

# NEIC

CUSTOMS/EPA

JOINT ENFORCEMENT STRATEGY

HAZARDOUS WASTE EXPORTS

JUNE 1989

National Enforcement Investigations Center, Denver

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U.S. Environmental Protection Agency



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Office of Enforcement

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF ENFORCEMENT AND COMPLIANCE MONITORING**

**AND**

**UNITED STATES CUSTOMS SERVICE  
OFFICE OF INSPECTION AND CONTROL**

**CUSTOMS/EPA**

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**HAZARDOUS WASTE EXPORTS**

**JUNE 1989**

**NATIONAL ENFORCEMENT INVESTIGATIONS CENTER  
Denver, Colorado**

## **PREFACE**

Hazardous wastes generated by a variety of industrial activities in the United States are routinely exported to Canada, Mexico and other areas of the world for recycling, reclamation, treatment or disposal. These export activities are regulated by the Resource Conservation and Recovery Act and by International Agreements. Since March 1987, our agencies have cooperated in monitoring this commerce to ensure that shipments are properly documented and in compliance with applicable regulations and statutes and that the exports have the full consent of the receiving country.

This Joint Enforcement Strategy supplements and forms a key element of EPA's March 1988 Enforcement Strategy for Hazardous Waste Exports. The Joint Enforcement Strategy further defines responsibilities outlined in the February 1987 Memorandum of Understanding between our agencies and forms the basis for cooperative enforcement activities.

It is our policy that our agencies will cooperate fully in monitoring hazardous waste exports and in related enforcement activities to ensure that such exports occur in an environmentally sound manner.

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**Samuel H. Banks**  
Assistant Commissioner  
Office of Inspection and  
Control  
U.S. Customs Service

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**Edward E. Reich**  
Acting Assistant Administrator  
Office of Enforcement and  
Compliance Monitoring  
U. S. Environmental  
Protection Agency

ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF ENFORCEMENT  
NATIONAL ENFORCEMENT INVESTIGATIONS CENTER  
BUILDING 53, BOX 25227, DENVER FEDERAL CENTER  
DENVER, COLORADO 80225

DATE June 14, 1989

**MEMORANDUM**

**SUBJECT:** Customs/EPA Joint Enforcement Strategy - Hazardous Waste Exports

**FROM:** Carroll G. Wills   
Acting Director, NEIC

**TO:** Edward E. Reich (LE-133)  
Acting Assistant Administrator for Enforcement  
and Compliance Monitoring

Enclosed are two final copies of the subject enforcement strategy. The two copies are ready for signature on the Preface page by the Assistant Administrator-OECM, and the Assistant Commissioner Office of Inspection and Control, U.S. Customs. Also enclosed is a separate Preface page to be signed and returned to NEIC for use in producing additional copies for distribution.

Howard Berman and Jim Vincent have met with Charles Davies of Customs to complete the final strategy and arrange for signatures. Howard has agreed to complete these arrangements when you have received the two copies.

The Joint Strategy was reviewed by Customs and by the following EPA offices: OECM (Civil and Criminal), International Activities, Waste Programs Enforcement, and Solid Waste. The final version has been revised to reflect review comments.

The Joint Enforcement Strategy is a supplement to the EPA Enforcement Strategy for Hazardous Waste Exports and is an element of the Memorandum of Understanding with Customs. It will be used by both agencies to guide our cooperative efforts in monitoring hazardous waste exports.

Please contact me or Jim Vincent if you have any questions.

Encl.

cc: Paul R. Thomson, Jr.  
Deputy Assistant Administrator, Office of Criminal Enforcement  
Counsel/OECM

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## **I. INTRODUCTION**

This document describes the strategy developed by the U.S. Customs Service (Customs) and the Environmental Protection Agency (EPA) to fulfill their joint responsibilities for regulating the export of hazardous waste from the United States to Canada, Mexico and other countries. The strategy continues and expands cooperative enforcement activities implemented by the two agencies during the past two years. Elements of the strategy are defined, responsibilities assigned and an implementation plan established. Provisions for monitoring imports of hazardous waste into the United States are also included.

The objectives of this strategy are to ensure that all exports of hazardous waste from the United States are in compliance with applicable statutes and regulations including the requirement that the country receiving the waste has formally consented to the shipment and that all such exports are reported to EPA.

This strategy is national in scope in that it includes the enforcement of regulations on import and export shipments of hazardous waste wherever they enter or leave the country. However, the main focus of the enforcement activities will be on the Canadian border crossings in New England, New York, Michigan and Washington and on selected Mexican border crossings. Currently there are about 4,000 to 5,000 export shipments of hazardous waste annually with a total volume in the range of 100,000 to 120,000 tons. Most of these shipments leave the United States through about 10 ports of exit with shipment frequencies at each port ranging from less than 100 to more than 1,500 per year. About 80 percent of the volume is exported to Canada, primarily by highway. About 15 percent of the volume goes by rail to Mexico with the remaining 5 percent by water to overseas locations. Imports of hazardous waste are in the range of 40,000 to 50,000 tons annually, primarily from Canada.

Section 3017 of the Resource Conservation and Recovery Act (RCRA), which was added by the Hazardous and Solid Waste Amendments of 1984, provides specific statutory requirements applicable to the export of hazardous waste from the United States to any other country [Appendix A]. In August 1986, EPA promulgated regulations as 40 CFR Part 262, Subpart E, effective November 8, 1986, fully implementing the provisions of Section 3017 [Appendix B]. Bi-Lateral International Agreements were signed by the United States with both Canada [Appendix C] and Mexico [Appendix D] in late 1986 to further implement controls on transboundary movements of hazardous waste. These statutes, regulations and international agreements form the regulatory framework for regulation of international shipments of hazardous waste.



In deliberating on passage of Section 3017 of RCRA, Congress indicated its intent that EPA and Customs develop a national program of spot checks of export shipments of hazardous waste. In addition, Customs is in the best position to assist EPA in the enforcement of the export regulations and in the monitoring of import shipments as they enter the country. In February 1987, EPA and Customs signed a Memorandum of Understanding (MOU) which sets forth the responsibilities of each agency in carrying out a cooperative program to enforce the export regulations [Appendix E].

In March 1988, EPA completed an Enforcement Strategy for Hazardous Waste Exports. The Strategy clearly recognizes the role of Customs and sets forth several program elements that are included in this joint strategy.

Several elements of the MOU have already been implemented. In March 1987, Customs issued Other Agency Compliance Circular No. 188 that transmitted the regulatory requirements for hazardous waste exports to all Customs locations and implemented the collection of hazardous waste manifests by Customs from export shipments for delivery to EPA. In September 1987, a pilot border spot check was conducted jointly by EPA and Customs at El Paso, Texas, with the assistance of State and local agencies. A pilot training course was also conducted at El Paso in November 1987. In February 1988, EPA notified Customs of 10 ports of exit that were handling most of the export shipments. Manifest collection procedures were refined at those locations. Additional border spot checks were conducted at Detroit and Port Huron, Michigan; Alexandria Bay, Buffalo, Champlain and Niagara Falls, New York and Highgate Springs, Vermont during 1988. EPA contacts were also made with Customs personnel in Douglas, Naco and Nogales, Arizona; Otay Mesa and San Ysidro, California and Laredo, Texas during 1988 to provide information on hazardous waste movements at those locations. Border spot checks and training of Customs inspectors are continuing in 1989.

Communication patterns have been developed between EPA and various Customs offices and ports, manifest collection procedures have been improved, compliance with export regulations has substantially improved, additional border spot checks have been scheduled and a training program has begun. There is now a need to fully define and implement a Joint Enforcement Strategy as set forth in the MOU.

## **II. SUMMARY**

This Customs/EPA Joint Enforcement Strategy is designed to ensure that all exports of hazardous waste from the United States are in compliance with applicable statutes and regulations and that the exports are reported to EPA. Compliance of import shipments of hazardous waste is also monitored.

Enforcement activities are national in scope with emphasis on 10-20 ports of exit in New England, New York, Michigan and Washington and along the Mexican border which are known to handle hazardous waste shipments.

Regulations applicable to the transport and handling of hazardous waste are complex. This strategy focuses on ensuring that all transboundary shipments of hazardous waste are accompanied by the proper documentation and that the shipments have been consented to by the receiving country. Key documents are the EPA Uniform Hazardous Waste Manifest (a shipping paper that identifies the exporter, transporter and receiving facility and that describes the nature and volume of the waste) and, for exports, the EPA Acknowledgment of Consent that authorizes the shipment.

EPA has implemented an overall enforcement strategy for the regulation of hazardous waste exports. Activities conducted as part of the Customs/EPA Joint Enforcement Strategy form an integral part of the overall strategy. Elements of the EPA strategy include a program to inform the regulated community, information management activities, an inspection strategy and enforcement response procedures.

### **Public Information**

EPA is developing information packets for informing the regulated community of hazardous waste export requirements. Customs will assist EPA in this public information activity by distributing these packets to waste handlers at the border when instances of non-compliance are detected.

### **Manifest Collection**

Procedures for collecting Hazardous Waste Manifests from waste transporters as shipments exit the United States have been implemented by Customs and EPA at all ports of exit. Revised procedures are in use at about 10 locations handling most of the waste shipments. Collected manifests are delivered to EPA for tracking export shipments. These procedures will be revised and expanded to additional ports as indicated by experience and as new export routes are identified.

## Training

EPA will continue development of training for Customs inspectors involved in monitoring of waste shipments. The existing pilot training course will be produced as a video tape during 1989. A handbook for Customs inspectors will be produced as part of this course. The handbook gives location-specific information on waste shipments and provides procedures for response to likely waste transport scenarios. EPA will provide the initial training at key locations during 1989. Customs will ensure that appropriate personnel receive the training and will provide the training to new personnel in an ongoing fashion.

## Waste Exporter Profile

A national profile of hazardous waste exports has been developed from information in the EPA export computer database and has been used to target ports of exit for regulatory attention and to define content for the training course. As part of the training and border spot check programs, waste exporter profiles will be developed by EPA for each location handling waste shipments. Several profiles have already been completed and provided to Customs personnel and to State environmental agencies. These profiles provide information on the types of waste exported, containers, transport vehicles, transportation firms, exporters, destinations of shipments, potential illegal shipments and known violations of regulations. EPA and Customs will jointly explore the use of these profiles and the Customs data systems to assist Customs inspectors in identifying suspected shipments of waste.

EPA has identified to Customs the 10 ports of exit handling most waste exports. EPA will continually update information on shipment routes and will cooperate with Customs in implementing enforcement procedures at additional ports of exit as needed to ensure most shipments are monitored.

## Border Spot Checks

The ongoing program of border spot checks conducted jointly by EPA, Customs and State and local enforcement agencies will be continued and expanded to additional ports during 1989. Joint spot checks will initially be conducted at about 10 to 15 ports annually at various frequencies. These spot checks will vary from review of shipping documents only to full inspections of transport vehicles and sampling of waste loads. Customs will conduct spot checks of waste transporters as part of routine border checks for other purposes. Customs will also cooperate with periodic transporter checks conducted by State environmental agencies.

### Coordination

EPA is responsible for the overall coordination of enforcement of hazardous waste export regulations. This coordination is the responsibility of EPA's National Enforcement Investigations Center (NEIC) in Denver, Colorado, an element of the Office of Enforcement and Compliance Monitoring. Coordination of Customs hazardous waste activities is the responsibility of the Office of Inspection and Control in Washington, DC. At the local level, coordination responsibilities have been assigned among Customs Districts and ports, EPA Regions and State and Local enforcement agency offices to facilitate rapid response to enforcement and emergency situations.

### **III. APPLICABLE REGULATIONS**

Hazardous wastes are governed by a complex set of regulations from initial generation until they are ultimately recycled or disposed of. Export shipments are subject to many of these regulations. However, there are a few key requirements that are the focus of this strategy. These are outlined below.

All domestic hazardous waste handlers (generators, transporters and treatment, storage and disposal (TSD) facilities) are required to notify EPA of their activities and to comply with regulations promulgated pursuant to RCRA. These regulations define what materials are hazardous waste, set minimum standards for generators, specify standards for waste storage, treatment and disposal facilities, establish a permit system for TSD facilities and require the use of a hazardous waste manifest to track all off-site shipments of waste from the generator to ultimate treatment or disposal. In most states, most of these regulations are administered and enforced by an EPA authorized State agency. Additional State requirements usually apply.

All handlers of exports of hazardous waste are subject to essentially the same domestic RCRA requirements and also to additional RCRA regulations specific to exports. For exports to Canada and Mexico, Bi-Lateral International Agreements with these countries impose slightly different requirements than for all other countries. Export shipments must comply with Department of Transportation regulations applicable to all shipments of hazardous materials. Exports are subject to certain Census Bureau requirements.

#### **RCRA EXPORT REGULATIONS**

Most of the RCRA regulations specific to exports are contained in 40 CFR Part 262 Subpart E. Minor requirements are also contained in Parts 260, 261, 263 and 271. The export specific regulations were promulgated on August 8, 1986, and were effective November 8, 1986. Appendix B contains those regulations that were revised or promulgated on that date.

#### Notification of Intent to Export

A Notification of Intent to Export should be submitted to EPA about 60 days prior to initiation of any planned export shipments. This Notification is analogous to a permit application and may cover export activities for up to 12 months. The Notification must provide information on the exporter, the consignee (foreign facility ultimately receiving the waste), the type(s) of waste(s) to be exported, the frequency of shipments, the total volume of waste to be exported, points of entry to and departure from each foreign country through which the waste will pass, the means of transportation, types of containers and the

manner in which the waste will be treated, stored or disposed of in the receiving country. Renotification is required if there are changes in the material facts of export actions such as the consignee, the type of waste, volumes in excess of previous notifications, etc.

This Notification is a key document in the process to authorize hazardous waste exports as it provides the basis for the consent of the receiving country and for prescribing conditions on waste shipments. The Notification will normally not be used by Customs.

#### Acknowledgment of Consent

When a receiving country consents to an export shipment, EPA forwards an Acknowledgment of Consent to the exporter. This Acknowledgment is analogous to a permit or license to export. Exports must not take place unless written consent in the form of this Acknowledgment is received by the exporter. For all countries except Canada, the Acknowledgment is the cable sent to EPA by the U.S. Embassy in the receiving country that acknowledges the written consent of the country and describes any terms and conditions of that consent. An Acknowledgment of Consent Letter is used for Canadian exports under the terms of the Bi-Lateral Agreement. The Acknowledgment contains information on the specific waste which the exporter is authorized to ship.

By Statute, a copy of the Acknowledgment must accompany each export shipment. All export shipments must be in conformance with the conditions of the Acknowledgment. An objective of this joint enforcement strategy is to ensure that all exports meet this requirement.

#### Rejections

If a country objects to a shipment of hazardous waste or withdraws a previous consent, EPA is required to notify the exporter in writing. Shipments may not take place unless this objection is resolved. Customs may occasionally be requested by EPA to assist in stopping shipments that have been objected to by the receiving country.

#### Manifests

An EPA hazardous waste manifest must accompany all export shipments in essentially the same manner as for domestic shipments. The manifest must provide information on the generator or exporter of the waste, the transporter and the facility in the foreign country receiving the shipment. It also provides a description of the waste, the number and type of containers and the volume of the shipment. The point and date of departure from the U.S. must be shown on the manifest.

The generator is required to provide an extra copy of the manifest to the transporter. This manifest copy is required to be delivered to a U.S. Customs official at the point of departure from the U.S.

The EPA manifest is a key element in the monitoring of export shipments for compliance. The manifest must be consistent with the actual shipment and also with the Acknowledgment of Consent. The manifest also provides the basis for tracking export shipments.

Customs will be continually involved in this aspect of compliance monitoring in two ways. By checking export documentation as the shipment leaves the United States, compliance with the receiving country's consent can be verified. By collecting manifest copies for submission to EPA, tracking of shipments is facilitated. This strategy provides for both activities.

#### Exception Reports

Each exporter is required to file an exception report with the EPA Administrator if he does not receive a signed copy of the manifest from the transporter (within 45 days of the date the waste was accepted by the transporter) showing the date and place of departure from the U.S. or he does not receive written confirmation (within 90 days of the date the waste was accepted by the transporter) that the waste was received by the consignee. An exception report is also required if the waste is returned to the U.S.

Customs assists EPA in detecting when exception reports should be submitted by exporters by alerting EPA when export shipments are returned to the U.S.

#### Annual Reports

All exporters of hazardous waste are required to file an annual report with EPA by March 1 of each year covering all shipments for the previous calendar year. EPA uses these reports to prepare summaries of waste exports and to detect cases where exporters or transporters have not complied with the requirement to deliver manifest copies to Customs.

#### Transporter Requirements

In addition to the standard requirements for transporters of hazardous waste, a transporter of an export shipment is prohibited from accepting the shipment if it is not accompanied by an Acknowledgment of Consent or it does not conform to the Acknowledgment. The transporter is also required to give a copy of the manifest accompanying the shipment to a U.S. Customs official at the point of departure from the U.S. Customs assists EPA in monitoring compliance with these requirements.

## **INTERNATIONAL AGREEMENTS**

### Canada

A bi-lateral agreement concerning the transboundary movement of hazardous waste between the U.S. and Canada was signed by the EPA Administrator and his Canadian counterpart on October 28, 1986, effective November 8, 1986 [APPENDIX C]. The agreement sets forth slightly different requirements for several aspects of export shipments and also covers imports of hazardous waste into the U.S. from Canada and transit shipments of waste routed through Canada between two U.S. points. However, with respect to implementation of this strategy, no significant differences exist in procedures for monitoring export shipments.

Canadian exporters of waste to the U.S. are required to provide the same Notification of Intent under the bi-lateral agreement that is required of U.S. exports. The Notifications are sent to EPA for consent or objection. A Canadian Acknowledgment of Consent is not required to accompany shipments from Canada to the U.S. Customs may occasionally be requested by EPA to assist in intercepting import shipments which have been objected to by EPA or the receiving State.

Hazardous waste shipments frequently move between U.S. ports of exit in Michigan and New York over Ontario highways or railroads. These transit shipments are also covered by the bi-lateral agreement. A notification to the transit country is required at least seven days prior to the shipment.

The agreement provides for a cooperative program of information exchange, monitoring and spot-checking of transboundary shipments in order to ensure that they comply with the regulations of both countries. EPA and Customs are participating in this cooperative program.

### Mexico

A bi-lateral agreement concerning the transboundary shipments of hazardous waste and hazardous substances between the U.S. and Mexico was signed on November 12, 1986 and was effective in November 1986 [Appendix D]. The agreement slightly modifies the notification procedure and also covers the import of hazardous waste into the U.S. from Mexico and transit shipments through the U.S. and Mexico. Special provisions apply to hazardous waste generated by U.S. companies with manufacturing facilities in Mexico.

The agreement provides that notice of intent to export shall be provided to the receiving country 45 days in advance of the first shipment and that 45 days shall be provided for a response indicating consent or objection to the export. Consent to the proposed exports must be given by Mexico.



A specific requirement unique to Mexico concerns the generation of hazardous waste by U.S. companies with twin plants in adjacent areas of Mexico and the U.S. Raw materials are moved from the U.S. into Mexico for further processing. Any hazardous waste generated by such processing is to be returned to the U.S. for disposal. Under terms of the bi-lateral agreement, the U.S. must accept the returning hazardous waste. However, the returned waste is an import shipment under RCRA and must comply with U.S. regulations. Customs will assist EPA in the monitoring of both import and export shipments along the Mexican border.

#### **DEPARTMENT OF TRANSPORTATION REGULATIONS**

All hazardous waste shipments are required to comply with specific DOT regulations concerning the construction of shipping containers, markings on the containers, placarding of the transporting vehicle and classification and coding of wastes on shipping papers. These regulations include specific requirements for international shipments. The DOT classification and coding of hazardous waste are of major significance to export shipments as they are a key element in the description of wastes in Notifications of Intent to export, the Acknowledgment of Consent, manifests and Annual Reports. Applicable DOT regulations are contained in 49 CFR Parts 172-179. Portions of DOT regulations applicable to hazardous waste shipments have been adopted by EPA and are enforceable by both EPA and DOT. Border spot checks will assess compliance with DOT requirements as well as RCRA regulations.

#### **CENSUS BUREAU REQUIREMENTS**

Census Bureau regulations require that a Shipper's Export Declaration (SED) be prepared for all export shipments of materials (including hazardous waste) with a value exceeding \$1500. The SED indicates the number and type of containers, the type of material (as indicated by classification codes established by the Census Bureau), the units and weight of the shipment and the value. These SEDs are delivered to U.S. Customs at the point of departure from the U.S. and transmitted by Customs to the Census Bureau.

Because the SED is required only for shipments with values in excess of \$1500, most exports of hazardous waste for disposal (such as most shipments to Canada) would not require an SED. Conversely, exports of listed hazardous waste for recycling would frequently exceed \$1500 in value and would require an SED. The SED may be an important ancillary source of information on cases involving suspected sham recycling. Failure to file a required SED or falsification of information on the SED such as the classification of the material are enforceable violations under Census Bureau regulations.

#### **IV. EPA ENFORCEMENT STRATEGY**

In March 1988, EPA completed development of a national enforcement strategy for hazardous waste exports. The strategy contains four main elements: a program to inform the regulated community, information management activities, an inspection strategy and enforcement response procedures. Activities conducted as a part of the EPA/Customs Joint Enforcement Strategy are key parts of each of these elements.

Compliance with export specific RCRA requirements could be improved; part of the problem is due to ignorance on the part of waste exporters of the export specific requirements. EPA has implemented a variety of approaches to inform the regulated community. These include seminars, information packets, direct contact with exporters and other means. EPA will continue the development and modification of information packets for the regulated community and will make these available to Customs ports handling waste shipments. Customs will assist in the information program by providing information on border crossing procedures to exporters and waste transporters and by disseminating information packets as requested.

EPA has developed a computer database for compiling Notifications of Intent to Export, EPA Acknowledgment of Consent letters, Annual Reports and Hazardous Waste Manifests. This database is used to assess the status of compliance, develop inspection targeting strategies, develop waste exporter profiles, track export shipments and compile summaries of hazardous waste exports. Customs, through the collection of manifests from export shipments, will assist EPA in maintenance of this database. Information from the database will be provided to Customs on a routine basis.

Two types of inspections are used to assess the status of compliance with export regulations. Ongoing domestic inspections of hazardous waste generators, transporters and treatment, storage and disposal facilities by EPA and authorized State agencies identifies those facilities that are involved in export activities and evaluates their compliance with notification, manifesting and record keeping requirements. Spot checks of export shipments at the border in joint operations involving Customs, EPA and State agencies are the other key type of inspections. These spot checks are discussed in more detail in Section X.

EPA has established detailed procedures for response by EPA and authorized States to violations of hazardous waste regulations. The EPA Enforcement Strategy for Hazardous Waste Exports provides that import and export violations will be responded to in the same manner as domestic violations. For most violations, this will involve referral of the non-compliance to the EPA Regional office for enforcement follow-up by the Waste Management Division and Office of Regional Counsel as appropriate.

Responses may include warning letters, notices of violation, administrative orders and civil or criminal litigation. Where criminal activities are documented or suspected, these cases are handled directly by EPA's Office of Criminal Investigations. In some cases, the State environmental and law enforcement agencies may be involved.

Customs will refer any violations of RCRA regulations to EPA for follow up and appropriate enforcement response. EPA will refer any instances of non-compliance with Customs authorities (false declarations, etc.) to Customs for action. It is likely that some instances of non-compliance will require joint participation in enforcement responses including administrative procedures and both civil and criminal litigation.

## V. DEVELOPMENT OF PROCEDURES

A major EPA responsibility is the cooperative development with Customs of procedures for use by Customs inspectors in the monitoring of routine hazardous waste shipments and in detecting, inspecting, detaining and seizing illegal shipments of hazardous waste. This will be an ongoing activity with new procedures developed and existing ones modified as indicated by experience and changing conditions. Information exchange is occurring between various elements of Customs and EPA including data on criminal investigations. This exchange will be continued and broadened as needed.

Manifest collection procedures have been developed and implemented. These manifest procedures will be periodically updated as needed. Spot checking of export shipments has been conducted at several highway ports of exit. Spot check procedures will be developed for other ports including rail and water transportation ports. A handbook will be developed for Customs inspectors to aid them in identifying shipments of hazardous waste and taking appropriate enforcement responses. This handbook will be location specific and will form the reference book for a video training course.

### Manifest Collection Procedures

RCRA regulations require that the EPA Uniform Hazardous Waste Manifest accompany all shipments of hazardous waste including exports. This manifest includes information on the generator of the waste, the exporter, the transporter, the destination of the shipment, a description of each type of waste in the shipment, the waste volume and the number and type of containers. It is a key document both for the inspection of the shipment and in the tracking of exports.

Export regulations require that the exporter provide an extra copy of the manifest to the transporter for delivery to Customs at the point of exit from the U.S. EPA has developed procedures for the collection of these manifests by Customs for subsequent transmittal to EPA for entry into the export database. These collection procedures were implemented at all Customs ports of exit in March 1987 by issuance of Other Agency Compliance Circular No. 188. Additional procedures have since been implemented at about 10 highway ports of exit and at two rail ports of exit to Canada and Mexico.

EPA and Customs will continue to monitor the performance of the manifest collection procedures to ensure that manifests are collected from all export shipments, the manifests are properly marked by Customs and that they are transmitted to EPA in a timely manner. Procedures will be periodically revised if needed

and local adjustments made where appropriate. As additional highway and rail ports of exit handling waste shipments are identified, Customs will ensure that manifest collection procedures are fully operable at these locations. Current projections indicate that manifest collections may routinely occur at up to 25 ports of exit during the next few years.

Due to the infrequent shipments of waste by water transportation at a few scattered seaports and different document processing procedures, the collection of manifests at seaports is more difficult than at highway ports. EPA and Customs will explore means of improving the collection of manifests at water shipping locations.

#### Spot Check Procedures

At most highway ports of exit, traffic leaving the U.S. is not routinely inspected by Customs. At some locations, all loaded trucks must stop and make personal contact with a Customs official to present Shipper's Export Declarations or other shipping papers. At other locations, the trucks may stop at a "mail-box" to deposit the Declarations without any contact with Customs. To ensure compliance with a variety of export requirements, Customs conducts spot checks of outbound traffic.

Customs conducts periodic spot checks at many of the highway ports of exit as part of Exodus or Contraband Enforcement Team activities. These spot checks are targeted at certain types of vehicles or contraband but can be used as a basis for detecting illegal loads of hazardous waste and monitoring compliance of routine shipments with applicable regulations.

Periodic spot checks will be conducted at locations handling frequent export shipments as joint exercises with Customs, EPA and State environmental agency participation. EPA has developed procedures in cooperation with Customs to conduct border spot checks.

#### Hazardous Waste Handbook

As will be discussed in Section VI, EPA has developed a training course for Customs inspectors involved in monitoring of hazardous waste shipments. This training course has been presented by EPA in person to Customs personnel at key ports of exit. The course is being converted into video format so that it may be distributed to additional ports of exit and also made available to new personnel whose duties may include monitoring hazardous waste shipments at ports where the initial training has been completed. EPA will also provide a location specific procedural handbook to each port of exit handling hazardous waste shipments. This handbook provides the "how to" information for responding to various scenarios likely to be encountered with transboundary waste shipments. It also provides information on the known movements of hazardous waste at that location.

Specific contents will include:

- Manifest Collection Procedures
- Identification of Hazardous Waste Shipments
- Responses to Illegal Shipments
- Responses to Leaking Loads
- Shipments Rejected by Foreign Facilities
- Imports
- Spot Checking Procedures
- Waste Exporter Profiles

#### Information Exchange

This strategy provides for the routine exchange of various types of information between Customs and EPA. Hazardous waste manifests, waste exporter profiles, training information and other documents will continue to be exchanged using established communication patterns. Evidence of non-compliance will be exchanged on a case-specific basis.

## **VI. TRAINING**

A major responsibility of EPA is the development of training for Customs inspectors to prepare them for identification of hazardous waste shipments and the monitoring of compliance with regulations. A pilot one-day training course was developed in 1987 and presented by EPA to personnel in El Paso, Texas, in November 1987. The course was modified in response to this pilot test. A shorter two-hour version of the course was pilot tested at the Laredo and Brownsville, Texas, ports in March 1989. The revised course was presented to Customs inspectors in Buffalo, Champlain and Niagara Falls, NY, and Highgate Springs, VT in Spring 1989. This course is being produced as a video tape for use at all Customs ports which handle waste shipments.

EPA will complete development of the video course during 1989 in cooperation with Customs and will conduct the initial training of inspectors at about 6-10 key ports. Customs will ensure that appropriate personnel at key ports receive the training and will provide the training to new personnel at these locations on an ongoing basis. Training will also be provided by EPA and Customs in the same fashion at any new ports of exit identified as handling significant volumes of waste shipments.

The video training course includes the following major topics:

- Hazardous Waste Regulations
- Export Regulations
- Import Regulations
- Customs/EPA Memorandum of Understanding
- Manifest Collection Procedures
- Waste Handler Profiles
- Transporter Inspections
- Border Spot Checks
- Safety Considerations
- Enforcement Responses

The course emphasizes practical aspects of how to recognize shipments of hazardous waste and to determine if proper documentation accompanies the shipment. Scenes of various types of waste transport vehicles and containers are used to acquaint the inspector with this complex subject. Actual inspection scenarios are also presented. A Customs inspector handbook is used as the

course reference so that the proper procedures for response to specific situations can easily be determined at a later date. The handbook contains local procedures such as contacts if an illegal load of waste is discovered or if a load is leaking.

The course presents a profile of a wide variety of wastes, transport vehicles and containers to acquaint the inspector with the most common hazardous waste shipments even if those may not be currently present at this location. Location-specific waste exporter profiles are contained in the course handbook.

When practical, the initial training by EPA may be coupled with a border spot check so that inspectors may receive immediate hands on practice in the procedures taught by the course.

EPA will provide each Customs location handling significant hazardous waste shipments with its own copy of the video training course and a location-specific handbook. The local Customs office will be responsible for conducting follow up training of new personnel and periodic refresher training.



## **VII. WASTE EXPORTER PROFILES**

EPA has compiled a large volume of information on known exports of hazardous waste from Notifications of Intent to Export, manifests collected from export shipments and Annual Reports. In addition, information has been collected by EPA Regional offices and State environmental agencies through ongoing inspection and enforcement programs. Much of this data has been entered in an export database at the National Enforcement Investigations Center. This information has been used to prepare a profile of known export activity on the national scale. This profile is being updated as new information is received and is the basis for preparation of location-specific waste exporter profiles.

The national profile currently contains the following types of information:

- Waste Types and General Characteristics
- Volumes of Waste Exported by Type and Characteristic
- Types of Containers
- Types of Transport Vehicles
- Major Destinations for Waste Shipments
- Ports of Exit with Expected Shipment Frequencies
- Major Transportation Companies

In addition to this information, data are being compiled on waste types with significant potential to be exported illegally, suspect commodities that may be improperly labeled, known types of sham recycling and other exporter characteristics.

Customs routinely develops information on non-compliance with other types of regulations by companies or individuals that may be involved in hazardous waste handling. Through information exchange procedures, this information is provided to EPA for inclusion in the profile.

The national profile is used by EPA to identify to Customs those ports of exit to be targeted for implementation of revised manifest collection procedures and for the training and spot check programs. It is also the basis for selecting the content of the video training course.

Customs uses computer procedures to track import shipments and determine whether a specific shipment entering the country should be released without inspection or detained for secondary

inspection. This system operates on a commodity and company-specific basis. Customs is developing a similar system for monitoring export shipments within the next three to five years. Customs and EPA will explore the use of the EPA waste exporter profile and the Customs computer systems to identify suspected waste shipments and other shipments that should receive detailed Customs inspections.

Profiles specific to each port of exit handling waste shipments are needed to assist Customs inspectors in monitoring the specific shipments expected at each location. These profiles have been prepared for several of the locations where spot checks have been conducted and will be completed for all key ports as part of the Customs reference handbook for the video training course. Port specific profiles contain the following types of information:

- Known Exporting Companies and Locations
- Known Waste Transporters
- Types of Transport Vehicles
- Container Types
- Waste Types, Characteristics and Volumes
- Shipment Frequencies

Histories of violations will be compiled for each location as the information becomes available from enforcement actions by EPA, Customs and State agencies.

## VIII. BORDER SPOT CHECKS

### Export Shipment Monitoring

Depending upon local operating procedures and the configuration of the port of exit, Customs may or may not routinely make contact with transporters of export shipments of hazardous waste. At some locations, all transporters stop and make personal contact with Customs inspectors. At other locations, transporters stop at a drop box to deposit Shipper Export Declarations and hazard waste manifests. At some locations, outbound traffic is not observed by Customs and bypassing of Customs facilities by waste transporters is possible. A program of border spot checks has been implemented to assist in enforcing compliance with the manifest drop requirement, to ensure that export shipments have the proper documentation and to detect illegal shipments.

During 1988, border spot checks were conducted in Michigan, New York, New England and Texas. This existing program will be expanded to include about 10 to 15 key ports on an annual basis. At those locations where routine contact is made with waste transporters, Customs will continue to routinely verify that proper documentation accompanies each export shipment. This monitoring activity will be supplemented by periodic joint EPA/State transporter checks involving a more detailed inspection of the transportation vehicle and related licenses, documentation, etc.

Two types of spot checks (outbound checks by Customs personnel only and more comprehensive joint spot checks involving EPA and other agencies) will be performed at the other key locations. Customs routinely conducts periodic spot checks of outbound traffic as part of the Exodus Program or Contraband Enforcement Team activities. Checks for hazardous waste shipments will be included in some of these routine checks. These will usually be record checks in which only shipping papers including hazardous waste manifests are inspected with follow-up inspection of suspect loads where indicated.

In addition to these Customs operations, joint operations involving various combinations of Customs, EPA, State environmental agencies, local enforcement agencies and Canadian agencies will be conducted periodically to specifically check for compliance with hazardous waste regulations. Procedures for these inspections have been developed and tested. Some of these spot checks will involve typical transporter checks with inspections of transport vehicles and record reviews. Others will be more comprehensive with sampling of selected waste shipments.

When allegations or evidence of illegal shipments are obtained by enforcement agencies, targeted inspections of certain transporters or shipments may be conducted.

### Import Shipment Monitoring

All import shipments of all commodities must stop at a Customs inspection station as they enter the country. Depending upon the nature of the cargo and the border location, the shipment may be routinely subjected to varying degrees of detailed inspection by Customs inspectors.

For declared hazardous waste shipments, Customs will conduct a records review to verify that a hazardous waste manifest accompanies the shipment. Both declared and suspected waste shipments may be subjected to more detailed inspections and may be detained for EPA or State environmental agency response if necessary.

### Rail and Water Shipments

Inspections of hazardous waste shipments exported by rail or water are not routinely performed at present. EPA and Customs will jointly explore methods of conducting such inspections. Procedures for targeting those locations or shipments most likely to handle hazardous waste will also be evaluated.

When information on suspected illegal shipments by rail or water is received, Customs will assist EPA in detecting, intercepting and detaining such suspected shipments.

## **IX. COORDINATION**

EPA has the overall responsibility for coordination of RCRA hazardous waste export and import regulations. Within EPA, the EPA Enforcement Strategy for Hazardous Waste Exports establishes the National Enforcement Investigations Center (NEIC) in Denver, Colorado, as the focal point for this coordination. In addition, each of the 10 EPA Regional Offices has designated a hazardous waste export coordinator to facilitate coordination among EPA and the various State environmental agencies. EPA will continue this established communication pattern to facilitate the coordination of enforcement actions within EPA and authorized State hazardous waste programs. NEIC will be the focal point for communications with Customs.

The Office of Inspection and Control in Washington, DC, has the lead responsibility within Customs for coordination of hazardous waste enforcement activities. Each key port of exit has designated a coordinator for local activities. Customs will continue the established communication pattern to facilitate dissemination of information of national application and interest.

EPA (NEIC) will communicate directly with the designated coordinator at each port when local procedure modifications are necessary, when specific enforcement actions are needed at that location, when spot checks are planned and other similar activities. The local Customs coordinator will be responsible for communicating items of national program significance to the Office of Inspection and Control.

Local communications arrangements for dealing with emergencies such as spills of hazardous materials, etc. will be continued. Routine contact among Customs personnel and State and local enforcement and environmental agencies will be encouraged for exchange of information relative to hazardous waste shipments.

**APPENDIX A**

**SECTION 3017**

**RESOURCE CONSERVATION AND RECOVERY ACT**

**§ 6938. Export of hazardous wastes**

(a) **In general.**—Beginning twenty-four months after November 8, 1984, no person shall export any hazardous waste identified or listed under this subchapter unless

(1)(A) such person has provided the notification required in subsection (c) of this section,

(B) the government of the receiving country has consented to accept such hazardous waste,

(C) a copy of the receiving country's written consent is attached to the manifest accompanying each waste shipment, and

(D) the shipment conforms with the terms of the consent of the government of the receiving country required pursuant to subsection (e) of this section or

(2) the United States and the government of the receiving country have entered into an agreement as provided for in subsection (f) of this section and the shipment conforms with the terms of such agreement.

(b) **Regulations.**—Not later than twelve months after November 8, 1984, the Administrator shall promulgate the regulations necessary to implement this section. Such regulations shall become effective one hundred and eighty days after promulgation.

(c) **Notification.**—Any person who intends to export a hazardous waste identified or listed under this subchapter beginning twelve months after November 8, 1984, shall, before such hazardous waste is scheduled to leave the United States, provide notification to the Administrator. Such notification shall contain the following information:

(1) the name and address of the exporter;

(2) the types and estimated quantities of hazardous waste to be exported;

(3) 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;

(4) the ports of entry;

(5) a description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) the name and address of the ultimate treatment, storage or disposal facility.

(d) **Procedures for requesting consent of the receiving country.**—Within thirty days of the Administrator's receipt of a complete notification under this section, the Secretary of State, acting on behalf of the Administrator, shall—

(1) forward a copy of the notification to the government of the receiving country;

(2) advise the government that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the hazardous waste;

(3) request the government to provide the Secretary with a written consent or objection to the terms of the notification; and

(4) forward to the government of the receiving country a description of the Federal regulations which would apply to the treatment, storage, and disposal of the hazardous waste in the United States.

(e) **Conveyance of written consent to exporter.**—Within thirty days of receipt by the Secretary of State of the receiving country's written consent or objection (or any subsequent communication withdrawing a prior consent or objection), the Administrator shall forward such a consent, objection, or other communication to the exporter.

(f) **International agreements.**—Where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, only the requirements of subsections (a)(2) and (g) of this section shall apply.

(g) **Reports.**—After November 8, 1984, any person who exports any hazardous waste identified or listed under section 6921 of this title 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 such hazardous waste exported during the previous calendar year.

(h) **Other standards.**—Nothing in this section shall preclude the Administrator from establishing other standards for the export of hazardous wastes under section 6922 or 6923 of this title.

Pub.L. 89-272, Title II, § 3017, as added Pub.L. 98-616, Title II, § 245(a), Nov. 8, 1984, 98 Stat. 3262.



**APPENDIX B**  
**RCRA EXPORT REGULATIONS**

requirements, Water pollution control, Water supply.

Lee M. Thomas,

Administrator.

August 5, 1986.

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1008, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019 and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6903, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.2 is amended by revising paragraph (b) to read as follows:

**§ 260.2 Availability of information; confidentiality of information.**

(b) Any person who submits information to EPA in accordance with Parts 260 through 266 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B, of this chapter except that information required by § 262.53(a) which is submitted in notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 is revised to read as follows:

Authority: Secs. 1008, 2002(a), 3001, 3002, and 3017 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6903, 6912(a), 6921, 6922, and 6937).

4. Section 261.8 is amended by revising paragraphs (a)(3)(i) to read as follows:

**§ 261.8 Requirements for recyclable materials.**

(a) . . .  
(3) . . .

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided

otherwise in an international agreement as specified in § 262.56:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)-(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Subpart E of Part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

5. Section 261.5 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

**§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.**

(f) . . .  
(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(g) . . .  
(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

## PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

6. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1008, 2002(a), 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6908, 6912(a), 6922, 6923, 6924, 6925, and 6937).

7. Section 262.41 is amended by revising the introductory text to paragraph (a), (a)(3), (a)(4) and (a)(5), and adding a sentence at the end of paragraph (b) to read as follows:

**§ 262.41 Biennial Report.**

(a) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year. The Biennial Report must be submitted on EPA Form 8700-13A, must cover generator activities during the previous year, and must include the following information:

(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;

(5) A description, EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number of each such off-site facility to which waste was shipped.

(b) . . .  
Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

8. 40 CFR Part 262 is amended by revising Subpart E to read as follows:  
**Subpart E—Exports of Hazardous Waste**

Sec.	
262.50	Applicability.
262.51	Definitions.
262.52	General requirements.
262.53	Notification of intent to export.
262.54	Special manifest requirements.
262.55	Exception reports.
262.56	Annual reports.
262.57	Recordkeeping.
262.58	International agreements. [Reserved]

## 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 Acknowledgment 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.

#### § 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.

(Approved by the Office of Management and Budget under control number 2050-0035)

#### § 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 Part 171-177;

(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) Notification shall be sent to the Office of International Activities (A-106), EPA, 401 M Street, SW., Washington, DC 20460 with "Attention: Notification to Export" prominently displayed on the front of the envelope.

(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.

(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.

(Approved by the Office of Management and Budget under control number 2050-0035)

**§ 262.54 Special manifest requirements.**

A primary exporter must comply with the manifest requirements of 40 CFR 262.20-262.23 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 18 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) Recontact 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.

(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).

(Approved by the Office of Management and Budget under control number 2050-0035)

**§ 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.

(Approved by the Office of Management and Budget and assigned under control number 2050-0035)

**§ 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.

(b) Reports shall be sent to the following address: Office of International Activities (A-106), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(Approved by the Office of Management and Budget under control number 2050-0035)

**§ 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.

(Approved by the Office of Management and Budget under control number 2050-0035)

**§ 262.58 International agreements. (Reserved)**

9. Title 40 CFR Part 262 is amended by adding new Subpart F to read as follows:

**Subpart F—Imports of Hazardous Waste**

Sec.

262.60 Imports of hazardous waste.

**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.

10. Title 40 CFR Part 262 is amended by adding a new Subpart G to read as follows:

**Subpart G—Farmers****§ 262.70 Farmers.**

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in 40 CFR Part 270, 264 or 265 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

**Appendix—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)**

11. The instructions to the Uniform Hazardous Waste Manifest form in the Appendix to Part 262 is amended to add under Item 16 a new paragraph after the first paragraph as follows:

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."

**PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE**

12. The authority citation for Part 263 is revised to read as follows:

Authority: Secs. 2002(a), 3002, 3003, 3004, 3005 and 3017 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1976 (42 U.S.C. 6912, 6922, 6923, 6924, 6925 and 6937).

13. Section 263.20 is amended by revising paragraphs (a), (c), (e)(2), (f)(2) and (g)(3) and by adding paragraph (g)(4) to read as follows:

**§ 263.20 The manifest system.**

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 40 CFR 262.20. In the case of exports, a transporter may not accept such waste from a primary exporter or other person (1) if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and (2) unless, in addition to a manifest signed in accordance with the provisions of 40 CFR 262.20, such waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.

(e) . . .

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

(f) . . .

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports an EPA Acknowledgment of Consent

accompanies the hazardous waste at all times.

(g) . . .

(3) Return a signed copy of the manifest to the generator; and

(4) Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

**PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS**

14. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1008, 2002(a), and 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6928).

**§ 271.1 [Amended]**

15. Section 271.1 paragraph (j) is amended by adding the following entry to Table 1 in chronological order:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
(Insert date of publication)	Exports of hazardous waste.

16. Section 271.10 is amended by revising paragraph (e) to read as follows except for the note which remains unchanged.

**§ 271.10 Requirements for generators of hazardous wastes.**

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR Part 262 Subparts E and F, except that:

(1) Advance notification, annual reports and exception reports in accordance with 40 CFR 262.53, 262.55 and 262.56 shall be filed with the Administrator; States may require that copies of the documents referenced also be filed with the State Director; and

(2) The Administrator will notify foreign countries of intended exports in conjunction with the Department of State and primary exporters of foreign countries' responses in accordance with 40 CFR 262.53.

17. Section 271.11 is amended by revising paragraph (c) to read as follows:

**§ 271.11 Requirements for transporters of hazardous wastes.**

• • • • •

(c) The State must require the transporter to carry the manifest during transport, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f) and to deliver waste only to the facility designated on the manifest. The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR 263.20 (e) and (f). For exports of hazardous waste, the State must require the transporter to refuse to accept hazardous waste for export if he knows the shipment does not conform to the EPA Acknowledgment of Consent, to carry an EPA Acknowledgment of Consent to the shipment, and to provide a copy of the manifest to the U.S. Customs official at the point the waste leaves the United States.

• • • • •

[FR Doc. 86-17999 Filed 8-7-86; 8:45 am]

BILLING CODE 6160-10-M

**APPENDIX C**  
**INTERNATIONAL AGREEMENT WITH CANADA**

**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES  
OF AMERICA AND THE GOVERNMENT OF CANADA  
CONCERNING THE TRANSBOUNDARY MOVEMENT  
OF HAZARDOUS WASTE**

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 to Canada, waste dangerous goods, and with respect to the United States, hazardous waste subject to a manifest requirement in the United States, as defined by their respective national legislations and implementing regulations.
- (c) "Country of Export" means the country from which the shipment of hazardous waste originated.
- (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 transporter(s) 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 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 shipment(s) 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.

#### **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 agreement(s) 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.

EN FOI DE QUOI, les soussignés, dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Accord.

DONE at Ottawa, in duplicate, this 28th day of October, 1986, in the English and French languages, both texts being equally authentic.

FAIT en double exemplaire à Ottawa, ce 28<sup>ème</sup> jour de octobre 1986, en français et en anglais, les deux versions faisant également foi.

  
For the Government of  
the United States of America

Pour le Gouvernement des  
Etats-Unis d'Amérique

  
For the Government  
of Canada

Pour le Gouvernement  
du Canada

**APPENDIX D**  
**INTERNATIONAL AGREEMENT WITH MEXICO**

**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"),

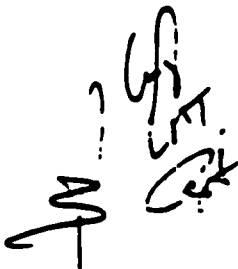
Recognizing that health and environmental damage may result from improper activities associated with hazardous waste;

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

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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:

Have agreed as follows:

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**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.

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

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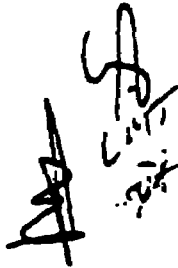
ARTICLE II

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.

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**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.
  - 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.

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- 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.

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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 Article 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 regulatory action;
- (d) name and address of the contact point for further information.

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**ARTICLE VII**

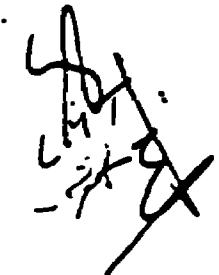
**Timing of the Notifications**

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.

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# 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 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.

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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.

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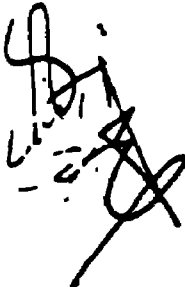
ARTICLE XII

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 violations 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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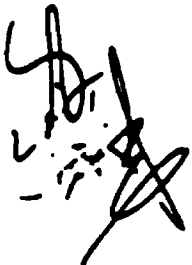
- (b) Save in exceptional circumstances, requests for assistance made pursuant to this Article shall be submitted in writing and translated into the language of the requested State.
- (c) The requested State shall provide the requesting State with copies of publicly available records of government departments 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.

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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.

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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.

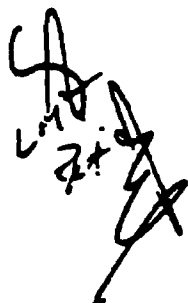
The country of export shall report to the country of import all measures and legal actions undertaken in the framework of this paragraph, and shall cooperate with the country of import, on the basis of this Annex or of other bilateral treaties and agreements in force between the Parties, and to the extent 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.

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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.

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**ARTICLE XIX**

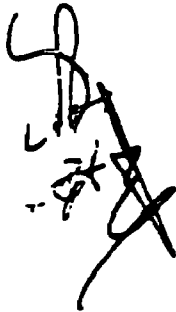
**Entry into force**

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.

**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.

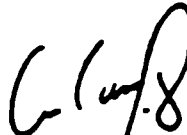
A handwritten signature or set of initials, possibly reading 'J. D.' or similar, with a large, sweeping flourish extending downwards and to the right.

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

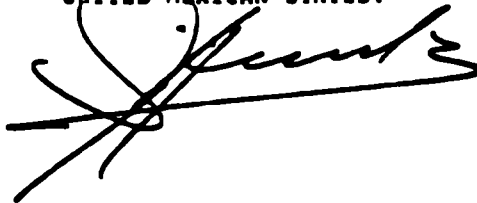
DONE at Washington, in duplicate, this twelfth day  
of November, 1986 in the English and Spanish languages, both  
texts being equally authentic.



FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE  
UNITED MEXICAN STATES:



**APPENDIX E**  
**CUSTOMS/EPA MEMORANDUM OF UNDERSTANDING**

MEMORANDUM OF UNDERSTANDING BETWEEN THE  
ENVIRONMENTAL PROTECTION AGENCY  
AND  
UNITED STATES CUSTOMS SERVICE  
FOR ENFORCEMENT OF RCRA §3017

1. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to delineate the areas of responsibility of the Environmental Protection Agency (EPA) and the U.S. Customs Service (Customs) for the enforcement of requirements applicable to the export of hazardous waste. EPA and Customs agree that guidance, as set forth in this MOU, is appropriate to coordinate responsibilities for enforcement of hazardous waste export requirements.

2. AUTHORITY

A. EPA and the Hazardous and Solid Waste Amendments of 1984

Section 3017 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) 98 Stat. 3221 et seq., governs the export of hazardous waste. It prohibits the export of hazardous waste unless: (1) notification of the intent to export is provided, (2) prior written consent is obtained from the receiving country, (3) a copy of the prior written consent is attached to the hazardous waste manifest, and (4) the export conforms to the terms of the written consent. Alternatively, if the United States enters into an international agreement with a receiving country which establishes different notice, export and enforcement procedures for the transportation, treatment, storage and disposal of hazardous wastes, the export

may take place if it conforms with the terms of such agreement. Subsection (b) of Section 3017 requires EPA to promulgate the regulations necessary to implement that Section. Regulations recently promulgated pursuant to Section 3017 require, among other things, that exporters of hazardous waste provide a copy of the hazardous waste manifest to the U.S. Customs Service official at the point where the hazardous waste leaves the United States, 40 CFR §§ 262.54(i), 263.20(g)(4). The effective date of these regulations is November 8, 1986. See generally, "Hazardous Waste Management System; Exports of Waste; Final Rule," 51 Fed. Reg. 28664, 28681 (August 8, 1986).

Non-compliance with Section 3017 or regulations promulgated thereunder may subject the exporter to civil penalties as authorized by RCRA § 3008(g). In addition, Sections 3008(d)(4), 3008(d)(6) and 3008(e) of RCRA authorize imposition of criminal penalties for violations of hazardous waste export requirements. Furthermore, use of a falsified acknowledgement of consent may subject an exporter to criminal sanctions under 18 U.S.C. § 1001.

The legislative history accompanying Section 3017 provides that EPA "should work with the U.S. Customs Service to establish an effective program to monitor and spot check international shipments of hazardous waste to assure compliance" with hazardous waste export requirements. S. Rept. No. 98-284, 98th Cong., 1st Sess. 48. B. Customs and the Export Administration Act Amendments of 1985

Customs has independent authority to stop, search and examine shipments of hazardous waste where there is reasonable

cause to suspect that these shipments of hazardous waste are or are about to be illegally exported. Customs may on probable cause seize and detain such suspected illegal exports of hazardous wastes. Section 12(a)(2)(A) and (B) of the Export Administration Act (EAA), 50 U.S.C. App. § 2411, as amended by the Export Administration Act Amendments of 1985, Pub. L. No. 99-64, 99 Stat. 120 (1985) grants Customs broad authority to monitor and spot check international shipments of hazardous waste to ensure compliance with Section 3017 of the HSWA. That the EAA, as amended, applies to hazardous wastes is confirmed by §§ 2(10), 2(12) and 16(3), 50 U.S.C. App. § 2401(12) and (13), 2415(3). In addition, Section 113 of the Export Administration Act Amendments as well as case law recognizes the broad authority of Customs to conduct outbound border searches in connection with illegal exports.

C. Other Agencies

This MOU does not supplant the authority of other agencies which have enforcement authority for export laws. Where appropriate, EPA and Customs will work with the Department of Commerce and other federal and state agencies to coordinate enforcement efforts in areas of joint responsibility.

3. SCOPE OF RESPONSIBILITIES

A. EPA agrees, subject to available resources, to:

- ° Develop procedures for Customs to identify hazardous wastes and notify EPA when shipments of hazardous waste do not comply with Section 3017;

- ° Notify appropriate Customs officials when they should take "for cause" inspections of suspect shipments;
  - ° Promptly respond to Custom's request for assistance in inspecting, seizing, detaining, or otherwise handling known or suspected non-complying shipments;
  - ° Take the lead on investigating non-compliance with Section 3017 and bring enforcement actions where appropriate.
- B. Customs agrees, subject to available resources, to:
- ° Collect all manifests which transporters deliver to U.S. Customs officials;
  - ° Periodically transmit all manifests which transporters deliver to U.S. Customs officials at the point at which hazardous waste leaves the United States to: James Prang, EPA Office of Criminal Investigations, National Enforcement Investigation Center, Building 53, Denver Federal Center, Denver, Colorado 80225. All manifests received by Customs in a given month should be mailed so that they reach EPA by the tenth calendar day of the following month. They should be stamped with the port of exit and date of receipt, and mailed to the above address;
  - ° Inspect, seize, detain, or otherwise handle non-complying shipments;
  - ° Issue a compliance circular to Customs officials which describes requirements applicable to exports of hazardous waste;
  - ° Participate in enforcement actions where appropriate;
  - ° Where appropriate, provide information, briefings and training to Customs officials which will inform and prepare them to apply the hazardous waste export requirements.
- C. Both Agencies agree, subject to available resources, to:
- ° Develop a joint enforcement strategy which further implements this MOU. The enforcement strategy will include a waste exporter profile. It will also target



ports of exit through which illegal exports of waste are most likely occurring, or are expected to occur;

- ° Develop and implement a pilot spot checking program, the details of which will be developed by the joint enforcement strategy;
- ° Exchange information;
- ° Coordinate with the Department of Commerce, Bureau of the Census and affected states in the border area, where appropriate, as discussed supra at Article 2C.

#### 4. PERIOD OF AGREEMENT AND AMENDMENTS

A. This MOU shall continue in effect unless modified by mutual written consent of both Agencies. Amendments must be signed by appropriate EPA and Customs officials.

B. Twelve months after the effective date of this MOU, EPA and Customs agree to discuss the necessity of amending this MOU or entering into related Interagency Agreements (IAG's).

C. This MOU may be terminated by either party upon a thirty day advance written notice of the other party. The termination notice must be signed by appropriate officials of EPA or Customs.

#### 5. EFFECT OF AGREEMENT

A. This MOU does not limit in any way the statutory authority or jurisdiction of either Agency. It does not cover enforcement of hazardous substance export requirements under Federal Insecticide, Fungicide and Rodenticide (FIFRA), 7 U.S.C. §136 et seq., and Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq.

B. This MOU will be implemented, in part, by the joint enforcement strategy. This MOU authorizes appropriate EPA and

Customs officials to prepare a joint enforcement strategy.

C. Nothing in this MOU modifies other existing agreements, or precludes either Agency from entering into separate agreements setting forth procedures for special programs which can be handled more efficiently and expeditiously by such special agreement. These special agreements may include MOUs or IAGs, governing:

- ° Further areas of joint responsibility and cooperation between the two Agencies, including enforcement of hazardous substance export requirements under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136 et seq., and the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq.;
- ° Provision of resources for technical support, including establishment of a pilot training course for the EPA and Customs staff charged with enforcing Section 3017;
- ° Contacts with Mexican, Canadian or other foreign Customs officials regarding shipments of hazardous waste;
- ° Disbursement and reimbursement of funds;
- ° Responses to border incidents involving hazardous waste or hazardous substances;
- ° Implementation of additional procedures and programs to monitor and spotcheck shipments of hazardous wastes and prevent non-compliance with § 3017 of RCRA;
- ° Coordination with states.

#### 6. EFFECTIVE DATE

This MOU will become effective upon signature of both parties.

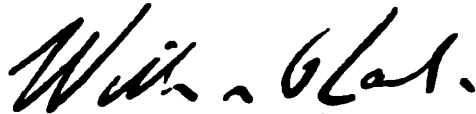
#### 7. CONTACTS

For purposes of implementation of this MOU, each Agency shall work through a single contact point in the other Agency.

The contact point for EPA shall be James Pranz, Assistant Director, Office of Criminal Investigations, National Enforcement Investigation Center, Building 53, Denver Federal Center, Denver Colorado 80225, telephone FTS 8-776-3215. The contact point for Customs shall be Louis N. Razzino, Senior Customs Inspector, Exodus Program, U.S. Customs Service, Inspection and Control, telephone (202) 566-8164.



LEE M. THOMAS  
Administrator  
U.S. Environmental Protection  
Agency



WILLIAM von RAAB  
Commissioner of the U.S.  
Customs Service

12/27/86  
Date

2/4/86  
Date