period has passed. The competent authorities may decide to provide written consent in a period of less than 30 days. The transfrontier movement may commence immediately after such consent is received. Written consent may be provided by telefax in the first instance, followed by post if required.
(b) Re-export to a country outside the OECD area shall be fully subject to, and in accord with, all international agreements and arrangements to which the importing OECD Member country is a party.

4. Provisions relating to recognised traders
(a) A recognised trader who takes physical custody of the wastes and intends to perform any of the operations in Table 2 B of OECD Council Decision C(88)90(Final) shall require appropriate authorization from its competent authorities to act as a recovery facility.
(b) A recognised trader may act as a notifier or consignee for wastes with all the responsibilities associated with being a notifier or consignee.
(c) The contracts referred to in (1) above (Conditions) shall:
i) clearly identify: the generator of each type of waste; each person who shall have physical custody of the wastes; each person who shall have legal control of the wastes; and the recovery facility;
ii) provide that all requirements of this Decision are taken into account and are legally binding on all parties to the contracts.
(d) The notification information called for at Appendix 2A shall include a signed declaration by the notifier that the appropriate contracts are in place and are legally enforceable in all concerned countries.
(e) Competent authorities of the exporting and importing countries may under terms of their domestic laws require the notifier to provide copies of such contracts or portions thereof.
(f) Any information contained in the contracts provided under terms of paragraph (e) above shall be held as strictly confidential in accordance with, and to the extent allowable by, domestic laws.

5. Provisions relating to wastes designated for exchange or accumulation prior to submission to recovery operations designated Rl -Rl 1 in Table 2B of OECD Council Decision C(88)90(Final)

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(a) The notification information included in Appendix 2A shall also indicate that exchange or storage is foreseen for the wastes covered by the notification.
(b) The competent authorities of concerned countries may request that the recovery facility where operations designated Rl-Rl I in Table 2B of Council Decision C(88)90(Final) will occur be identified.
(e) The tracking document referred to in Appendix 2B shall accompany the wastes to the recovery facility noted in paragraph (b) above which shall then comply with paragraph (j) of (2) above (Control System).

6. Amber list of wastes
The amber list of wastes is set out at Appendix 4.

V. RED TIER

1. The red list represents certain specific substances which, even moved in an adequately managed way, nevertheless must be controlled in a more stringent way than provided for by the amber control system. Wastes included in the red list shall be subject to the same controls as applied to wastes included in the amber list (see Section IV), and shall move in accord with Case (1), except that the importing and any transit countries must provide written consent prior to commencement of the transfrontier movement.

2. Red list of wastes
The red list of wastes is set out at Appendix 5.

VI. ACTIONS TO PROMOTE HARMONIZED IMPLEMENTATION

1. Member countries individually, and as a group acting through the Review Mechanism established in this Decision, shall take appropriate steps toward improving the green, amber and red lists of wastes and toward uniform application of this Decision.

2. Member countries shall cooperate in efforts aimed at:
a) developing procedures for evaluating the criteria in Annex 2 to determine to which list a waste should be assigned; and
b) harmonising procedures for determining whether a waste exhibits any of the hazardous characteristics listed in Table 5 of OECD Council Decision C(88)90(Final).

3. Member countries shall cooperate to identify and assess steps taken toward optimization of environmentally sound and economically efficient practices for recovery operations of each waste.

4. When Sections II(4), II(6) and II(7) must be resorted to, Member countries shall cooperate to ensure that the provisions of this Decision are fully complied with.

5. The OECD Secretariat shall circulate to all Member countries the information provided in accordance with this Decision, in particular under Sections II(4), II(5), II(6) and II(7).

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Appendix 1
INTERNATIONAL TRANSPORT AGREEMENTS

1. Chicago Convention:
Convention on International Civil Aviation (1944) Annex 18 which deals with the carriage of dangerous goods by air (T. I.: Technical Instructions for the Safe Transport of Dangerous Goods by Air);

2. ADR:
European Agreement concerning the International Carriage of Dangerous Goods by Road (1957);

3. ADNR:
Regulations of the Carriage of Dangerous Substances on the Rhine
(1970).

4. MARPOL Convention:
International Convention for the Prevention of Pollution from Ships (1 973/1978);

5. SOLAS Convention:
International Convention for the Safety of Life at Sea (1974);

6. IMDG Code:
International Maritime Dangerous Goods Code; (incorporated into SOLAS since 1985)

7. COTIF:
Convention concerning the International Carriage of Goods by Rail
(1985);

8. RID: Regulation on the International Carriage by Rail of Dangerous Goods (1985) [Annex I to COTIF];

Appendix 2
NOTIFICATION AND TRACKING INFORMATION

A. INFORMATION TO BE SUBMITTED UPON NOTIFICATION
1) Serial number or other accepted identifier of notification form.
2) Notifier name, address, telephone, telefax.
3) Recovery facility name, address, telephone, telefax, and technologies employed
4) Consignee if not the recovery facility, address, telephone, telefax
5) Intended canier(s) and/or their agents.
6) Country of export and relevant competent authority
7) Countries of transit and relevant competent authorities.
8) Country of import and relevant competent authority.
9) Is this a single notification or a general notification? If general, period of validity requested.
10) Date foreseen for commencement of transfrontier movement.

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11) Certification that any applicable insurance or other financial guarantee is or shall be in force covering the transfrontier movement.
12) Designation of waste type(s) on the appropriate list (amber or red) and their description(s), probable total quantity of each, and an accepted uniform classification code (such as the IWIC) for each.
13) Certification of the existence of written contract or chain of contracts or equivalent arrangement as required by this Decision.
14) Certification by notifier that the information is complete and correct to the best of his knowledge.

B. TRACKING DOCUMENT
Include all information at A. above plus
(a) Date shipment was dispatched
(b) Shipper (if not notifier), address, telephone, telefax
(c) Actual carrier(s)
(d) Means and mode of transport including types of packaging
(e) Any special precautions to be taken by carrier(s)
(f) Declaration by notifier that no objection has been lodged by the competent authorities of all concerned countries. This declaration requires signature of the notifier.
(g) Appropriate signatures for each custody transfer.

C. ALL OF THIS INFORMATION SHALL BE PROVIDED ON A FORM TO BE DEVELOPED FOR USE WITHIN THE OECD AREA

D. NOTE. Under terms of domestic legislation, some Member countries require information in addition to that included in A and B above in order to assess aspects of the environmentally sound management of wastes. Affected countries shall inform the OECD Secretariat and provide a list of the additional information needed.

Appendix 3
GREEN LIST OF WASTES *
Regardless of whether or not wastes are included on this list, they may not be moved as Green Tier wastes if they are contaminated by other materials to an extent which (a) increases the risks associated with the waste sufficiently to render it appropriate for inclusion in the amber or red lists, when taking into account the criteria in Annex 2, or (b) prevents the recovery of the waste in an environmentally sound manner.

A. METAL AND METAL-ALLOY WASTES IN METALLIC, NON DISPERSIBLE FORM **
The following waste and scrap of precious metals and their alloys :
711210 - of gold
711220 - of platinum (the expression "platinum" includes platinum, iridium, osmium, palladium, rhodium and ruthenium)
+ Whenever possible, the Harmonized Commodity Description and Coding System, established by the Brussels Convention of 14th June 1983 under the auspices of the Customs Co-operation Council (hereinafter Harmonized Customs Code) is listed opposite an entry. This code may apply to both wastes and products. This Decision does not include items which are not wastes.

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Therefore, the code - used by customs officials in order to facilitate their procedures as well as by others - is only provided here to help in identifying wastes that are listed and subject to this Decision. However, corresponding official explanatory notes as issued by the Customs Co-operation Council should be used as interpretative guidance to identify wastes covered by generic headings. The indicative "ex" identifies a specific item contained within the Harmonized Customs Code heading.
++ "Non-dispersible" does not include any wastes in the form of powder, sludge, dust or solid items containing encased hazardous waste liquids.
711290 - of other precious metal, e.g., silver
N.B. (1) Mercury is specifically excluded as a component of these metals
(2) Electrical assemblies wastes shall consist only of metals or alloys
(3) Electronic scrap (subject to specifications, these to be reviewed by the Review Mechanism)
The following ferrous waste and scrap; remelting scrap ingots of iron or steel:
720410 - Waste and scrap of cast iron
720421 - Waste and scrap of stainless steel
720429 - Waste and scrap of other alloy steels
720430 - Waste and scrap of tinned iron or steel
720441 - Turnings, shavings, chips, milling waste, filings, trimmings and stampings, whether or not in bundles
720449 - Other ferrous waste and scrap
720450 - Remelting scrap ingots
ex 730210 - Used iron and steel rails
The following waste and scrap of non-ferrous metals and their alloys:
740400 - Copper waste and scrap
750300 -Nickel waste and scrap
760200 -Aluminum waste and scrap
ex 780200 -Lead waste and scrap
790200 -Zinc waste and scrap
800200 -Tin waste and scrap
ex 810191 -Tungsten waste and scrap
ex 810291 - Molybdenum waste and scrap
ex 810310 - Tantalum waste and scrap
810420 - Magnesium waste and scrap
ex 810510 - Cobalt waste and scrap
ex 810600 - Bismuth waste and scrap
ex 810710 - Cadmium waste and scrap
ex 810810 - Titanium waste and scrap
ex 810910 - Zirconium waste and scrap
ex 811000 - Antimony waste and scrap
ex 811100 - Manganese waste and scrap
ex 811211 - Beryllium waste and scrap
ex 811220 - Chromium waste and scrap
ex 811230 - Germanium waste and scrap
ex 811240 - Vanadium waste and scrap
ex 811291 - Wastes and scrap of
- Hafnium

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- Indium
- Niobium
- Rhenium
- Gallium
- Thallium

ex 280530 - Thorium and rare earths waste and scrap
ex 280490 - Selenium waste and scrap
ex 280450 - Tellurium waste and scrap

B. OTHER METAL BEARING WASTES ARISING FROM MELTING, SMELTING AND REFINING OF METALS

262011 - Hard zinc spelter
Zinc containing drosses:

- Galvanizing slab zinc top dross (> 90% Zn)
- Galvanizing slab zinc bottom dross (> 92% Zn)
- Zinc die cast dross (> 85% Zn)
- Hot dip galvanizers slab zinc dross (batch) (> 92% Zn)
- Zinc skimmings

Aluminum skimmings
ex 262090 - Slags from precious metals and copper processing for further refining

C. WASTES FROM MINING OPERATIONS: THESE WASTES TO BE IN NON-DISPERSIBLE FORM

ex 250490 - Natural graphite waste
ex 251400 - Slate waste, whether or not roughly trimmed or merely cut, by sawing or otherwise
252530 - Mica waste
ex 252921 - Feldspar; leucite; nepheline and nepheline syenite; fluorspar - containing by weight 97% or less of calcium fluoride
ex 280461 - Silica wastes in solid form excluding those used in foundry
ex 280469 - operations

D. SOLID PLASTIC WASTES:

Including, but not limited to:
3915 - Waste, parings and scrap of plastics
391510 - of polymers of ethylene
391520 - of polymers of styrene
391530 - of polymers of vinyl chloride
391590 - polymerized or co-polymerized

- polypropylene
- polyethylene terephthalate
- acrylonitrile copolymer
- butadiene copolymer
- styrene copolymer
- polyamides
- polybutylene terephthalates
- polycarbonates

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- polyphenylene sulphides
- acrylic polymers
- paraffins (Cl0-Cl3)
- polyurethane (not containing chlorofluorocarbons)
- polysiloxalanes (silicones)
- polymethyl methacrylate
- polyvinyl alcohol
- polyvinyl butyral
- polyvinyl acetate
- fluorinated polytetrafluoroethylene (Teflon, PTFE)

391590 - resins or condensation products of
- urea formaldehyde resins
- phenol formaldehyde resins
- melamine formaldehyde resins
- epoxy resins
- alkyd resins
- polyamides

E. PAPER, PAPERBOARD AND PAPER PRODUCT WASTES:
470700 - Waste and scrap of paper or paperboard:
470710 - of unbleached kraft paper or paperboard or of corrugated paper or paperboard
470720 - of other paper or paperboard, made mainly of bleached chemical pulp, not colored in the mass
470730 - of paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter)
470790 - other, including but not limited to:
1) laminated paperboard
2) unsorted waste and scrap

F. GLASS WASTE IN NON-DISPERSIBLE FORM
ex 7001 00 - Cullet and other waste and scrap of glass except for glass from cathode-ray tubes and other activated glasses
- Fibre glass wastes

G. CERAMIC WASTES IN NON-DISPERSIBLE FORM
ex 690000 - Wastes of ceramic which have been fired after shaping, including ceramic vessels
ex 811300 - Cermets waste and scrap
- Ceramic based fibres not otherwise specified

H. TEXTILE WASTES:
5003 Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock)
500310 - not carded or combed
500390 - other
5103 Waste of wool or of fine or coarse animal hair, including yam waste but excluding garnetted stock
510310 - noils of wool or of fine animal hair

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510320 - other waste of wool or of fine animal hair
510330 - waste of coarse animal hair
5202 Cotton waste (including yam waste and gametted stock)
520210 - yam waste (including thread waste)
520291 - garnetted stock
520299 - other
530130 - Flax tow and waste
ex 530290 - Tow and waste (including yam waste and garnetted stock) of true hemp (Cannabis sativa L.)
ex 530390 - Tow and waste (including yam waste and garnetted stock) of jute and other textile bast fibres (excluding flax, true hemp and ramie)
ex 530490 - Tow and waste (including yarn waste and garnetted stock) of sisal and other textile fibres of the genus Agave
ex 530519 - Tow, noils and waste (including yam waste and garnetted stock) of coconut
ex 530529 - Tow, noils and waste (including yam waste and gametted stock) of abaca (Manila hemp or Musa textilis Nee)
ex 530599 - Tow, noils and waste (including yam waste and gametted stock) of ramie and other vegetable textile fibres, not elsewhere specified or included
5505 Waste (including noils, yam waste and garnetted stock) of man-made fibres
550510 - of synthetic fibres
550520 - of artificial fibres
630900 Worn clothing and other worn textile articles
6310 Used rags, scrap twine, cordage, rope and cables and worm out articles of twine, cordage, rope or cables of textile materials
631010 - sorted
631090 - other

I. RUBBER WASTES:
400400 Waste, parings and scrap of rubber (other than hard rubber) and granules obtained therefrom
401220 Used pneumatic tyres
ex 401700 Waste and scrap of hard rubber (for example, ebonite)

J. UNTREATED CORK AND WOOD WASTES:
440130 Wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
450190 Cork waste; crushed, granulated or ground cork

K. WASTES ARISING FROM AGRO-FOOD INDUSTRIES
230100 Dried, sterilized and stabilized flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption but fit for animal feed or other purposes; greaves
230200 Bran, sharps and other residues, whether or not in the form of pellets derived from the shifting, milling or other working of cereals or of leguminous plants
230300 Residues of starch manufacture and similar residues, beet- pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets

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230400 Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil, used for animal feed
230500 Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of ground-nut (peanut) oil, used for animal feed
230600 Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable oil, used for animal feed
ex 230700 Wine lees
ex 230800 Dried and sterilized vegetable waste, residues and by- products, whether or not in the form of pellets, of a kind used in animal feeding, not elsewhere specified or included
152200 Degras; residues resulting from the treatement of fatty substances or animal or vegetable waxes
180200 Cocoa shells, husks, skins and other cocoa waste

L. WASTES ARISING FROM TANNING AND FELLMONGERY OPERATIONS AND LEATHER USE
050200 Waste of pigs', hogs' or boars' bristles and hair or of badger hair and other brush making hair
050300 Horsehair waste, whether or not put up as a layer with or without supporting material
050590 Waste of skins and other parts of birds, with their feathers or down, of feathers and parts of feathers (whether or not with trimmed edges) and down, not further worked than cleaned, disinfected or treated for preservation
050690 Waste of bones and horm-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid or degelatinised
411000 Parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles, excluding leather sludges

M. OTHER WASTES
890800 Vessels and other floating structures for breaking up, property emptied of any cargo which may have been classified as a dangerous substance or waste
Motor vehicle wrecks, drained of liquids
050100 Waste of human hair
ex 051191 Fish waste
Anode butts of petroleum coke and/or bitumen
Flue gas desulphurisation (FGD) gypsum
Waste gypsum wallboard or plasterboard arising from the demolition of buildings
ex 2621 Coal fired power station fly ash, bottom ash and slag tap*.
Waste straw
Broken concrete
Spent catalysts:
- fluid catalytic cracking (FCC) catalysts
- precious metal bearing catalysts
- transition metal catalysts

*This entry is subject to certain specifications, these to be reviewed by the Review Mechanism
Deactivated fungus mycelium from penicillin production to be used as animal feed
261800 Granulated slag arising from the manufacture of iron and steel
ex 261 900 Slag arising from the manufacture of iron or steel*

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310320 Basic slag arising from the manufacture of iron or steel for phosphate fertilizer and other use
ex 2621 00 Slag from copper production, chemically stabilized, having a high iron content (above 20%) and processed according to industrial specifications (e.g. DIN 4301 and DIN 8201) mainly for construction and abrasive applications
ex 2621 00 Neutralized red mud from alumina production
ex 2621 00 Spent activated carbon
Sulphur in solid form
ex 283650 Limestone from the production of calcium cyanamide (having a pH less than 9)
Sodium, calcium, potassium chlorides
Waste photographic film base and waste photographic film not containing silver
Single use cameras without batteries
ex 28181 0 Carborundum
* This entry covers the use of such slags as a source of titanium dioxide and vanadium.
Appendix 4
AMBER LIST OF WASTES +
Regardless of whether or not wastes are included on this list, they may not be moved as Amber Tier wastes if they are contaminated by other materials to an extent which (a) increases the risks associated with the waste sufficiently to render it appropriate for inclusion in the red list, when taking into account the criteria in Annex 2, or (b) prevents the recovery of the waste in an environmentally sound manner.
ex 261 900 Dross, scalings and other wastes from the manufacture of iron and steel++
262019 Zinc ash and residues++
262020 Lead ash and residues++
262030 Copper ash and residues++
262040 Aluminium ash and residues++
262050 Vanadium ash and residues++
262090 Ash and residues++ containing metals or metal compounds not specified otherwise
Residues from alumina production not otherwise specified
262100 Other ash and residues, not otherwise specified
Residues arising from the combustion of municipal wastes
+ Whenever possible, the Harmonized Commodity Description and Coding System, established by the Brussels Convention of 14th June 1983 under the auspices of the Customs Co-operation Council (hereinafter Harmonized Customs Code) is listed opposite an entry. This code may apply to both wastes and products. This Decision does not include items which are not wastes. Therefore, the code - used by customs officials in order to facilitate their procedures as well as by others - is only provided here to help in identifying wastes that are listed and subject to this Decision. However, corresponding official explanatory notes as issued by the Customs Co-operation Council should be used as interpretative guidance to identify wastes covered by generic headings. The indicative "ex" identifies a specific item contained within the Harmonized Customs Code heading.
++ This listing includes ash, residue, slag, dross, skimming, scaling, dust, sludge and cake, unless a material is expressly listed elsewhere.
271390 Waste from the production/processing of petroleum coke and bitumen, excluding anode butts
Lead-acid batteries, whole or crushed

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Waste oils unfit for their originally intended use
Waste oils/water, hydrocarbonstwater mixtures, emulsions
Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish
Wastes from production, formulation and use of resins, latex, plasticizers, glues and adhesives
Wastes from production, formulation and use of reprographic and photographic chemicals and processing materials not otherwise specified
Single use cameras with batteries
Wastes from non-cyanide based systems which arise from surface treatment of metals and plastics
Asphalt cement wastes
Phenols, phenol compounds including chlorophenol in the form of liquids or sludges
Treated cork and wood wastes
Used batteries or accumulators, whole or crushed, other than lead-acid batteries, and waste and scrap arising from the production of batteries and accumulators, not otherwise specified
ex 391590 Nitrocellulose
ex 7001 00 Glass from cathode-ray tubes and other activated glasses
ex 411 000 Leather dust, ash, sludges and flours
ex 252921 Calcium fluoride sludge
Other inorganic fluorine compounds in the form of liquids or sludges
Zinc slags containing up to 18 weight percent zinc
Galvanic sludges
Liquors from the pickling of metals
Sands used in foundry operations
Thallium compounds
Polychlorinated naphthalenes
Ethers
Precious metal bearing residues in solid form which contain traces of inorganic cyanides
Hydrogen peroxide solutions
Triethylamine catalyst for setting foundry sands
ex 280480 Arsenic waste and residue ex 280540 Mercury waste and residue Precious metal ash, sludge, dust and other residues such as: ash from incineration of printed circuit boards film ash
Waste catalysts not on the green list
Leaching residues from zinc processing, dusts and sludges such as jarosite, hematite, goethite, etc.
Waste hydrates of aluminium
Waste alumina
Wastes that contain, consist of or are contaminated with any of the following:
- inorganic cyanides, excepting precious metal-bearing residues in solid form containing traces of inorganic cyanides
- organic cyanides
Wastes of an explosible nature, when not subject to specific other legislation
Wastes from the manufacture, formulation and use of wood preserving chemicals
Leaded petrol (gasoline) sludges
Used blasting grit
Chlorofluorocarbons
Halons

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Fluff - light fraction from automobile shredding
Thermal (heat transfer) fluids
Hydraulic fluids
Brake fluids
Antifreeze fluids
Ion exchange resins
Wastes on the Amber List which will be re-examined as a priority matter by the Review Mechanism
Organic phosphorous compounds
Non-halogenated solvents
Halogenated solvents
Halogenated or unhalogenated non-aqueous distillation residues arising from organic solvent recovery operations
Liquid pig manure; feces
Sewage sludge
Household wastes+
Wastes from the production, formulation and use of biocides and phytopharmaceuticals
Wastes from the production and preparation of pharmaceutical products
Acidic solutions
Basic solutions
Surface active agents (surfactants)
Inorganic halide compounds, not otherwise specified
Wastes from industrial pollution control devices for cleaning of industrial off-gases, not otherwise specified
Gypsum arising from chemical industry processes
+ In the Basel Convention household wastes -- defined as an "other waste" -are controlled when they are subject to transfrontier movements. Therefore under this Decision all household wastes (and not just those which exhibit a hazardous characteristic) will be subject to the procedures in Section IV (Amber Tier). Until exporting countries have the legal authority to control transfrontier movements of household wastes, the provisions in Section 11(4) will be applied.

Appendix 5
RED LIST OF WASTES
"Containing" or "contamined with", when used in this list, mean that the substance referred to is present to an extent which (a) renders the waste hazardous when taking into account the criteria in Annex 2, or (b) renders it not suitable for submission to a recovery operation.
Wastes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB) and/or polychlorinated terphenyl (PCT) and/or polybrominated biphenyl (PBB), including any other polybrominated analogues of these compounds, at a concentration level of 50mg/kg or more
Wastes that contain, consist of or are contaminated with any of the following:
- any congenor of polychlorinated dibenzo-furan
- any congenor of polychlorinated dibenzo-dioxin
Asbestos (dusts and fibres)
Ceramic based fibres similar to those of asbestos
Leaded anti-knock compound sludges

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Wastes on the Red List which will be re-examined as a priority matter by the Review Mechanism
Waste tarry residues (excluding asphalt cements) arising from refining, distillation and any pyrolitic treatment
Peroxides other than hydrogen peroxide

Annex 2
CRITERIA

A) Properties
1. Does the waste normally exhibit any of the hazardous characteristics listed in Table 5 of OECD Council Decision C(88)90(Final)? Furthermore, it is useful to know if the waste is legally defined as or considered to
be a hazardous waste in one or more Member countries.
2. Is the waste typically contaminated?
3. What is the physical state of the waste?
4. What is the degree of difficulty of cleanup in the case of accidental spillage or mismanagement?
5. What is the economic value of the waste bearing in mind historical price fluctuations?
B) Management
6. Is there technological capability to recover the waste?
7. Is there a history of adverse environmental incidents arising from transfrontier movements of the waste or associated recovery operations?
8. Is the waste routinely traded through established channels and is that evidenced by commercial classification?
9. Is the waste usually moved internationally under the terms of a valid contract or chain of contracts?
10. What is the extent of reuse and recovery of the waste and how is any portion separated from the waste but not subject to recovery managed?
11. What are the overall environmental benefits arising from the recovery operations?

DECISION-RECOMMENDATION OF THE COUNCIL on Further Measures for the Protection of the Environment by Control of Polychlorinated Biphenyls

(Adopted by the Council* at its 656th Session on 13th February 1987)
THE COUNCIL,
Having regard to Articles 3, 5a) and 5b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December, 1960;
Having regard to the Decision of the Council of 13th February 1973 on Protection of the Environment by Control of Polychlorinated Biphenyls [C(73)](Final)];
Having regard to the Recommendation of the Council of 28th September 1976 on a Comprehensive Waste Management Policy [C(76)155(Final)];
Having regard to the results of the PCB Seminar hosted by the Netherlands under patronage of the OECD in Scheveningen, Netherlands, 28th-30th September 1983;

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Having regard to the Decision and Recommendation of the Council of 1st February 1984 on Transfrontier Movements of Hazardous Waste {C(83)180(Final)];
Having regard to the Recommendation of the Coundil of 4th April 1984 concerning Information Exchange Related to Export of Banned or Severely Restricted Chemicals [C(84)37(Final)];
Having regard to the Resolution of the Council of 20th June 1985 on International Co-operation Concerning Transfrontier Movements of Hazardous Waste [C(85)100];
Having regard to operative paragraphs 3,6, and 7 of the Declaration on Environment: Resource for the Future, of 20th June, 1985 adopted by the Governments of OECD Member countries and of Yugoslavia at the meeting of the Environment Committee at Ministerial Level;
Considering that current controls of polychlorinated biphenyls (PCBs) have not led to a clear and consistent downward trend of environmental levels of PCBs, except in certain local situations, and that previous concerns about environmental contamination by PCBs, and their health and environmental effects, remain unabated;
Considering that new concerns have arisen over the use of PCBs, particularly in situations where highly toxic products such as chlorinated dioxins or chlorinated dibenzofurans might be produced by their decomposition in fires;
Considering that the ultimate objective of international action to control PCBs is to eliminate entirely their release to the environment;
Considering, therefore, the need for additional, more stringent measures to control new and existing uses of PCBs and the disposal of PCBs and wastes containing PCBs;
Considering that alternatives exist, and are being used, for the major industrial and commercial applications of PCBs;
Considering that the desirability of withdrawing PCBs from use must be balanced against the feasibility of taking such action without increasing the risk of environmental contamination by PCBs and must take due account of the availability of appropriate disposal facilities;
On the proposal of the Environment Committee;

I. USES OF PCB'S

1. New Uses of PCBs
Decides that, in respect of new uses of PCBs, Member countries shall ensure that not later than 1st January, 1989 the following activities cease: the manufacture, import, export and sale of
a) PCBs;
b) products, articles or equipment containing PCBs; and
c) equipment which specifically requires the use of PCBs;
Except for the following cases:
i) for research purposes or use as a reference standard;
ii) for the export or import of waste fluids or other wastes containing or contaminated by PCBs, for the sole purpose of disposal; or
iii) if the competent authority of a Member country has received a request for a derogation from these provisions and, on the basis of the information submitted in support of this request, has authorized such a derogation for a limited period of time after having ensured that
- no alternative to PCBs exists for the proposed use,
- no significant amount of PCBs would reach the environment during the proposed use and subsequent disposal and
- human health or environment would not be endangered as a result of the proposed use.

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2. Existing uses of PCBs
Decides that, in respect of existing uses of PCBs, Member countries shall ensure that appropriate controls are applied to such uses, as well as to any associated storage and transport, in order to prevent the release of PCBs into the environment or fires involving PCBs.
Recommends that, in respect of existing uses of PCBs, Member countries take steps to accelerate the withdrawal of PCBs from use, particularly where potential accidents or leaks could endanger human health or the environment, in so far as such withdrawal would not otherwise increase the risk of environmental contamination by PCBs.

II. PRODUCTS, ARTICLES OR EQUIPMENT CONTAMINATED BY PCBS
Decides that Member countries shall apply control measures to products, articles or equipment contaminated by PCBs in order to reduce contamination in such items to levels which do not endanger human health or the environment.
Recommends that Member countries ensure that for contaminated fluids and soils, the levels of contamination are no greater that 50 parts per million.

III. DISPOSAL OF PCBS AND OTHER WASTES CONTAINING PCBS
Decides that Member countries shall ensure that disposal of waste fluids and solids containing PCBs at levels greater that 100 parts per million and of equipment which has contained PCBs and has not been adequately cleaned, is carried out in adequate disposal facilities by means of high temperature incineration, or a comparably effective method, in a manner which does not endanger human health of the environment.

IV. IMPLEMENTATION AND REVIEW
Recommends that, as far as practicable, Member countries ensure that the disposal of wastes containing or contaminated by PCBs at levels of 100 parts per million of less is caried out in adequate disposal facilities and in a manner that avoids the release of PCBs into the environment.
Decides that Member countries shall prohibit the deliberate dilution of wastes containing PCBs where such activity is intended to contravene Decision III.1 and disregard Recommendation III.2.
Invites Member countries to inform the Organisation of any derogations from the controls on new uses of PCBs as set out in Section I(A)(iii).
Instructs the Environment Committee to pursue a programme of work to facilitate the practical implementation of the provisions of section III of this Decision-Recommendation.
Instructs the Environment Committee to review actions taken by Member countries in pursuance of this Decision-Recommendation, including the granting of derogations, and to report thereon to the Council in 1990.

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OECD: DECISION-RECOMMENDATION OF THE COUNCIL on the Reduction of Transfrontier Movements of Wastes

(adopted by the Council at its 750th Session on 31st January 1991)
THE COUNCIL,
Having regard to Articles 5 a) and 5 b) of the Convention on the
Organization for Economic Co-operation and Development of 14th December 1960;
Having regard to the Decision and Recommendation of the Council of lst February 1984 on Transfrontier Movements of Hazardous Waste [C(83)180(Final)] which requires Member countries to control transfrontier movements of hazardous wastes;
Having regard to the Decision-Recommendation of the Council of 5th June 1986 on Exports of Hazardous Wastes from the OECD Area [C(86)64(Final)] which, inter alia, prohibits movements of hazardous wastes to a final destination in a non-member country without the consent of that country and the prior notification to any transit countries of the proposed movements;
Having regard to the Decision of the Council of 27th May 1988 on Transfrontier Movements of Hazardous Wastes [C(88)90(Final)] which defines "wastes", identifies those wastes referred to as hazardous wastes in relevant Council Acts, and sets out a classification system for wastes subject to transfrontier movements;
Having regard to the Resolution of the Council of 18th-20th July 1989 on the Control of Transfrontier Movements of Hazardous Wastes [C(89)112(Final)];
Having regard to the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted in Basel on 22nd March 1989;
Having regard to the Resolution of the Council of Ministers of the European Economic Community of 7th May 1990 on Waste Policy;
Noting that each Party to the Basel Convention of 22nd March 1989 is obligated to "take appropriate measures to ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal";
Recognizing the desirability of appropriately controlled international
trade in waste materials* destined for environmentally sound operations leading to resource recovery, recycling, reclamation, direct re-use or alternative uses (hereafter referred to as "Recovery Operations");
Convinced of the need to reduce transfrontier movements of all wastes to the minimum consistent with environmentally sound and efficient management;
Convinced that the basic principles for the management of wastes must be, first, to prevent and reduce, as far as possible, the generation of such wastes and, secondly, to increase the proportion of such wastes that is recycled or re-used;
Noting that many industrial sectors are already implementing waste recovery techniques in an economically and environmentally satisfactory fashion, and convinced that further efforts in this direction are necessary and should be encouraged;
Recognizing that efficient and environmentally sound management of
wastes may justify some transfrontier movements of such wastes in order to make use of adequate recovery or disposal facilities in other countries;

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Noting that most Member countries and the European Economic Community have become signatories to the Basel Convention of 22nd March 1989;
Convinced that international cooperation concerning the management of wastes should be founded upon agreements at governmental level;
Noting that some Member countries and the European Economic Community have already taken action to prevent the export of wastes subject to control under terms of the Basel Convention of 22nd March 1989 toward developing countries;
*For purposes of this Decision-Recommendation, the terms "wastes" and "waste materials" include all wastes subject to controls under terms of the Basel Convention of 22nd March 1989 and all other wastes subject to transfrontier movements control of the exporting and importing Member countries.
On the proposal of the Environment Committee;

1. Decides that, for wastes not to be subjected to recovery operations, Member countries shall:
a) consistent with environmentally sound and efficient management practices insofar as possible dispose in their own territory the wastes produced therein;
b) take action to reduce their transfrontier movements to the minimum justified by environmentally sound and efficient management;
c) on a continuing basis identify those wastes that cannot be managed in an environmentally sound manner within their territory. They shall encourage the establishment of additional and appropriate waste management infrastructure so that these wastes can be managed within their own territory and if such infrastructure cannot be established they shall cooperate by means of bilateral or regional plans agreed at governmental level meant to ensure environmentally sound management of the wastes.

2. Decides that Member countries shall cooperate in the collection of harmonised data on waste imports and exports and make these data publicly available consistent with their national laws on the confidentiality of business information.

3. Recommends that Member countries cooperate in developing and implementing the guidelines concerning reduction of transfrontier movements of wastes set out in the Annex to this Decision-Recommendation and in collecting the necessary data.

4. Recommends that the initial plans referred to in Paragraph l(c) of this Decision-Recommendation be substantially completed prior to 1st January 1995.

5. Instructs the Environment Committee to consider further harmonisation of Member country lists of wastes, the transfrontier movements of which are subject to control.

6. Instructs the Environment Committee in cooperation with other relevant OECD bodies, in particular the Trade Committee and the High Level Group on Commodities, to develop and implement a programme of activities concerning wastes destined for recovery operations. This programme, which shall take into account the work of, and shall be conducted in cooperation with, other international organisations and bodies, in particular the United Nations Environment Programme, the UN Economic Commission for Europe and the Commission of the European Communities, should in particular:

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a) Clarify the definition of wastes and characterize those wastes which may require differing levels of control;
b) Identify and assess environmentally sound and economically efficient practices for recovery operations;
c) Develop means to appropriately determine quantities of wastes subjected to recovery operations as compared to those finally disposed;
d) Establish the current and potential role of the uses of wastes in substituting for primary raw materials and in preserving natural resources;
e) Delineate such controls as may be appropriate for the transfrontier movements of waste materials destined for recovery operations;
f) After assessment of the results of elements a) through e), if appropriate, develop the basis of a multilateral agreement pursuant to Article 1 1 of the Basel Convention of 22nd March 1989 which would govern transfrontier movements of these wastes exclusively among Member countries.

7. Instructs the Environment Committee and other relevant OECD
Committees to review periodically action taken by Member countries in pursuance of this Decision-Recommendation.

Annex
GUIDELINES CONCERNING REDUCTION OF TRANSFRONTIER MOVEMENTS OF WASTES
The following guidelines are designed to aid in the development of harmonized policies concerning reduction of transfrontier movements of wastes.
1. Countries should determine quantities of wastes generated by type, e.g. wastes listed in the Annexes to the Basel Convention of 22nd March 1989, and develop a compatible methodology for reporting the data;
2. Countries should periodically compile and make available data concerning generation of wastes within their jurisdiction;
3. Countries should take steps to reduce to the greatest extent practicable the generation of wastes in particular by the promotion of clean technologies and clean products and to encourage recycling, reclamation, resource recovery, direct re-use or alternative uses for any waste generated;
4. Countries should take steps to determine the capacity needed for environmentally sound treatment and disposal of those wastes generated within their jurisdiction;
5. Countries should take all practicable steps to ensure that adequate capacity for environmentally sound treatment and disposal of wastes is available within their jurisdiction;
6. For wastes which are subjected to transfrontier movements, e.g. those to be reported under terms of Council Resolution C(89)112(Final), countries should cooperate in further harmonizing the notification systems and procedures for control of such movements;
7. Countries through their coordination in the programme referred to in Paragraph VI of this Decision-Recommendation, should delineate appropriate controls for managing transfrontier movements of wastes which are destined for recovery operations in order that these activities are promoted while ensuring that human health and the environment are protected;
8. Where there is a lack of appropriate waste management infrastructure or where objective evaluations involving all parties-of-interest suggest that management of certain wastes in the

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country where they are generated is not justified, countries should, in conformity with Paragraph 1(c) of this Decision-
Recommendation, cooperate by means of bilateral or regional plans meant to ensure environmentally sound management of the wastes;
9. In the interest of promoting environmentally sound management of wastes, appropriate steps should be taken to provide technical assistance and training in the field of waste management to those countries in need of such assistance and who request it.

OECD: PROTECTION OF THE ENVIRONMENT BY CONTROL OF POLYCHLORINATED BIPHENYLS

(Decision adopted on 13th February, 1973)
C(73)1(Final)
THE COUNCIL,
Having regard to Articles 5a), 5b) and 12c) of the Convention on the Organistion for Economic Co-operation and Development of 14th December, 1960;
Having regard to the Recommendation of the Council of 26th May, 1972, on Guiding Principles concerning International Economic Aspects of Environmental Policies [C(72)128];
Having regard to the Note by the Secretary-General of 7th February, 1973, concerning Proposals for Concerted Action with respect to Polychlorinated Biphenyls [C(73)1(2nd Revision)];
Considering that the use of Polychlorinated Biphenyls (PCBs) should be controlled by international action in order to minimize their escape into the environment pending the realization of the ultimate objective of eliminating entirely their escape into the environment;
On the proposal of the Environment Committee;

I. DECIDES:
1. Member countries shall ensure that in their respective territories, Polychlorinated Biphenyls (PCBs) shall not be used for industrial or commercial purposes, except in the following categories of use:
a) Dielectric fluids for transformers or large power factor correction capacitors;
b) Heat transfer fluids (other than in installations for processing of foods, drugs, feeds and veterinary products);
c) Hydraulic fluids in mining equipment;
d) Small capacitors (subject to the provisions of Section II.2 below);
and, as regards the foregoing categories, PCBs may be used only in those applications in which the requirements for non-inflammability outweigh the need for environmental protection and in which Member countries are satisfied that sufficient controls are exercised in order to minimize risk to the environment.

2. In pursuance of paragraph 1. I above, Member countries shall:
a) control the manufacture, import and export of bulk PCBs;
b) institute adequate arrangements for the recovery, regeneration, adequate incineration other safe disposal of surplus and waste materials;
c) institute a special, uniform labelling system for both bulk PCBs and PCB containing manufactured products; and

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d) establish safety specifications for containers and transport.

II. Recommends that Member countries in implementing the Decisions set forth in Section I above:
1. Control and manufacture, import and export of PCB-containing products;
2. Work towards the elimination of the use of PCBs in small capacitors;
3. Give priority attention to the elimination of the following applications of PCBs:
a) heat transfer fluids in the food, pharmaceuticals, feed and veterinary industries;
b) plasticizers for paints, inks, copying paper, adhesives, sealants;
c) hydraulic liquids (other than in mining) and lubricating oils;
d) vacuum pump fluids and cutting oils;
e) pesticides;
4. Request firms to use, as PCB replacements, materials which are less hazardous to human health and the environment than the range of PCBs now in use.

III. DECIDES:
At the beginning of 1974, 1975 and 1976 within the framework of the Environment Committee, Member countries shall exchange information on the main statistical data concerning PCBs, notably on:
1. amounts of PCB, including:
a) amounts manufactured by PCB type,
b) amounts imported by PCB type and by country,
c) amounts exported by PCB type and by country,
d) amounts incinerated by PCB type and by use;
e) amounts consumed by PCB type and by use;
2. PCB replacements supplied by manufacturers, including the following points:
a) identification,
b) total mounts for each chemical type and for each use,
c) known toxicity and environmental hazard of each chemical type;
3. disposal of surplus PCBs by incineration (including evaluation of incinerator efficiency) or by other efficient means.

IV. NOTES the "Technical Note on Polychlorinated Biphenyls" contained in the Appendix to this Decision.

V. INVITES Member countries to report to the Organisation at the beginning of 1974, 1975 and 1976 on measures taken in application of this Decision.

VI. INSTRUCTS the Environment Committee to follow the implementation of this Decision, to report at regular intervals to the Council on the information exchanges provided for in Section III of this Decision and to make such proposals to further improve and strengthen the control of production and use of PCBs as may seem appropriate in the light of experience gained and the continued work of the Organization in this field.

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Appendix

TECHNICAL NOTE ON POLYCHLORINATED BIPHENYLS

Introduction

Polychlorinated biphenyls (PCBs) are a group of stable substances comprising theoretically more than 200 individual compounds, many of which are widely used particularly because of their dielectric properties and non-flammability. At present they arc obtained through chlorination of diphenyl, resulting in mixtures that are characterized by their average content of chlorine. Due to the persistance and toxicity of some of these compounds, effects have been observed in the environment and accidents reported over the last few years, which have given rise to serious concern in Member countries. In view of this concern, the Sector Group on Unintended Occurrence of Chemicals in the Environment has investigated, on a priority basis, the need for, and feasibility of, concerted action to control the use and emissions of PCBs. The results of this enquiry, which have been presented in document NR/ENV/72.49, lead to the following conclusions:

a) because of unacceptable levels of PCBs found in the environment and because of a number of incidents involving human health, some countries have taken, or are considering taking action to control the use of PCBs;

b) there are (1972) only six companies in OECD Member countries that manufacture PCBs; five of them have already taken steps to reduce production to the supply for a few approved uses;

c) PCBs can be replaced except for some uses where their dielectric properties and non-flammability are essential;

1 As of the time of the preparation of this Note, limited research studies with certain selected PCB-compounds seem to indicate that some of these compounds could eventually safely be used for certain applications.

d) the technology for destruction of PCBs exists;

e) because of the many applications of PCBs in the wide range of consumer products moving in international trade, the situation will almost certainly become complicated unless international agreement is reached on allowable uses;

f) a rough estimate2 indicates that consumption of PCBs in OECD countries is matched by production. Considering in addition that import of chemicals from non-OECD to OECD countries is still restricted to basic chemicals, import of bulk PCBs is unlikely. It is, therefore, reasonable to suggest that the major part of the problem of unintended occurrence of PCBs can be solved through concerted action between OECD Member countries.

Uses of PCB's

The applications of PCBs fall mainly into two categories:

a) uses in closed systems;

b) dissipative uses.

Closed systems

3. The use of PCBs in closed systems can be defined as applications from which the PCBs are recoverable. PCBs in transformers, capacitors, heat transfer systems, hydraulic equipment, and vacuum pumps are in principle recoverable, since during use, the PCBs are not generally dispersed into the environment.

4. It is, however, important to distinguish between closed system uses that are controllable in practice and those where control cannot be guaranteed either:

- because frequent replacement of relatively small quantities will lead to disposal rather than recovery, or

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- because a large number of small units widely dispersed will make collection extremely difficult, or
2 Production in 1971 amounted to about 48 400 metric tons and consumption in the 13 countries that provided numerical information to about 35,300 tons.
- because accidental leakage will cause imminent danger to human health.
5. A truly controllable use may therefore be defined as an application where:
- the PCBs are contained in a scaled circuit in large, long-life units;
- the quantities involved are such that there is an incentive for regeneration.
6. Following what has been said above, the only truly controllable uses of PCBs are in dielectrics for transformers and for large capacitors for power factor correction. Preventing escape of PCBs from these applications is mainly a problem of engineering design and of collection and destruction of used liquids, or, in the case of capacitors, of removal and destruction of PCB-impregnated material. These uses also being essential for safety reasons, it would be unreasonable to suggest that they be discontinued at the present time.
7. In all other closed systems, recovery of PCBs, although theoretically possible, would not be practical. Such application should, therefore, be discontinued, unless safety requirements prevent the use of substitute products:
a) Heat transfer systems
There may be some installations where the risk of explosion or fire must be avoided at all cost, and the danger of some escape of PCBs therefore is of less importance. Because of the risk of leakage, which can never be totally guarded against, the use of PCBs as heat transfer media in the food, drugs and feed industries should, however, be prohibited.
b) Hydraulic equipment, vacuum pumps
Although the quantities involved in the individual case are relatively small, they will, unless recovered, add significantly to the environ- mental burden of PCBs. Theoretically, used fluids could be recovered, but in view of the difficulty of establishing a system to collect small quantities from many users these applications should be discontinued. Furthermore, PCBs are generally not essential in hydraulic and pumping fluids, with the possible exception of hydraulic equipment in underground mining.
c) Small capacitors
These are typical examples of an application of PCBs in sealed units that are almost completely non- recoverable. Considering, for example, the many domestic electrical appliances in which capacitors arc used, the cost of recovery would probably be prohibitive. A warning label showing that the equipment must not be disposed of as ordinary waste has been suggested; it is however, not likely to be sufficient, unless manufacturers and retailers would accept return of appliances that are out of use. The problem of recovery remains unresolved at the present time, but it has to be noted that Japan has stopped the use of PCBs in the manufacture of small capacitors.

Dissipative uses

8. The dissipative uses are those where recovery of used PCBs is not possible, since they are not contained in closed systems but in direct contact with the environment:
a) Lubricating and cutting oils
The conditions under which these oils are used are such that there is continuous emission of small quantities into the environment. These applications, not being essential, should be discontinued.
b) Pesticide use

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This use has fortunately been abandoned in most countries already; if not, it should be banned with immediate effect. Since all OECD countries require registration of pesticides, such a measure can easily be taken under existing legislation.
c) Plasticizers
The most important category, by volume of dissipative use is in the field of plasticizers. They are or have been used in most countries in a wide variety of consumer products including paints, inks, copying paper, adhesives, sealants, plastic products, etc., many of which are traded internationally. The major applications seem to be in the printing and paint industries.
9. The printing industry: Because of the risk of contamination of paper, which after recycling may be used in food packaging, the use of PCBs in the printing industry should be banned. In view of the fact that printing inks can be produced without PCBs and that in any case the amount used probably represents a total value of only about $30 000 in OECD countries, such a measure should not cause serious economic damage. Assuming that copying paper is usually provided by the copying machine manufacturers (relatively few and big companies), any economic effects should be small.
10. The paint industry poses a somewhat different problem. Over the last decade, production has increased by 3.5 per cent-5 per cent annually and the trend is rising in the OECD area. The over 2 000 million dollar West European paint industry alone accounts for some 40 per cent of the world output. Production is assured by a few large and a great many small companies (United Kingdom = 480, Italy and France = 350, etc.). This picture suggests that an overall ban on PCBs in paints could have some economic consequences. It appears, however, that where used (e.g. in stoving applications) PCBs constitute something like 5- 1 0 per cent of the paint. Few details are available in respect of the amounts used in paints, by taking one example (France) where 250 tons were used (1971) in a paint industry that produced something like 700 000 tons of paint, presumably only 2 500-5 000 tons would contain PCBs. Considering in addition that I small paint manufacturers are gene.-ally highly specialized, and that the manufacturing process would not have to undergo a major change to replace the use of PCBs, a ban on PCBs should not cause any serious disturbance. The use of PCBs in paints has, in fact, been discontinued in some countries already. Figures for production (8 654 200 tons in 1969) and consumption (8 517 500 tons) in OECD countries again suggest that import of paints from non-OECD producers may be of minor significance.
11. In practice, none of the products where PCBs have been used as plasticizers can be recovered. Unless the use is totally eliminated, there will be continuous emissions into the environment due to evaporation, insufficient incineration, etc. Judging by the action already taken in several countries, substitutes can readily be found for the whole category of plasticizer use of PCBs, which should, therefore, be banned.
12. It follows from what has been said above that for adequate protection of health and environment, but also to avoid undue competition in international trade, agreement is necessary on allowed uses of PCBs. In order to ensure that home production is not substituted by import, control action by governments, through licensing or other means, is essential. Measures are further necessary to ensure collection of used material, safety in transport of raw PCBs, and assessment of substitute materials:
a) A uniform labelling system, internationally recognizable, should be developed for use on containers of raw PCBs as well as on any equipment or product containing PCBs.

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b) Suppliers (i.e. manufacturers and importers) should further provide containers for the transport of PCB-containing liquids: such containers must meet the appropriate specifications that have been laid down to ensure safety in transport of dangerous chemicals.
c) Development of substitutes that are less hazardous than persistent PCBs1 should be encouraged, but in view of the fact that no system for pre-market control of new chemicals has been introduced, testing for environmental effects is so far entirely the responsibility of the manufacturers. Information on replacement products should, therefore, be collected and reviewed.
1 As of the time of the preparation of this Note, limited research studies with certain selected PCB-compounds seem to indicate that some of these compounds could eventually safely be used for certain applications.

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US EPA Headquarters Press Release

Washington, DC

Date Published:	05/23/2001
Title:	U.S. SIGNS CONVENTION ON PERSISTENT ORGANIC POLLUTANTS

Environmental News

FOR RELEASE: WEDNESDAY, MAY 23, 2001

U.S. SIGNS CONVENTION ON PERSISTENT ORGANIC POLLUTANTS

Steffanie Bell 202-564-6976

The Environmental Protection Agency and the Department of State have issued today a joint statement on the U.S. signing of the Convention on Persistent Organic Pollutants. Following is the text:

Following up on the commitment of President George W. Bush to sign the global treaty on Persistent Organic Pollutants (POPs), EPA Administrator Christie Whitman today signed the Convention on behalf of the United States in Stockholm, Sweden. Ministers from over ninety countries joined the U.S. in signing the treaty. The United States, among the very first to call for a global POPs Convention, provided strong leadership in Stockholm to bring this important environmental treaty to a successful conclusion.

President Bush, in a Rose Garden ceremony on April 19, attended by Secretary of State Powell and Administrator Whitman, strongly supported this agreement to rid the world of these highly toxic chemicals and pesticides. The President hailed the treaty as one that would safeguard the health of Americans, particularly those most at risk, such as native Alaskans, while extending a helping hand to developing countries.

In her address to the Diplomatic Conference, Administrator Whitman stressed the U.S. commitment to continued strong leadership on POPs. She noted that the United States donated $22 million to POPs-related assistance since 1997, including a planned $3.5 million for this fiscal year. The United States was praised by UN officials for its consistent and strong financial support for the negotiations.

The United States worked closely with other countries to reach a broad consensus on an ambitious interim work plan that will focus on ways to quickly address the twelve chemicals targeted in the treaty. Once in force, the Convention's dynamic provisions permit the addition of other POPs chemicals.

Due to their unique characteristics, POPS, which include substances such as DDT, PCBs and

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dioxins, are chemicals of both local and global concern. POPs are toxic, persist in the environment for long periods of time, and accumulate as they move up the food chain.

The Administration plans to move swiftly to submit the treaty for the advice and consent of the U.S. Senate. A global agreement is necessary, urgent and in the national interest because POPs released abroad can affect the health and environment of all Americans. The U.S. has already banned or severely restricted the production, use, sale and/or release of these chemicals. However, many countries have taken little or no action.

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HQ 547147

March 23, 1999

RR:IT:VA 547147 RC

CATEGORY: Valuation

Andrew E. Mishkin, Esq.
Beveridge & Diamond, P.C.
1350 I Street, N.W., Suite 700
Washington, D.C. 20005-3311

RE:Solid waste material; non hazardous waste; fallback method; all reasonable ways and means; 19 U.S.C. ß 1500; HRL 545017 affirmed

Dear Mr. Mishkin:

This in response to your letter dated August 10, 1998, on behalf of Waste Management, Inc. ("WMI"), requesting a prospective ruling concerning the appraisement of solid waste to be imported into the United States. On September 24, 1998, you withdrew your request for confidential treatment of information set forth in your submission.

FACTS:

WMI, a United States corporation whose subsidiaries provide services, throughout North America, contracts with domestic and foreign customers, for the disposal of domestic and imported waste in the United States. According to WMI, a number of Customs port directors apply the decision in Headquarters Ruling Letter (HRL) 545017, issued August 19, 1994, which appraised imported waste oil based on the cost of domestic services purchased by the exporter. In HRL 545017, Customs stated:

Based on the facts presented, especially in light of the fact that the protestant has not provided any other documentation such as invoices, contracts, or record keeping to show otherwise, we find that the protestant has not proffered sufficient evidence to prove that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all the evidence made available by the protestant and used "all reasonable ways and means in his power" to appraise the merchandise. (Emphasis added.)

WMI disagrees with the decision in HRL 545017 and attempts to distinguish the instant facts from those in HRL 545017. WMI explains that, here, a pro forma Customs invoice has been submitted. The invoice states that the particular type of solid waste at issue has a value of one dollar per 19 tons. Therefore, WMI contends that the imported waste, in essence, has no commercial value in its condition as imported. Moreover, WMI asserts that the fee it charges exporters is for services related to the disposal of the waste in the U.S. after importation, rather than a payment for the waste itself.

As such, WMI claims that to appraise the imported waste based on the price paid for its disposal is not a reasonable fallback method. Additionally, WMI agues that in HRL 545017, Customs failed to address the applicability of the preceding

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methods of valuation, as required by the statute and that, therefore, the appraised value was arbitrary and fictitious.

WMI argues that HRL 545017 is incorrect, that the method of appraisement applied contravenes statutory intent of the amended Tariff Act of 1930. WMI requests that Customs find, based on the evidence presented, that the solid waste imported into the United States for disposal by WMI is not subject to HRL 545017, or in the alternative, that Customs reassess the method of appraisement applied in HRL 545017, and modify the ruling accordingly.

No other relevant documentation such as, contracts or record keeping was submitted for our review.

ISSUE:

Whether, based on the evidence presented, it is appropriate to appraise the imported goods under section 402(f) of the TAA.

LAW AND ANALYSIS:

Merchandise imported into the United States is appraised in accordance with section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. ß 1401a; TAA). The primary method of appraisement is transaction value, defined as "the price actually paid or payable for the merchandise when sold for exportation to the United States" plus the value of certain statutorily enumerated additions thereto. 19 U.S.C. ß 1401a(b)(1).

When imported merchandise cannot be appraised on the basis of transaction value, it is to be appraised in accordance with the remaining methods of valuation, applied in sequential order. The alternative bases of appraisement, in order of precedence, are: the transaction value of identical merchandise; the transaction value of similar merchandise; deductive value; and computed value. If the value of imported merchandise cannot be determined under these methods, it is to be determined in accordance with section 402(f) of the TAA. 19 U.S.C. ß 1401a(a)(1).

For Customs purposes, a "sale" generally is defined as a transfer of ownership in property from one party to another, for a consideration. J.L. Wood v. United States, 62 CCPA 25, 33; C.A.D. 1139 (1974). Although J.L. Wood was decided under the prior appraisement statute, Customs recognizes this definition under the TAA. Several factors may indicate whether a bona fide sale exists between potential seller and buyer. In determining whether property or ownership has been transferred, Customs considers whether the alleged buyer has assumed the risk of loss and acquired title to the imported merchandise. In addition, Customs may examine whether the alleged buyer paid for the goods, whether such payments are linked to specific importations of merchandise, and whether, in general, the roles of the parties and circumstances of the transaction indicate that the parties are functioning as buyer and seller. See, HRL 545542, dated December 9, 1994; HRL 546225, dated April 14, 1997.

Here, WMI would have us believe that the pro forma Customs invoice submitted evidences a bona fide sale for exportation. Notwithstanding the fact that it is the only evidence presented, we note that the invoice does not indicate the shipping terms agreed to by the parties. Consequently, there is no evidence provided to show when the parties agreed that title and risk of loss would pass to WMI. Additionally, there is no evidence that WMI paid consideration for the imported waste. Moreover, if the "Customs invoice" purporting to show a price

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paid or payable of one dollar, as consideration for the transfer of title and assumption of the risk for the solid waste, is evidence of a bona fide sale, then it begs the question as to why the exporter would be obligated or willing to pay for the disposal of the waste, after the alleged sale, that it no longer owns. Based on the information and documentation presented, we find that there is insufficient evidence of a bona fide sale.

Since the imported waste does not appear to be the subject of a sale, it, therefore, cannot be appraised under the transaction value method set forth in section 402(b) of the TAA. The transaction value of identical or similar merchandise is based on sales, at the same commercial level and in substantially the same quantity, of merchandise exported to the United States at or about the same time as that being appraised. 19 U.S.C. 1401a(c). We would assume that there is no merchandise similar or identical to the imported waste. Accordingly, the waste cannot be appraised on the basis of the transaction value of similar or identical merchandise.

Under the deductive value method, merchandise is appraised on the basis of the price at which it is sold in the U.S. in its condition as imported and in the greatest aggregate quantity either at or about the time of importation . . . . 19 U.S.C. 1401(d)(2)(A)(i)-(ii). This price is also subject to certain enumerated deductions. 19 U.S.C. 1401a(d)(3). In the instant situation, the waste is not sold in its condition as imported. Merchandise that is not sold in its condition as imported can still be appraised under deductive value, however, provided the importer so elects. 19 U.S.C. 1401a(d)(2)(A)(iii). In this case the importer has not to our knowledge elected this method. Furthermore, the method is not normally applicable when as the result of further processing, imported merchandise loses its identity unless the value added by the processing can be determined accurately without unreasonable burden on the importer or Customs. Section 152.105(i)(2), Customs Regulations (19 C.F.R. 152.105(i)(2)). As a result, the imported waste cannot be appraised on the basis of deductive value method.

Under the computed value method, merchandise is appraised on the basis of the material and processing costs incurred in the production of imported merchandise, plus an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind, and the value of any assists and packing costs. 19 U.S.C. 1401a(e)(1). Since there is no information on which to base computed value, this method of appraisement is also inapplicable.

Section 402(f) of the TAA provides that imported merchandise is to be appraised on the basis of a method derived from one of the methods set forth in sections 402(b)-(e), with such methods reasonably adjusted to the extent necessary to arrive at a value. However, there are certain prohibited bases of appraisement under section 402(f), including the selling price of merchandise produced in the United States, minimum values and arbitrary or fictitious values. 19 U.S.C. ß 1401a(f)(2).

Nevertheless, under section 500 of the Tariff Act of 1930, as amended, which sets forth Customs' general appraisement authority, the appraising officer may:fix the final appraisement of merchandise by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding .19 U.S.C. ß 1500(a) (emphasis added).

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In this regard, the Statement of Administrative Action (SAA), which forms part of the legislative history of the TAA, provides in pertinent part:

Section 500 allows Customs to consider the best evidence available in appraising merchandise . . . [It] authorize [sic] the appraising officer to weigh the nature of the evidence before him in appraising the imported merchandise. This could be the invoice, the contract between the parties, or even the record keeping of either of the parties to the contract.

Statement of Administrative Action, H.R. Doc. No. 153, 96 Cong., 1st Sess., at 2, reprinted in, Department of the Treasury, Customs Valuation under the Trade Agreements Act of 1979 (October 1981), at 67. Accordingly, if the value of imported merchandise cannot be determined on the basis of a method derived from sections 402(b)-(e), it is our position that the value of the imported waste material that is the subject of the instant protest may be determined under the fallback method provided for in section 402(f) of the TAA, using all reasonable ways and means, so long as the method is not specifically precluded under section 402(f)(2)(D).

In HRL 545017, regarding the valuation of waste oil imported for purposes of disposal, we stated:

Based on the facts presented, especially in light of the fact that the protestant has not provided any other documentation such as invoices, contracts, or record keeping to show otherwise, we find that the protestant has not proffered sufficient evidence to prove that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all the evidence made available by the protestant and used "all reasonable ways and means in his power" to appraise the merchandise.

HRL 545017, at 3. See also, HRL 543904, dated March 20, 1987.

Similarly, we find that by applying the fallback method, Customs would be using reasonable ways and means in appraising the imported waste at issue. Based on the information provided in both HRL 545017 and the instant case, we find that the fallback method of appraisement as applied is neither arbitrary nor fictitious. Indeed, the basis for determining that value, the disposal fee, is the only available information which can be quantitatively documented. The payment is an amount agreed upon by the two parties to the transaction and represents the consideration for which WMI is willing to accept and process the imported waste.

HOLDING:

Based on the evidence presented, it is appropriate to apply section 402(f) of the TAA and appraise the imported waste based on the disposal fee. Accordingly, HRL 545017, dated August 19, 1994, is affirmed.

Sincerely,

Thomas L. Lobred
Chief, Value Branch

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HQ 547061

March 19, 1999

VAL RR:IT:VA 547061 CRS

CATEGORY: Valuation

Area Port Director
U.S. Customs Service
9901 Pacific Highway
Blaine, WA 98230

RE: AFR of Protest No. 3004-98-100021; waste material; hazardous waste; fallback method; all reasonable ways and means; 19 U.S.C. ß 1500

Dear Sir:

This is in reply to an application for further review of protest no. 3004-98-100021, dated February 5, 1998, filed by counsel Junker & Thompson on behalf of the protestant and importer of record, Philip Environmental, Inc., concerning the valuation of certain imported waste material. The AFR was forwarded to this office under cover of your memorandum PRO-2-NG:C KAL dated February 17, 1998. Information contained in brackets [] will be deleted from any published version of this decision. We regret the delay in responding.

FACTS:

Philip Environmental ("Philip"), a British Columbia corporation, located in Delta, B.C., is a wholly owned subsidiary of Philip Services Corporation ("PSC"), an Ontario corporation. Philip is a full service provider of industrial cleaning and waste disposal services and operates a network of transfer, treatment and disposal facilities in the United States and Canada. These facilities are authorized by the U.S. and Canadian Governments to accept, treat, store and dispose of hazardous waste in accordance with applicable regulations.

Philip accepts waste from entities that generate the waste. Typically the waste is transported through a transfer station to a Treatment, Storage and Disposal Facility ("TSDF") where the material is treated prior to disposal by third parties. Philip's Delta facility acts primarily as a transfer station, shipping waste to Philip's TSDFs in the United States. The usual destination is one of three TSDFs in the Puget Sound area. Philip's Delta, B.C., facility is charged a fee by the U.S. operators based on the required processing cost and any third party charges for final disposal.

The imported merchandise that is the subject of the instant protest consists of sixty-seven entries of hazardous and non-hazardous waste material such as cadmium, lead, oil sludge, toluene, phosphoric acid, wax emulsion, oily water and filter press solids. Pro forma invoices submitted at the time of entry, e.g., in respect of entry no. [***************], declared a value of $1.00 "FOR CUSTOMS PURPOSES ONLY." Subsequently, however, pursuant to a request for information from your office, Philip provided an intercompany billing invoice which showed that Philip was to remit to Philip Environmental Services, Seattle, Washington, an amount of [$*****] for the shipment in question. The imported merchandise was appraised under the fallback method of valuation on the basis of the information contained in the pro forma invoices.

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Philip contends that the imported waste has no commercial value in its condition as imported and, moreover, that valuing the waste on the basis of the disposal fee it paid to Philip Environmental Services is not a reasonable method of appraisement under the fallback method. Philip asserts that the fee is a charge for services related to the disposal of the waste in the U.S. after importation rather than a payment for the waste itself. Further, Philip notes an appraisement based on the disposal fee is not derived from one of the preceding methods of valuation as required by the statute. As such, Philip contends the value was arbitrary and fictitious.

ISSUE:

The issue presented is whether the information presented is sufficient to show that Customs did not use all reasonable ways and means in appraising the imported merchandise.

LAW AND ANALYSIS:

Initially, we note that the protest and application for further review was timely filed under the statutory and regulatory provisions for protests (19 U.S.C. ß 1514; 19 C.F.R. pt. 174). We also note that the issues protested are protestable issues (19 U.S.C. ß 1514).

Merchandise imported into the United States is appraised in accordance with section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. ß 1401a; TAA). The primary method of appraisement is transaction value, defined as "the price actually paid or payable for the merchandise when sold for exportation to the United States" plus the value of certain statutorily enumerated additions thereto. 19 U.S.C. ß 1401a(b)(1).

When imported merchandise cannot be appraised on the basis of transaction value, it is to be appraised in accordance with the remaining methods of valuation, applied in sequential order. The alternative bases of appraisement, in order of precedence, are: the transaction value of identical merchandise; the transaction value of similar merchandise; deductive value; and computed value. If the value of imported merchandise cannot be determined under these methods, it is to be determined in accordance with section 402(f) of the TAA. 19 U.S.C. ß 1401a(a)(1).

In the instant case, the imported waste was not the subject of a sale and therefore cannot be appraised under the transaction value method set forth in section 402(b) of the TAA. Similarly, the methods of appraisement set forth in sections 402(c)-(e) of the TAA are inapplicable in the present circumstances. Accordingly, the imported merchandise must be appraised under the fallback method provided for under section 402(f) of the TAA.

Section 402(f) of the TAA provides that imported merchandise is to be appraised on the basis of a method derived from one of the methods set forth in sections 402(b)-(e), such methods reasonably adjusted to the extent necessary to arrive at a value. However, there are certain prohibited bases of appraisement under section 402(f), including the selling price of merchandise produced in the United States, minimum values and arbitrary or fictitious values. 19 U.S.C. ß 1401a(f)(2).

Nevertheless, under section 500 of the Tariff Act of 1930, as amended, which sets forth Customs' general appraisement authority, the appraising officer may:

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fix the final appraisement of merchandise by ascertaining or estimating the value thereof, under section 1401a of this title, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding....

19 U.S.C. ß 1500(a) (emphasis added).

In this regard, the Statement of Administrative Action (SAA), which forms part of the legislative history of the TAA, provides in pertinent part:

Section 500 allows Customs to consider the best evidence available in appraising merchandise....[It] authorize (sic) the appraising officer to weigh the nature of the evidence before him in appraising the imported merchandise. This could be the invoice, the contract between the parties, or even the recordkeeping of either of the parties to the contract.

Statement of Administrative Action, H.R. Doc. No. 153, 96 Cong., 1st Sess., pt 2, reprinted in, Department of the Treasury, Customs Valuation under the Trade Agreements Act of 1979 (October 1981), at 67. Accordingly, if the value of imported merchandise cannot be determined on the basis of a method derived from sections 402(b)-(e), it is our position that the value of the imported waste material that is the subject of the instant protest may be determined under the fallback method provided for in section 402(f) of the TAA, using all reasonable ways and means, so long as the method is not specifically precluded under section 402(f)(2)(D).

In the instant case the imported waste material was appraised under section 402(f) on the basis of the fee paid by Philip, the importer of record, to Philip Environmental Services, the U.S. TSDF which processed the waste. This same approach was followed in Headquarters Ruling Letter (HRL) 545017 dated August 19, 1994, in regard to the valuation of waste oil imported for purposes of disposal. There we stated:

Based on the facts presented, especially in light of the fact that the protestant has not provided any other documentation such as invoices, contracts, or recordkeeping to show otherwise, we find that the protestant has not proffered sufficient evidence to prove that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all the evidence made available by the protestant and used "all reasonable ways and means in his power" to appraise the merchandise.

HRL 545017 at 3. See also, HRL 543904 dated March 20, 1987.

Similarly, we find that there is insufficient evidence in the instant case that Customs used unreasonable ways and means in appraising the imported waste at issue. The appraised value for, e.g., entry no. [***********] was neither arbitrary nor fictitious. Indeed, the basis for determining that value, the disposal fee, is the only available information which can be quantitatively documented. The payment is an amount agreed upon by the two parties to the transaction and represents the consideration for which Philip Environmental Services is willing to accept and process the imported waste. Accordingly, we find that the cognizant import specialist used "all reasonable ways and means in his power" to determine the value of the imported goods under section 402(f) of the TAA.

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HOLDING:

In conformity with the foregoing the protest should be denied in full. The information presented is insufficient to show that Customs failed to use all reasonable ways and means in appraising the imported merchandise.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, this decision and the Customs Form 19 are to be mailed to the protestant no later than sixty days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

Thomas L. Lobred
Chief, Value Branch

HQ 545017

HQ 545017

August 19, 1994

VAL CO:R:C:V 545017 LPF

CATEGORY: Valuation/Entry

Area Port Director U.S. Customs Service 9901 Pacific Highway Blaine, WA 98230

RE: Application for Further Review of Protest No. 3004-92-100053;

Appraisement under section 402(f) of the TAA; Formal Entry; Merchandise Processing Fee

Dear Sir:

This is a decision on an application for further review of a protest filed April 20, 1992, against your decision concerning the appraisement of petroleum waste oil. The entries were liquidated on March 6, 1992 and March 13, 1992. We regret the delay in responding.

FACTS:

On December 11, 1991, petroleum waste oil was imported at Blaine, WA. A debit invoice dated November 26, 1991, included in the file, indicates that Master Wash Products Ltd. ("Master Wash") of British Columbia, Canada paid Sol-Pro Inc. of Tacoma, WA $4986.40 to dispose of the waste oil. We have confirmed through the U.S. Environmental Protection Agency (EPA) that the product is subject to

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the Toxic Substances Control Act (TSCA), administered by the EPA. The invoice certifies that the substances comply with the applicable rules or orders under the TSCA. Information included on the Customs Form (CF) 19 provides that the goods were not sold for export to the U.S., but were exported for disposal because no such facility exists in the British Columbia area.

You appraised the merchandise at the price paid by Master Wash to the U.S. importer for disposal of the goods. Furthermore, because you required formal entry, you assessed an ad valorem merchandise processing fee (MPF) on the merchandise.

The protestant, Master Wash, submits that the goods should be appraised at a nominal value instead of the price paid by Master Wash to the U.S. importer. Additionally, the protestant claims that informal entry should be permitted and that, consequently, only a minimum MPF appropriately would be assessed on the merchandise.

ISSUE:

Whether the protestant has proffered sufficient evidence to prove that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise and whether it was inappropriate to require formal entry and to assess an ad valorem MPF on the merchandise.

LAW AND ANALYSIS:

Appraisement of the Merchandise

Section 402(a) through (f) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), codified at 19 U.S.C. 1401a, provides the hierarchy of methods used when appraising imported merchandise. The preferred method of appraisement is transaction value pursuant to section 402(b) of the TAA. Section 402(b)(1) of the TAA provides, in pertinent part, that the transaction value of imported merchandise is the "price actually paid or payable for the merchandise when sold for exportation to the United States" plus enumerated statutory additions.

Section 500 of the TAA, codified at 19 U.S.C. 1500, provides the general authority under which Customs appraises merchandise. Section 500(a) states that the appropriate Customs officer shall, under rules and regulations prescribed by the Secretary:

appraise merchandise by ascertaining or estimating

the value thereof, under section 1401a of this title,

by all reasonable ways and means in his power, any

statement of cost or costs of production in any invoice,

affidavit, declaration, other document to the contrary

notwithstanding . . . .

The Statement of Administrative Action further provides that:

[s]ection 500 allows Customs to consider the best

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evidence available in appraising merchandise . . . .

[It] authorize[s] the appraising officer to weigh the

nature of the evidence before him in appraising the

imported merchandise. This could be the invoice, the

contract between the parties, or even the recordkeeping

of either of the parties to the contract.

In this case, because the goods are not "sold for exportation to the United States," within the meaning of 19 U.S.C. 1401a(b), the "price actually paid or payable" for the imported merchandise cannot be ascertained and, consequently, transaction value is not a viable method of appraisement.

Section 402(f) of the TAA provides that if the value of the merchandise cannot be determined under the other methods of appraisement delineated within section 402 of the TAA, the merchandise is appraised on the basis of a value that is derived from a method of appraisement, allowing for reasonable adjustments as necessary to arrive at a value. Accordingly, in this case, pursuant to section 402(f) the appropriate Customs officer appraised the merchandise at the price paid by Master Wash to the U.S. importer for disposal of the goods in the U.S.

Based on the facts presented, especially in light of the fact that the protestant has not provided any other documentation such as invoices, contracts, or recordkeeping to show otherwise, we find that the protestant has not proffered sufficient evidence to prove that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. The appraising officer, under authority of section 500 and by utilizing a method of appraisement in accordance with section 402(f), appropriately considered all the evidence made available by the protestant and used "all reasonable ways and means in his power" to appraise the merchandise.

Entry of the Merchandise

Section 10.151, Customs Regulations (19 C.F.R. ß10.151) provides, in pertinent part, that pursuant to section 321(a)(2)(C), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(C)), the district director shall pass free of duty and tax and without the preparation of an entry, any importation having a fair retail value in the country of shipment not exceeding $5. However, section 143.22, Customs Regulations (19 C.F.R. ß143.22) explains, in pertinent part, that the district director may require a formal consumption or appraisement entry for any merchandise if deemed necessary for: import admissibility enforcement purposes, revenue protection, or the efficient conduct of Customs business.

We note that the protestant has not established whether the goods have a fair retail value of $5 or less in Canada, the country of shipment. Regardless of the retail value of the goods, it is apparent through our confirmation from the EPA and from the certification on the invoice indicating that the goods comply with the TSCA, as administered by the EPA, that the goods are subject to the TSCA. In this case, because the EPA's laws are involved, it was appropriate, pursuant to section 143.22, for the district director to require formal entry for the merchandise.

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In Headquarters Ruling Letter (HRL) 221804, issued December 28, 1989, Customs stated that section 10.151 applies to those very simple cases which do not involve an other agency's laws. The same issues raised in that decision pertaining to public policy concerns when importing such potentially harmful products and maintaining a record of such merchandise also are applicable in this case. Section 10.151 was not intended to be used in these situations but rather when the expense and inconvenience of collecting duty would be disproportionate to the amount of revenue that otherwise would be collected. See section 321, Tariff Act of 1930, as amended by 19 U.S.C. 1321.

With regard to the assessment of the ad valorem MPF on the merchandise, 19 U.S.C. 58c(a)(9)(A) provides that the Secretary of the Treasury shall charge and collect an ad valorem fee for the processing of merchandise that is formally entered or released. This fee, with certain exceptions, is based on the value of merchandise as determined under 19 U.S.C. 1401a. 19 U.S.C. 58c(b)(8)(D)(ii). On the contrary, 19 U.S.C. 58c(a)(10) provides that merchandise that is informally entered or released is assessed a specific fee (as enumerated within the provision), depending on the manner in which the entry was prepared.

Because it was appropriate to require formal entry for the merchandise, it follows, in accordance with 19 U.S.C. 58c, that the appraising officer properly assessed an ad valorem MPF on the merchandise.

HOLDING:

The protestant has not proffered sufficient evidence to prove that Customs employed unreasonable ways and means to ascertain the value of the imported merchandise. Additionally, it was appropriate for the appraising officer to require formal entry and, consequently, to assess an ad valorem MPF on the merchandise.

You are directed to deny this protest. A copy of this decision with the Form 19 should be sent to the protestant.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision, the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS, and to the public via the Diskette Subscription Service, the Freedom of Information Act and other public access channels.

Sincerely,

John Durant, Director
Commercial Rulings Division

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