



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON D.C., 20460

JUL 31 2000

OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

The Honorable David Anderson  
Minister of the Environment  
Environment Canada  
Ottawa, Canada K1A 0H3

Dear Minister Anderson:

I am writing in response to your May 22, 2000 letter to EPA Administrator Carol M. Browner in which you requested EPA's assistance in returning to the United States the hazardous waste shipments that have been stranded in Canada. As the Agency official responsible for managing the PCB program, the Administrator asked that I respond to you on this issue. We share your interest in and commitment to ensuring the continued safe movement of hazardous wastes across our common border. As you noted, U.S. Federal courts have interpreted the Toxic Substances Control Act (TSCA) in a manner which limits EPA's ability to allow the import of PCBs. The Court's strict statutory interpretation continues to be discussed in both the executive and legislative branches of the U.S. government.

Nonetheless, we believe the existing regulations provide an immediate solution to this particular problem. After a review of the PCB regulations (specifically Title 40 of the Code of Federal Regulations, part 761, section 99) promulgated under TSCA, we have determined that these shipments can be returned to the United States for disposal. Neither the U.S. nor the Canadian facilities were authorized to export or receive PCB wastes at the time of shipment. As a result, the initial shipments to the Canadian facilities may have been inadvertent errors on the part of the generators or intentional violations of the TSCA ban on the export of PCBs. The procedures for returning the hazardous waste shipments are furnished in the enclosure.

Please accept my apology for the delay in finding a viable solution for returning the waste shipments to the United States. If you would like to discuss this issue further, please contact me. For details on returning shipments of PCB-contaminated wastes, please have your staff contact Peter Gimlin at (202) 260-3972. Mr. Gimlin is in my Office of Pollution Prevention and Toxics.

Sincerely,

A handwritten signature in cursive script that reads "Susan H. Wayland".

Susan H. Wayland  
Acting Assistant Administrator

Enclosure

***Procedures for Returning to the United States  
Stranded Hazardous Waste Shipments Containing PCBs***

The applicable regulation at 40 CFR 761.99 states:

*For purposes of this subpart, the following transboundary shipments are not considered exports or imports:*

*(a) PCB waste generated in the United States, transported outside the Customs Territory of the United States (including any residuals resulting from cleanup of spills of such wastes in transit) through another country or its territorial waters, or through international waters, and returned to the United States for disposal.*

*(b) PCB waste in transit, including any residuals resulting from cleanup of spills during transit, through the United States (e.g., from Mexico to Canada, from Canada to Mexico). [§761.99]*

The purpose of this regulation is to allow transshipments of PCB wastes through the United States, or from part of the United States to another part through a foreign country or international waters, without considering such shipments to be "imports" or "exports" under TSCA. Under the circumstances presented in this situation, the Agency believes it is appropriate to treat the return of erroneously or illegally exported PCB wastes that have not been substantially altered outside the United States as a "transshipment" rather than an "import" pursuant to 40 CFR 761.99.

Implementation of this transshipment regulation normally requires that a U.S. generator and a U.S. PCB storage or disposal facility must be listed on the waste manifest. However, in order to return U.S.- generated PCB contaminated waste from a Canadian facility under this regulation, the Canadian facility may create a new manifest listing itself as the generator and listing a U.S. PCB storage or disposal facility as the recipient. (A new manifest is not required if the Canadian facility never accepted the waste; i.e., never signed the original manifest acknowledging receipt of the waste). The waste may also be returned directly to the original U.S. generator. The original U.S. generator would be listed as the receiving facility on the new manifest.

For clarification purposes, it should be noted on the new manifest that the shipment is being returned pursuant to 40 CFR 761.99. (If a new manifest is not being generated, the original manifest should include a notation that the waste is being returned pursuant to 40 CFR 761.99.) A copy of the original manifest from the U.S. generator to the Canadian facility also must be attached. In addition, standard notification may be necessary pursuant to the Canada-USA Agreement on the Transboundary Movement of Hazardous Wastes.

It is our understanding that several of the original shipments may have been mixed with other hazardous waste after being received at Canadian facilities. By law, the returned waste shipments may not contain PCB wastes that are the result of commingling Canadian PCB waste with U.S. PCB wastes.

Additional guidance concerning the return to the United States of stranded shipments of PCB-contaminated wastes may be obtained by contacting Peter Gimlin at (202) 260-3972 of the Office of Pollution Prevention and Toxics.