

LE CONTROLE JURIDIQUE DES MOUVEMENTS TRANSFRONTIERES DE DECHETS
TOXIQUES AUX ETATS UNIS D'AMERIQUE

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I. Introduction

The storage, treatment, transportation, and disposal of hazardous waste is the most controversial land use and environmental issue of the 1980's in the United States.¹ The American waste disposal crisis recently came to international attention when the barge Mobro 4,000 traveled more than 6,000 miles in search of a place to dump garbage from Islip, New York.²

The odyssey of the 3,168 tons of garbage began when officials closed the Islip municipal landfill for fear it would contaminate the local water supply.³ The garbage was sent to North Carolina, but the North Carolina environmental authorities refused to accept it because New York officials could not certify that it was free of hazardous wastes.⁴ Three other states--Alabama, Florida, and Louisiana--refused to accept the cargo. Three foreign nations also refused it--the Bahamas, Mexico, and Belize.⁵ Ultimately, the barge returned to New York, where the garbage was incinerated and the residue used as landfill.⁶

The fate of the Long Island garbage barge illustrates the nature of the hazardous waste problem in the United States. Many state and local governments have enacted legislation prohibiting or restricting importation of hazardous waste into their jurisdiction. Some of these governments also attempt to export their own hazardous waste. The result is intergovernmental conflict over the location of disposal sites and the standards that should govern them.

Health and environmental concerns have led to increasing limitations on wastes that may be disposed of in landfills.⁷ Since 1980 many existing sites have closed and no new ones have opened up.⁸ At the same time, the annual production of hazardous wastes in the United States is increasing at an unprecedented rate. Estimates in 1984 showed more than 150 million tons of municipal solid wastes from residential, commercial, and institutional sources going annually to land disposal sites.⁹ Of this amount, an estimated ten to fifteen percent is hazardous to human health or the environment.¹⁰ In fact, the United States Environmental Protection Agency [EPA] calculates that the nation generates fifty-seven million metric tons of hazardous waste is generated each year.¹¹

Advances in industrial technology further complicate the problem. New chemical wastes are being created faster than existing regulation can identify and regulate them. For example, more than 50,000 new chemical substances have been created since World War II, and more than 1,000 are currently produced each year. EPA considers that 70 percent of these new substances are

potentially harmful to human health.¹²

Disposing of these ever-increasing wastes is a national problem. The United States Congress and most state legislatures have responded by enacting waste management legislation. In addition, the United States Congress has entered into international agreements regarding international exportation and importation of hazardous wastes. The remainder of this paper treats three areas of hazardous waste control. First, it examines United States law regulating the interstate transportation and disposal of hazardous waste. Second, it discusses principles advanced by United States courts for resolving controversies both among states and between the states and the federal government. Third, it looks at United States law and international agreements controlling the international import and export of hazardous waste.

II. DEFINITION: What Is "Hazardous Waste"

There is no single national definition in the United States for hazardous waste. A multitude of federal, state, and local laws regulate materials commonly thought of as "hazardous."¹³ However, significant and widely-used definitions occur in the key federal statute in the area--The Resource Conservation and Recovery Act ("RCRA")¹⁴--and in the Environmental Protection Agency [EPA] regulations implementing that Act.

RCRA establishes a regulatory program to manage hazardous waste from generation to final disposal. The Act consists of three major elements: 1) federal criteria for identifying and

listing hazardous waste; 2) minimum federal standards for hazardous waste storage, treatment, and disposal; and 3) a "manifest" system for tracking hazardous waste from generation to disposal.

The RCRA definition of hazardous waste provides uniformity to hazardous waste management both because RCRA regulations are comprehensive in scope and because most states have adopted and incorporated the RCRA definition into their own legislation.¹⁵

RCRA defines "hazardous waste" as

a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may -

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.¹⁶

Note that RCRA does not identify specific substances as hazardous waste. Instead, RCRA requires the Environmental Protection Agency to establish criteria for identifying substances as hazardous waste. These criteria should take account of the substance's toxicity, persistence, degradability, flammability, and potential to accumulate in tissue.¹⁷ EPA must apply these

criteria and "promulgate regulations identifying the characteristics of hazardous waste and listing particular hazardous wastes" which are then subject to RCRA.¹⁸ In cooperation with the Agency for Toxic Substances and Disease Control and the National Toxicology Program, EPA must also identify or list wastes which contain levels of carcinogens, mutagens, or teratogens that are dangerous to human health. RCRA specifically requires EPA to review wastes containing chlorinated dioxins, chlorinated-dibenzofurans, halogenated dioxins, halogenated dibenzofurans, chlorinated aliphatics, dioxin, dimethyl hydrazine, TDI, carbamates, bromacil, lunuron, organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes, pigments, inorganic chemical wastes, lithium batteries, coke by-products, paint production wastes, and coal slurry pipeline effluent.¹⁹

Both RCRA and EPA regulations²⁰ define hazardous waste as a subset of solid waste. Under RCRA "solid waste" includes any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution

Control Act . . . or source, special nuclear, or by-product material as defined by the Atomic Energy Act

A solid waste is hazardous waste under EPA definitions if it is specifically listed in the regulations²¹ or if it exhibits certain characteristics identified in the regulations.²² There are three categories of hazardous waste listed in the regulations: (a) generics, (b) wastes from listed sources, and (c) discarded commercial chemical products. The first category, "generics," includes common solvents, wastewater treatment sludges, and other metal treatment wastes.²³ These wastes are considered hazardous regardless of their source. Wastes in the second category are hazardous only when they are generated by certain listed industries such as the wood preservation industry.²⁴ However, there is little practical effect to this limitation, because with few exceptions only the listed industries generate these wastes.²⁵ The third category includes many commonly used materials, such as methanol and hexachlorophene, which are deemed hazardous waste only after their disposal.²⁶

These lists are not static. EPA must review them and make changes as required to conform to EPA criteria for identifying hazardous wastes.²⁷ There is also a procedure for delisting a material (removing it from one of the three lists) upon petition to the EPA.²⁸ Also upon petition, the EPA may exclude a material from the "solid waste" definition. In this way it is necessarily excluded from classification as hazardous waste.²⁹

A material not included in one of the three lists may still be regarded as a hazardous waste if it exhibits certain characteristics. EPA evaluates four characteristics: ignitability, corrosivity, reactivity, and toxicity. If the material exhibits any of these characteristics, beyond EPA tolerance levels, it is hazardous waste for the purposes of RCRA. On the other hand, materials excluded from the EPA definition of solid waste cannot, by definition, be hazardous wastes.³⁰

In addition to establishing the EPA procedure for identifying hazardous wastes, RCRA also empowers states to develop and administer hazardous waste programs upon EPA approval.³¹ EPA approval standards do not restrict the states to the EPA definition of hazardous waste.³² However, state plans must, at a minimum, control all the hazardous wastes identified by the EPA.³³ The state plan must also adopt a list of hazardous wastes and characteristics for identifying hazardous wastes equivalent to that in RCRA and the EPA regulations.³⁴ In practice, while some states have developed plans which establish their own definition of hazardous waste, most states have merely adopted the RCRA definition. Thus, despite the potential for nonuniformity, RCRA and the EPA regulations still provide a comprehensive national standard for identifying hazardous wastes.

In summary, there are several steps to determine whether a material is "hazardous waste" under RCRA. The material must first fall within the definition of solid waste. That is, the material must not have been excluded from the definition of solid waste, and it must not have been granted a variance from classification

as a solid waste. The material must be on one of the three EPA lists, and if in the second category (wastes generated from specific sources) one of the listed sources must have generated the waste. In the alternative, the material must display ignitability, corrosivity, reactivity, or toxicity beyond EPA tolerance levels. Finally it is important to note that the EPA may always amend the standards for identifying materials by characteristics and the lists themselves.³⁵

III. U.S. Law Regulating the Transportation and Disposal of Hazardous Waste

A. Federal Regulation

EPA regulates hazardous waste "from cradle to grave" by means of a mandatory "manifest" system. The manifest ensures that hazardous waste designated for delivery to an off-site treatment, storage, or disposal facility actually reaches the destination.³⁶

Although EPA is the lead agency for regulations concerning hazardous wastes, the safety aspects of transportation and handling are primarily the responsibility of the Department of Transportation ("DOT").³⁷ Where it will avoid duplication, the ERA is required to delegate inspection and enforcement functions relating to the transportation of hazardous waste to the DOT.³⁸ These two agencies coordinate their regulation of hazardous wastes through the use of a jointly adopted uniform manifest system.³⁹

DOT regulations apply not only to RCRA hazardous wastes, but also to hazardous materials not covered by RCRA.⁴⁰ Where the DOT determines that the transportation of any material in commerce poses an unreasonable threat to health or property, the material is subject to special DOT regulations regarding handling and shipment.⁴¹ EPA adopted these DOT regulations by reference, to ensure consistent regulation.⁴²

The responsibility for compliance begins with the generator of the hazardous waste. The generator must prepare the Uniform Hazardous Waste Manifest,⁴³ which remains with the waste until its final treatment or disposal. The manifest must designate an approved receiving facility; must be signed by every handler of the shipment, as well as by the designated facility; and must be returned to the generator within 35 days of the start of the shipment.⁴⁴ If the generator does not receive the completed manifest within 35 days, it must notify the EPA. This notice must include a copy of the manifest and a description of efforts to locate the waste.⁴⁵ This process is designed to ensure that the shipment reaches the designated facility.

To ensure the integrity of the manifest system, the transporter too must comply with manifest instructions and retain a copy of the manifest for three years.⁴⁶ The transporter may deliver the shipment of hazardous waste only to the site designated on the manifest. That site must have a valid permit. The regulations also detail the action to be taken in the event of a leak during transit.⁴⁷

EPA regulations require a prospective transporter (whether interstate or intrastate) to notify EPA, or state authorities administering an authorized RCRA hazardous waste management program, of its intent to transport hazardous wastes. If EPA approves, it will assign an identification number. The prospective transporter can begin operations only after receiving its number.⁴⁸ Transporters must comply with EPA regulations that establish standards necessary to protect human health and the environment. These regulations include record-keeping and labeling requirements.⁴⁹

B. Federal vs. State Regulation of Toxic WASTES

Hazardous waste disposal facilities are the least desirable of all possible land uses.⁵⁰ There is usually a strong public reaction against the presence of hazardous waste within a community, even when the waste will ultimately be disposed of outside of the community. State and local governments have responded to the public's concerns by legislating restrictions on the storage, disposal, and transportation of hazardous wastes. These restrictions on ~~the treatment of~~ ^{disposal of} waste, both hazardous and non-hazardous, must be examined in light of two key provisions of the Constitution of the United States -- (a) the Commerce Clause and (b) the Supremacy Clause.

The Commerce Clause, in Art. I, Sec. 8, of the United States Constitution, grants Congress the power to regulate commerce among the states, i.e., interstate commerce. Thus, any state or local law, including laws regulating waste, which

directly burdens interstate commerce is unconstitutional.

The Supremacy clause, in Article 6, Cl 12, of the Constitution makes federal law enacted pursuant to the constitution superior to state law. This supremacy provision gives rise to the "preemption doctrine," whereby Congress may assert the power to legislate exclusively on matters within its jurisdiction.

These two doctrines have forced American courts not only (1) to review the impact of state and local regulation of waste management on interstate commerce, but also (2) to determine whether Federal legislation (such as RCRA) has pre-empted the field of hazardous waste management. If Congress has pre-empted the field, states and their local governments may not legislate in the area, even if their regulations do not directly burden interstate commerce.

As I discussed this morning Congress has pre-empted the regulation of nuclear energy - just

The leading case discussing these two issues in the waste management context is City of Philadelphia v New Jersey.⁵¹ This 1978 United States Supreme Court decision concerns legislation passed by the State of New Jersey⁵² which prohibited the importation of most solid waste into the state. Before the enactment of the law, Philadelphia, Pennsylvania, shipped its excess garbage to New Jersey for disposal in private landfills. In a suit against the State of New Jersey, the City of Philadelphia and the operators of the private New Jersey landfills challenged the new, restrictive legislation.

*waste management
The rules are not just clean
non-nuclear wastes*

The Supreme Court of the United States ruled that New Jersey's law was not pre-empted by federal legislation [RCRA],

but the Court nevertheless struck down the law because it conflicted with the Commerce Clause. The Court reasoned that "waste" is an item of interstate commerce and therefore subject to the Interstate Commerce Clause. New Jersey could not isolate itself from a problem common to the entire nation by erecting a barrier against the importation of waste.

Because New Jersey banned the import of all solid waste, City of Philadelphia could be distinguishable from cases where only hazardous waste is regulated. However, the Court's holding seems equally applicable to attempts to restrict the interstate movement of hazardous waste, because hazardous waste is a subset of solid waste. This latter interpretation has been made clear in later cases extending City of Philadelphia to cases where legislation specifically excluded hazardous wastes.

In Browning-Ferris, Inc. v. Anne Arundel County, Maryland,⁵³ for example, the Maryland Court of Appeals reviewed a county ordinance regulating the transportation and disposal of hazardous wastes within the county. The ordinance absolutely prohibited disposal in the county or transportation through the county of various hazardous wastes, unless the wastes originated locally. Other provisions established a licensing requirement to transport or dispose of any hazardous waste within the county. The court cited City of Philadelphia and held that the absolute ban of various hazardous wastes violated the Interstate Commerce Clause. The court reasoned that there was no legitimate public purpose in discriminating against non-local waste. The county could no more avoid a problem common to the entire nation than

could the state of New Jersey in the City of Philadelphia case.

City of Philadelphia was not applicable to the other provisions of the county ordinance because they made no distinctions based on the origins of the waste. To decide these issues, the court had to go beyond City of Philadelphia. The question before the court was whether the licensing requirements directly burdened interstate commerce, or were merely a permissible incidental burden. The court ruled that the license required for transporting waste through the county was a direct burden and therefore invalid. The court reasoned that if this provision of the ordinance were upheld, any county could enact similar legislation. Thus, the interstate hauler of hazardous waste would face a confusing and burdensome array of local regulations. The court noted further that the DOT and EPA regulations and manifest requirement, as well as the State of Maryland's hazardous waste transportation program, made the local ordinance unnecessary.

The county prevailed only on the final ordinance provision. The licensing requirement for disposal was held valid because it was a local land use regulation, which neither Congress nor the State of Maryland intended to pre-empt.

In spite of the City of Philadelphia case and its interpretation by the Maryland court and similar rulings by other courts, local governments have continued to enact various restrictions on the importation and disposal of non-local hazardous waste. Some of these ordinances restricting the movement of solid waste have withstood court challenge. In a 1985 case, Waste Aid Systems,

Inc. v. Citrus County, Florida,⁵⁴ the federal district court for the middle district of Florida upheld an ordinance which allowed the county-owned landfill to accepting only locally-generated waste. The court rejected the plaintiff's argument that the ordinance was an attempt by the county to hoard its landfill in violation of the Interstate Commerce Clause. The limited nature of the Citrus County ordinance distinguished Waste Aid from City of Philadelphia. The Citrus County ordinance restricted the use of only one particular landfill, unlike the City of Philadelphia law, which forbade the passage of out-of-state waste across its borders or the deposit of out-of-state waste in any New Jersey landfill including privately owned and operated facilities. Further, the court found that the county's decision to restrict its landfill served a legitimate public purpose ensuring that the landfill would be available in the future to meet the county's needs and avoid burdening neighboring jurisdictions.

The ordinance reviewed in Waste Aid addressed solid waste generally, not hazardous waste in particular. However, the court's reasoning is equally applicable to laws restricting storage facilities for hazardous wastes. If Waste Aid is adopted by other courts, we risk the balkanization of waste management. This is contrary to the reasoning of City of Philadelphia. Further, Waste Aid does not establish clear standards to determine whether an ordinance limiting access to local waste facilities is valid. Waste Aid holds that City of Philadelphia applies where the borders are closed to all outside waste, but

does not apply where only some restrictions are imposed. A court following Waste Aid might uphold laws forbidding importation of hazardous wastes, as long as other wastes could be imported. However, Waste Aid has not yet been cited by any other court. Moreover, later cases do not indicate that courts will tolerate greater restrictions on the interstate transportation of hazardous waste.

For example, in 1986 a federal court of appeals in Ensco v. Dumus⁵⁵ struck down an Arkansas county ordinance prohibiting the disposal of hazardous wastes within the boundaries of a small town. The court ruled that while Congress did not completely preempt state and local regulation of hazardous waste disposal, such regulation must not conflict with federal law. The ordinance in question conflicted with the goals of RCRA and was therefore invalid.

The appeals court distinguished City of Philadelphia, which found no federal pre-emption of state legislation concerning solid waste. The Arkansas county ordinance regulated hazardous waste, which is subject to greater federal regulation than non-hazardous solid waste. Thus the opinion paid lip service to RCRA §6929 (wherein Congress explicitly states that RCRA does not preempt state and local governments in waste management legislation). At the same time it indicated that the courts will not permit barriers to be erected.

3 In summary, current case law indicates that states, counties, and local governments may not isolate themselves from

the national hazardous waste problem. However, some degree of restriction is acceptable to some courts. The question is, to what degree does a restrictive ordinance burden interstate commerce or conflict with RCRA. Because RCRA and its implementing regulations regulate hazardous wastes to a greater degree than non-hazardous wastes, laws attempting to exclude hazardous wastes from a jurisdiction are more likely to be overturned than those regulating all wastes or non-hazardous wastes.

IV. International

Transboundary shipments of hazardous waste are governed by both domestic law and international agreement. EPA and DOT are primarily responsible for regulating such shipments, but other agencies also issue regulations.⁵⁶ For example, the United States Customs Service has independent authority to stop, inspect or seize suspected illegal exports of hazardous wastes. If the exported waste is valued over \$1,000, the exporter must file a Shipper's Export Declaration with the Bureau of the Census of the United States Department of Commerce. However, these regulations remain incidental to the EPA and DOT requirements.

International regulation of hazardous waste, like interstate regulation, uses a manifest system to emphasize notice and accountability. Except for certain restrictions on PCB's [polychlorinated biphenyls],⁵⁷ United States law allows the export of any hazardous waste upon the approval of the receiving country and compliance with procedural regulations. For the EPA, "receiving country" is the country that ultimately ends up with the

waste and incurs the risks of long-term storage or disposal.⁵⁸ It is not a country in which mere transportation, or temporary storage incidental to transportation, occurs.⁵⁹ There are four procedural requirements for transboundary shipments of hazardous waste.

First, the prospective exporter must give the EPA 60 days' notice of the proposed shipment.⁶⁰ The notification must include the name and address of the exporter; a description of the hazardous waste including DOT and EPA identification numbers; the estimated frequency of shipments; the estimated total quantity of the hazardous waste to be exported; all points of entry to and departure from each foreign country through which the hazardous waste will pass; a description of method of transport and of waste treatment, storage, or disposal; and the name and address of all consignees and of all countries through which the waste will travel, plus approximate time the waste will remain in these countries.

Second, the exporter must obtain the written consent of the country of import. The EPA and United States Department of State assist the exporter to obtain consent. Upon receiving the required notice from the exporter, the EPA forwards the notice to the United States Department of State. The State Department transmits the notice to the receiving country, informing the country that United States law requires its consent. Further, the State Department provides the country with the federal regulations that would apply if the waste were treated, stored, or

disposed of in the United States. The Department of State then transmits the consent or objections of the proposed receiving country to the EPA. The EPA then informs the exporter.

Third, the exporter must attach EPA's Acknowledgment of Consent (issued on consent of receiving country) to the manifest accompanying the waste shipment. (There is an exception where the waste is exported by rail.) The exporter must comply with any terms that the receiving country imposes on the shipment. These terms are indicated on the EPA Acknowledgment of Consent.

States which administer an authorized hazardous waste management plan must enact equivalent requirements respecting international shipments. In addition, advance notification of international shipments must be filed with the EPA as well as with any state official who must be given notice. The state must enforce a manifest system, to ensure that intrastate hazardous waste shipments are delivered only to authorized facilities. The state manifest format must comply with the requirements of the Hazardous Materials Transportation Act.⁶¹ Recently promulgated EPA regulations provide that all state-designated hazardous waste is subject to the import and export regulations. This provision applies even where the state has designated more materials as hazardous than has the EPA. The purpose is to provide consistency between domestic and international regulation. RCRA also regulates the importation of hazardous waste into the United States. Before the owner or operator of a waste management facility may receive hazardous waste from a foreign source, he must give the Regional Administrator of the EPA at least four

weeks' written notice in advance of delivery.⁶² Further notice is not required for subsequent shipments of the same waste from the same foreign source.

RCRA notice and consent requirements for transboundary shipments do not apply where the United States has entered into an international agreement on hazardous waste shipment.⁶³ Currently, there are two such international agreements in force.

In 1983 the United States and Mexico entered into a treaty for environmental cooperation--the Environmental Cooperation Agreement.⁶⁴ This treaty did not regulate transboundary shipments, but in November of 1986 the countries signed an Annex creating specific requirements for such shipments.⁶⁵ Two incidents of illegal dumping illustrate the need for this Annex. In December of 1986, Lujan Macias, an employee of Pemex, Mexico's state-run oil company, pleaded guilty to charges of transporting two tanker trucks with 15,000 liters of sewage, petroleum products, and other wastes onto U.S. public lands without authorization.⁶⁶ Illegal dumping occurs on both sides of the border. In November of 1986 three United States businessmen pleaded guilty to transporting hazardous wastes into Mexico.⁶⁷

As for the specifics of Annex 3, it does not attempt to define hazardous waste. Rather, Annex 3 applies to all wastes that are defined as hazardous by the laws and regulations of the respective countries.⁶⁸ In particular, the treaty provides for a minimum of 45 days' notice to the receiving country, if the laws of the country of export require the consent of the receiving

country before shipment. Such notice may apply to a series of shipments extending one year or less. The treaty also requires the exporting country to readmit any hazardous waste that is returned for any reason, whether legally or illegally exported. When either country bans or severely restricts a chemical or pesticide, it must notify the other country. If one country discovers that a hazardous substance is being exported to the other, it must notify that country of the shipment.

The only other international agreement is with Canada -- the Agreement between the United States of America and Canada Concerning the Transboundary Movement of Hazardous Waste, Oct. 28, 1986. The impetus for the agreement is not reported incidents, but rather the length of the U.S.-Canada border and the heavy trade between the two countries. Generally, the countries agree to permit the export, import, and transit of hazardous waste across their borders for treatment, storage, or disposal. The domestic regulations and administrative practices of each country apply to international shipments.

The EPA and the Canadian Department of the Environment (CDER) are responsible for any notice required by the agreement. Notice must be given before any individual shipment or series of shipments extending twelve months or less. The notice required here is similar to the notice RCRA requires of exporters where there is no international agreement. It must identify the exporter, describe the hazardous waste, and list its identification number if one exists. The notice must include the frequency of shipments and the period of time over which they will occur, the

estimated total quantity of waste, the point of entry into the country of import, the name and address of the transporter, and the means of transport. Finally, it must state how the waste will be treated, stored, or disposed of in the importing country, the name and site address of the consignee, and the approximate date of the first shipment to each consignee if available.

The receiving country has 30 days from receipt of notice in which to accept or reject the proposed shipment. If it does not respond within the 30-day period, the receiving country is deemed to have consented and the shipment may proceed. Despite this provision, where "good cause" can be shown, the consent of the receiving country, whether express or tacit, may be withdrawn or modified without restriction. Further, the country of export must readmit any shipment returned by the receiving country #or returned by any transit country).

The agreement extends the notice requirement to countries through which the shipment will pass. The notice here is nearly identical to the notice which must be provided to the receiving country, with two modifications. First, the notice must describe point of entry and point of departure both to and from the transit country. Second, the notice must estimate the length of time the waste will be in the transit country and detail how the waste will be handled.

The agreement facilitates enforcement of domestic hazardous waste laws. The countries agree to cooperate to ensure compliance with the hazardous waste manifest requirements of each

country. Further, they will "spot-check" the shipments for violations of domestic regulations or agreement provisions. The countries agree to enforce their domestic laws on transportation, storage, treatment, and disposal of transboundary shipments of hazardous waste. Domestic laws and regulations control over the provisions of the agreement, but the EPA and CDER will promulgate regulations, consistent with existing domestic law, necessary to comply with the agreement.

Finally, the agreement remains in force until November 1991, and is automatically renewed for five years absent written notice of termination. The countries may amend the agreement at any time by mutual consent or terminate the agreement upon one year's written notice.

The existence of only two international agreements governing transboundary shipments of hazardous waste should not be interpreted as a sign that the United States has given low priority to the problem. The United States has recognized the need for international cooperation in this area and is actively participating in international discussions. The United States is a participant in the OECD (Organization for Economic Cooperation & Development) and United Nations negotiations to establish a binding multilateral agreement. If these negotiations are successful, additional bilateral agreements would not be needed.

FOOTNOTES

1. A. Dan Tarlock, State Versus Local Control of Hazardous Waste Facility Siting, 7 Zoning and Planning Law Report 1 (1984).
 2. 47 Facts on File 2434,518 (July 17, 1987). 3. 18 Env't. Rep. (BNA) 332 (May, 15 1987).
 4. Id.
 5. A. Cook, Garbage Law, 10 Nat'l Law Journal 8, 33 (Nov. 2, 1987).
 6. Id. See: New York Public Interest Research Group v. Town of Islip, 87-8967 (approving the incineration and landfilling).
 7. Eq. 42 U.S.C.S. §6924(d)-(h) (Supp. 1987) (prohibits land disposal of certain wastes); §403.7222 Fla. Stat. (1985) (prohibits landfilling of hazardous waste).
 8. T. Alexander, Hazardous Waste Policy Shuffle On The Hill, Sept. 17, 1984 Fortune 137; P. Steinbart, Down in the Dumps, 88 Audobon, 102 (May 1986).
 9. W. Bell, Hazardous Wastes: Not in My Back Yard. 99 American City & County, 24 (Feb. 1984).
- It was further estimated that annually more than 240 million tons of industrial waste is placed in United States land disposal sites, and 10 trillion gallons of liquid waste ends up in pits, ponds and lagoons. Id.
10. P. Steinbart, suora note 8, at 102.
 11. P. Rohan, Zoning and Land Use Controls §25A.02(1) at 25A-18.
12. Id.
 13. Eq. Hazardous Materials Transportation Act, 49 U.S.C. 1801 (1986). See 42 U.S.C. §6926 (1986). (authorizes States to develop and administer hazardous waste programs.
 14. 42 U.S.C. §6901-6991 (1984) (amended the Solid Waste Disposal Act of 1965).
 15. Eq. Fla. Stat. §403.703(21) (1985); Fla. Dept. of Env't Reg. Regulations 17-30.001 to 17-30.030 (Sept. 1987).

16. 42 U.S.C.S. §6903(5) (1982). See S. Briggum, G. Goldman, D. Squire and D. Weinberg, Hazardous Waste Regulation Handbook, 27 (1985).
17. 42 U.S.C.S. §6921(a) (1982).
18. 42 U.S.C.S. §6921(b) (Supp. 1987).
19. 42 U.S.C.S. §6921(e) (Supp. 1987).
20. 40 C.F.R. §261.3 (1986).
21. 40 C.F.R. Ch. 1 Part D (1986).
22. S. Briggum, supra note 16, at 30.
23. 40 C.F.R. §261.31 (1986).
24. 40 C.F.R. §261.32 (1986).
25. S. Briggum, supra note 16, at 39.
26. Id. at 40; 40 C.F.R. §261.33 (1986).
27. 42 U.S.C.S. §6921(a), (b) (Supp. 1987).
28. 40 C.F.R. §260.22 (1986). See R. Compton and D. Patterson, Jr., Delisting Hazardous Wastes, 14 ELR 10374 (1984).
29. 40 C.F.R. §§260.30, 260.31 (1986).
30. 40 C.F.R. §§261.4 (excludes materials from definition of solid waste); 261.3 (defines hazardous waste as a subset of solid waste) (1986). Examples of excluded wastes include: domestic sewage, irrigation return flows, certain nuclear byproducts regulated by the Atomic Energy Act. 49 U.S.C.S. §1803, household wastes, agricultural wastes used as fertilizer, and hazardous waste residue in otherwise empty containers. 40 C.F.R. §261.4 (1986); S. Briggum, suora, note 16 at 50.
31. 42 U.S.C.S. §6926 (1982 & Supp. 1987); S. Briggum, supra, at 8.
32. S. Briggum, supra note 16, at 8.
33. 40 C.F.R. §271.9 (1986).
34. Id.
35. See Jan. 23, 1987, Facts on File, 1987 (General Accounting Office criticism of EPA for adding only 5 substances to its lists of hazardous wastes in the past six years).

36. 49 Fed. Reg. 55, 10490 (March 20, 1984).
37. See Hazardous Materials Transportation Act of 1975, 49 U.S.C.S. §1801-1812 (1982 & Supp. 1987).
38. 42 U.S.C.S. §6191(6) (1982).
39. 49 Fed. Reg. 55, 10490 (March 20, 1984).
40. See 42 U.S.C.S. §1801 (1982).
41. 49 C.F.R. §172.101 (1986).
42. Zoning and Land Use Controls §25A.02(3) at 25A-47 (Nov. 1987); 40 C.F.R. §262.20 (1986).
43. Appendix to 40 C.F.R. Part 262.
44. P. Rohan, Supra note 11, P 25A.02(3) at 25A-47 (Nov. 1987); 40 C.F.R. §263.42 (1986).
45. Id.
46. U.S.C.S §6930 (1987). P. Rohan, Supra note 11, §25A.02(3) at 25A-55 (Nov. 1987); 40 C.F.R. §263.20(a).
47. 40 C.F.R. §263.30, 263.31.
48. 42 U.S.C.S. §6923(a) (1982).
49. Id. at §6923(a); 40 C.F.R. 263.22 (1986)).
50. V. Smith and W. Desvousges, The Value of Avoiding A LULU: Hazardous Waste Disposal Sites, 1986 Review of Economics and Statistics 293, 295.
51. 437 U.S. 617, 98 S.Ct. 2531, 11 ERC 1770, 57 L.Ed.2d 475 (1978).
52. N.J. Stat. Ann 13:1I-10 (West Supp. 1978).

The New Jersey Department of Environmental Regulation promulgated regulations exempting hazardous and chemical wastes from the import ban as long as these wastes were not disposed of in a New Jersey landfill. The regulations also exempted three other categories of waste from the import ban: 1) garbage to be fed to swine, 2) separated material intended for recycling or reclamation, 3) and municipal solid waste for use as fuel providing that at least seventy percent of the residue is usable material.

53. 292 Md. 136, 438 A.2d 269, 16 ERC 1863 (Md. 1981). 54. 613 F.Supp 102 (M.D. Fla 1985).
55. 807 F.2d 743, 25 ERC 186 (8th Cir. 1986). 56. 51 Fed. Reg. 153, 28680 (Aug. 8 1986).
57. 51 Fed. Reg. 153, 28665-67 (Aug. 8 1986); 40 CFR 761.10. 58. 51 Fed. Reg. 153, 28665-67 (Aug. 8, 1986). 59. Id.
60. Id. at 28683; 40 C.F.R. §262.52 (1986).
61. 49 U.S.C.S. 1801 (1982).
62. 40 C.F.R. 265.12 (1986).
63. 42 U.S.C.S. §6938(f)(1982) (providing that the agreement provides for notice to the receiving country).
64. Environmental Cooperation Agreement, August 14, 1983, United State-Mexico T.I.A.S. No. 10827.
65. Id. at Annex III, Transboundary Shipments of Hazardous Wastes and Hazardous Substances, November 12, 1986. (hereinafter "Annex 3").
66. See United States v. Lujan Macias, 861015G (S.D. Calif. 1986) (unreported decision).
67. See United States vs. Duisen, 860401JLI (S.D. Calif. 1986) (unreported decision).
68. Annex 3, Art. 1 §§2-3; 1987 Env't Pol'y & Law 38.