WENDY GRIEDER 382-4887

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA CONCERNING THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTE (and Other Waste)

October 28, 1986

The Government of the United States of America (the United States), and the Government of Canada (Canada), hereinafter called "The Parties":

RECOGNIZING that severe health and environmental damage may result from the improper treatment, storage, and disposal of hazardous waste;

SEEKING to ensure that the treatment, storage, and disposal of hazardous waste are conducted so as to reduce the risks to public health, property, and environmental quality;

RECOGNIZING that the close trading relationship and the long common border between the United States and Canada engender opportunities for a generator of hazardous waste to benefit from using the nearest appropriate disposal facility, which may involve the transboundary shipment of hazardous waste;

RECOGNIZING further that the most effective and efficient means of achieving environmentally sound management procedures for hazardous waste crossing the United States-Canada border is through cooperative efforts and coordinated regulatory schemes;

BELIEVING that a bilateral agreement is needed to facilitate the control of transboundary shipments of hazardous waste between the United States and Canada;

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

TAKING into account OECD Council Decisions and Recommendations on transfrontier movements of hazardous wastes, the UNEP Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Waste, and resolutions of the London Dumping Convention,

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

(a) "Designated Authority" means, in the case of the United States of America, the Environmental Protection Agency and, in the case of Canada, the Department of the Environment.

(b) "Hazardous Waste" means with respect 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 28ième jour d'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 États-Unis d'Amérique

For the Government of Canada

Pour le Gouvernement du Canada

Amendments to U.S./Canada Bilateral Agreement

DEPARTMENT OF STATE
WASHINGTON

November 4, 1992

Excellency:

I have the honor to refer to recent discussions between representatives of our two governments regarding the Agreement between the United States of America and Canada Concerning the Transboundary Movement of Hazardous Wastes, which was signed October 28, 1986, and which entered into force November 8, 1986 ("the Agreement"), and to propose, on behalf of the Government of the United States of America, that the agreement be amended as follows:

1. That a new subparagraph (h) be added to Article 1 of the Agreement which reads as follows:

"(h) "Other waste" means municipal solid waste that is sent for final disposal or for incineration with energy recovery, and residues arising from the incineration of such waste, as defined by the Parties' respective national legislations and implementing regulations, but excluding waste covered under paragraph (b) of this Article."

2. That each reference to "hazardous waste" in the Agreement, other than those contained in Article 1, subparagraph (b) be amended to read "hazardous waste and other waste".

His Excellency

Derek H. Burney

3. That the references to "regulations" in Article 5, paragraph 3, be amended to read "laws and regulations."

4. That the reference to "waste dangerous goods" in Article 1, subparagraph (b) be amended to read "hazardous waste."

5. That a new subparagraph (g) be added to Article 3 of the Agreement which reads as follows:

"(g) For the purposes of this Article and Article 5, manifest-related requirements may, with respect to other waste, be substituted by alternative tracking requirements."

If these proposals are acceptable to your Government, I have the further honor to propose that this note, together with your note in reply, shall constitute an agreement between our two Governments which shall enter into force on the date of Your Excellency's note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Acting Secretary of State:

Richard J. Smith

The Department of State acknowledges receipt of note No. 036 from the Embassy of Canada, dated December 6, 1995, concerning the definition of hazardous waste under the Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste, signed October 28, 1986, as amended ("the Agreement").

The Government of the United States confirms that, for the purposes of the Agreement, polychlorinated biphenyl (PCB) wastes, as defined under the United States Toxic Substances Control Act and implementing regulations, are "hazardous wastes subject to a manifest requirement as defined by United States legislation and implementing regulations." Therefore, PCB wastes are covered by the Agreement with respect to the United States.

Department of State,

DM

Washington, January 23, 1996.