



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 08 2020

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

MEMORANDUM

SUBJECT: Criteria and Process for Objecting to Requests to Import
Hazardous Waste to a U.S. Facility

FROM: Kathleen Salyer, Deputy Director 
Office of Resource Conservation and Recovery

TO: Land, Chemicals and Redevelopment Division Directors
Regions 1 - 10

Enforcement and Compliance Assurance Division Directors
Regions 1 - 10

Attached for your information and use is revised guidance¹ which identifies the criteria EPA should generally consider in deciding whether to object to a notification of intent to import foreign hazardous wastes to a U.S. facility.²

The RCRA Hazardous Waste Import/Export Notice and Consent Program, located in the Materials Recovery and Waste Management Division (MRWMD), International Branch (IB), is responsible for, among other duties, processing notices of intent to import hazardous waste from foreign countries into the United States. This process applies to all regulated hazardous wastes imported into the U.S. that are covered by bilateral agreements with Canada and Mexico, the Organization for Economic Cooperation and Development (OECD) Council Decision for the transboundary movement of hazardous wastes for recovery operations, and any other relevant international agreement, bilateral agreement or treaty to which the U.S. is a party.

In the course of administering this program, we have concluded that it would be helpful to issue updated guidance on the import notice and consent process and on the criteria for EPA's objection to imports of hazardous waste. This direction will help ensure that the process operates smoothly and efficiently, providing equitable treatment of all U.S. facilities contracting to receive hazardous waste from foreign

¹ This guidance supersedes the memorandum on this subject issued, October 6, 2010, by Susan G. Bromm, which revised the memorandum dated December 19, 1994, issued by Elaine G. Stanley entitled, "Criteria and Process for Objecting to Requests to Import Hazardous Waste to a U.S. facility."

² The policies set out in this memorandum are intended solely as guidance. They are not intended, nor can they be relied upon to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this memorandum, or to act at variance with the guidance, based on an analysis of specific circumstances. EPA also reserves the right to change this guidance at any time without public notice.

sources. Ultimately this guidance will also ensure that hazardous waste entering the U.S. is destined for facilities that are able to manage the waste properly and safely.

The Regions, through the Regional Import/Export coordinators, play a critical role in this process especially in reviewing the facilities which are destined to receive hazardous waste imports and making recommendations on whether to consent or object to the import of the hazardous waste.

We hope this guidance assists you and your staff through this process. If you have any questions, please call me or have a member of your staff contact Rick Picardi at Picardi.Rick@epa.gov or by phone at (703) 308-8879.

Attachment

cc: Regional Counsels
RCRA Enforcement Managers
RCRA Import/Export Regional Coordinators

**Import Notice and Consent Process and Criteria for Objecting
to
Requests to Import Hazardous Waste to a U.S. Facility**

Background

The RCRA Hazardous Waste Import/Export Notice and Consent Program, located in the Materials Recovery and Waste Management Division (MRWMD), International Branch (IB), is responsible for, among other duties, processing notices of intent to import hazardous waste from foreign countries into the U.S. This process applies to all regulated hazardous wastes imported into the U.S. that are covered by bilateral agreements with Canada and Mexico, the Organization for Economic Cooperation and Development (OECD) Council Decision for the transboundary movement of hazardous wastes for recovery operations, and any other relevant international agreement, bilateral agreement or treaty to which the U.S. is a party.

I. The RCRA Import Notice and Consent Process and Expected Timelines

- A. Notice of Intent to Import (NOI)** - When an entity desires to send hazardous waste to the U.S, EPA must receive a NOI, either from the competent authority of the foreign government or from the importer. Who must submit the NOI depends on the following specific circumstances:
1. When foreign entities contract to export hazardous wastes from their countries to U.S. facilities under the international agreements mentioned in the preceding section, EPA must receive from the foreign government's competent authority a notification of intent to import (NOI).
 2. In cases where the waste is RCRA hazardous but not controlled as a hazardous waste export by the foreign government, EPA must receive a NOI from the U.S. importer.
 3. From time to time EPA also receives NOIs for waste considered hazardous by the country of export but which is not RCRA hazardous waste. In those cases, EPA generally responds with a neither consent nor object letter (NCNO) but nothing prevents EPA from requesting additional information from the importer and/or exporter in order to ensure that the intended import is not controlled as RCRA-hazardous or is prohibited for import under another EPA regulation.

B. Procedures for Responding to a NOI and Expected Timeframes

1. **Headquarters (HQ) initial NOI review.** When HQ receives a NOI for hazardous waste destined for a U.S. facility, HQ reviews the NOI for completeness. The goal is for HQ to complete this step within 10 days or less unless more information is needed. Depending on the results of this review, HQ may take a number of actions:
 - a. If the NOI does not have the minimum required information, HQ requests a complete NOI from the foreign competent authority, foreign exporter or U.S. importer.
 - b. If the NOI is submitted by the U.S. importer, HQ will immediately reach out to the country of export's competent authority to request confirmation that the export described in the notice is not subject to that country's hazardous waste export notice requirements.

- i. If the country of export confirms that the described export is not subject to its hazardous waste export requirements, HQ continues its review of the notice.
- ii. If the country of export's response states that the export described in the notice is subject to its hazardous waste export requirements, HQ sends an objection to the U.S. importer and recommends working with the importer's foreign customer to submit an export notice to the competent authority for the country of export.
- c. If the NOI lists wastes clearly banned from import to the U.S., HQ immediately sends an objection back to the foreign competent authority or U.S. importer.
- d. If the NOI lists items that are clearly not controlled by RCRA or any other EPA Statute, then EPA sends an NCNO to the foreign competent authority.
- e. If the NOI lists items that are clearly not controlled by RCRA but are controlled under a separate statute (e.g., used ozone depleting substances), HQ sends a letter to the foreign competent authority that provides the pertinent statutory authority and appropriate EPA contact that is responsible for administering the appropriate import controls for that particular substance or material.
- f. If the NOI lists items that are clearly both hazardous waste under RCRA and are also controlled under another EPA program (e.g., certain ozone depleting substances that are listed hazardous wastes if being imported for disposal), HQ contacts the other EPA program office to coordinate the review and response back to the foreign competent authority.
- g. If the NOI is complete and does not list banned wastes or violate the country of export's regulations, HQ enters the information from the NOI into the electronic data management system, WIETS, and advises the relevant regional coordinator(s) that the NOI information is ready for review. Depending on the notice, up to a maximum of two facilities may be listed, and therefore a maximum of two regional import/export coordinators may be relevant.

2. **Regional detailed NOI review.** The regional import/export coordinator reviews the notice at the facility level and consults with the state, as appropriate. The goal is for each region to complete this step within 21 days unless more information is needed. As part of the review, the regional import/export coordinator:
 - a. Makes a recommendation on whether EPA should consent, object (based on the criteria in the next section) or needs additional time for review.
 - b. Provides the reason for any objection with substantiating documentation via electronic message to the HQ import/export processing office.
 - c. If additional time for review is needed, notifies HQ immediately using WIETS that further review time is needed and why. HQ will then send to the foreign competent authority a temporary objection to the import in order to avoid triggering “tacit consent” under the terms of the applicable bilateral or international agreement³. If additional information is needed from the U.S. importer or U.S. receiving facility, the request is made by the regional import/export coordinator. If additional information is needed from the country of export or foreign exporter, the request is sent from HQ to the foreign competent authority. In either case, the request will convey the outstanding or additional information necessary for EPA to determine the admissibility of the shipments.
 - d. After review of additional information obtained during the period the temporary objection is in effect, makes a recommendation to HQ whether EPA should object to the NOI.
 - e. In situations where a foreign country may request written consent even if it is not required under an international agreement, HQ will still require a recommendation from the Region in order to provide the foreign competent authority with a written response.

³ For certain agreements, *i.e.*, the U.S./Canadian bilateral and the OECD, if EPA fails to object or consent within 30 days of acknowledging receipt of a complete notice back to the foreign country, this “silence” constitutes tacit consent by the U.S. to the proposed import. However, it is EPA practice to issue a Temporary Objection when additional review time is needed in order to avoid triggering tacit consent. The 30-day response time frames include EPA Regional review and HQ response to the foreign competent authority and U.S. importing facility.

3. **HQ Issuance of Final Response letter.** When HQ gets recommendations back from all the relevant regional import/export coordinators, it will then review the recommendations and issue a final response. The goal is for HQ to complete this step in 5 days or less.
 - a. If the region(s) recommends consent or conditional consent, HQ will issue a consent letter back to the notice submitter (i.e., the competent authority of the country of export or the U.S. importer). In addition, when EPA consents back to the notice submitter it will also provide the destination facilities listed in the NOI with documentation confirming EPA's consent so that these facilities can comply with the requirements in 40 CFR 264.71(a)(3) and 40 CFR 265.71(a)(3).
 - b. If the region(s) recommends neither consent nor object (NCNO), HQ will issue an NCNO letter back to the foreign competent authority.
 - c. If the region(s) recommends objection, HQ will review the region's recommendation, taking into consideration the objection criteria in this memorandum. If HQ concurs with the region's recommendation, HQ will notify the notice submitter (i.e., the competent authority of the country of export or the U.S. importer) and the U.S. importing facility of EPA's decision to object. Where applicable, HQ must give its objection to a foreign competent authority within the pertinent time period of 30 days so as not to trigger the tacit consent mentioned previously.

II. CRITERIA AND BASIS FOR OBJECTION

As described in the previous section, HQ staff and the appropriate Regional Import/Export Coordinator review the NOI in order to ascertain whether to consent or object to the imports based upon various factors such as the nature of the hazardous waste and the U.S. receiving facility. One of the primary purposes of the objection criteria in this guidance is to help EPA determine whether specific U.S. receiving facilities can properly and safely manage the hazardous waste. Any one of the criteria listed below may be sufficient to object to the proposed imports, but the list does not constitute the only basis for objection. EPA may designate other instances when an objection could be made, including where there is harm or the threat of harm to human health or the environment. If, after EPA has already consented, evidence appears that the criteria for objection may apply, EPA may withdraw its consent to the NOI. Also, this guidance does not affect or diminish in any way EPA's authority to take enforcement actions against brokers, agents or any other persons acting as importers.

The following criteria should guide the EPA Regions in recommending to HQ whether EPA should object to specific imports of hazardous waste.

- A. The NOI does not provide all of the information required under 40 CFR §262.84 for notices submitted by U.S. importers, Article 3(b) of the U.S./Canadian bilateral agreement or Article III of Annex III of the La Paz Agreement between the U.S. and Mexico and/or provisions under the Organization for Economic Cooperation and Development (OECD) Council Decision for the transboundary movement of hazardous wastes for recovery operations, or any other relevant international agreement, bilateral agreement or treaty to which the U.S. is a party.
- B. The import of the waste is prohibited under other U.S. Federal statute(s), such as the ban on the importing substances containing polychlorinated biphenyls (PCBs) under The Toxic Substances Control Act or restrictions on importing Chlorofluorocarbons (CFCs) for recycling under the Clean Air Act.
- C. The U.S. importer seeks to import regulated hazardous wastes that are not included in the receiving facility's permit or interim status authorization.
- D. The U.S. receiving facility is not in interim status or is operating without a required RCRA permit.
- E. The U.S. receiving facility's owner, operator, or parent corporation has been convicted under the criminal provisions of any environmental statute within a year of notification, when such recent criminal activity calls into question the ability of the facility to properly and safely manage the hazardous waste. The term "within a year of notification" means a year prior to and a year post notification. When a criminal conviction occurs post notification, EPA will rescind the consent by notifying the parties in the same manner as any other objection, i.e., putting them on notice that no further shipments are allowed to proceed.
- F. EPA has received information that demonstrates that the U.S. receiving facility cannot properly and safely manage the intended hazardous waste import (e.g., a leak in the intended storage facility poses an imminent and substantial endangerment).

As noted previously, if the region recommends objection, HQ will review the region's recommendation, taking into consideration the objection criteria in this memorandum. If HQ concurs with the region's recommendation, HQ will notify the notice submitter (i.e., the competent authority of the country of export or the U.S. importer) and the U.S. importing facility of EPA's decision to object. Where applicable, HQ must give its objection to a foreign competent authority within the pertinent time period of 30 days so as not to trigger the tacit consent provisions in some of the international agreements.