

**Members of the Toxics Caucus of the  
Canadian Environmental Network's  
Response to Initial Discussions  
Regarding Amendment of the *Export and Import of  
Hazardous Wastes Regulations***

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The following organizations support this document:

Canadian Environmental Law Association, ON  
Canadian Institute for Environmental Law and Policy, ON  
Centre for International Studies, NS  
Citizens' Network on Waste Management, ON  
Environmental Law Centre, AB  
Great Lakes United, QC  
Greenpeace, ON  
Northwatch, ON  
Ontario Toxic Waste Research Coalition, ON  
Reach for Unbleached!, BC  
Saskatchewan Environmental Society, SK  
Toxics Watch Society of Alberta, AB  
Warwick-Watford Landfill Committee, ON  
The Wild Circle, NB

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## TABLE OF CONTENT

1. Introduction: Context of the Consultations .....	2
2. Guiding Principles for the Toxics Caucus of the Canadian Environmental Network .....	2
3. The Consultation Process .....	3
4. “Decoupling” of Recyclables from Regulations Affecting Disposables .....	4
5. Waste Reduction Plans .....	6
6. The Need for Upstream and Downstream Links to Manufacturing and Trade Regulations and to Treatment Sites.....	8
7. NAFTA and FTAA .....	10
8. Prohibition of Exports to non-OECD Countries .....	10
9. Permits of Equivalent Levels of Environmental Safety (PELES).....	11
10. Environmentally Sound Management Criteria (ESM).....	11
11. Insurance and Liability.....	12
12. Clarifying Definitions, Criteria and Lists.....	13
13. Guarantees of Accountability, Information, Compliance and Enforcement.....	15
14. Conclusion.....	17

**Members of the Toxics Caucus of the  
Canadian Environmental Network's  
Response to Initial Discussions  
Regarding Amendment of the *Export and Import of Hazardous  
Wastes Regulations***

**1. Introduction: Context of the Consultations**

Hazardous waste imports to Canada are accelerating at an alarming rate. Total hazardous waste imports grew by 12% from 1997 to 1998 and by 22% from 1998 to 1999. This represents an 83% increase in the *rate* of imports in two years, the last period for which final data is available. If this upward trend continues accelerating at the same rate, the 663,000 tonnes imported in 1999 could well exceed 1 million tonnes this year.

Also between 1998 and 1999 there has been a 20% increase in the part of the imported waste stream that is destined for disposal between 1998 and 1999. These statistics (Environment Canada Trans-boundary Division) point to a disturbing national trend. The cascade of hazardous waste imports, combined with the absence of environmentally sound disposal criteria, puts the health of Canadians and the environment at risk.

Many of these wastes are reactive, corrosive, infectious and radioactive. Some contain toxic heavy metals (lead, mercury and cadmium) and arsenic. Others are carcinogenic organic compounds and persistent organic compounds linked to immune system dysfunction, nervous system impacts, bone marrow damage, and endocrine disruption (Canadian Institute for Environmental Law and Policy). The relative laxness of Canadian landfill and disposal standards combined with significantly lower liability and insurance requirements in comparison with the U.S. has led to this trend.

Canadians continue to export significant quantities of hazardous waste – primarily to the U.S. These exports have hovered around the 300,000 tonnes per year level over the past three years. This is an increase of almost 50% over the quantities that were exported in the early 1990's. Over three-quarters of the exported hazardous wastes go to “recycling” facilities. This should not be taken to mean, however, that they pose no threat to the environment. A high percentage of exports are “recycled” as fuel in cement kilns raising serious contamination concerns.

**2. Guiding Principles for the Toxics Caucus of the Canadian Environmental Network**

Canada is a privileged nation with access to resources and the affluence to consume them that is the envy of most of the world. This good fortune carries with it a concomitant responsibility. Canada must lead in the effort to reduce and eliminate the production and the use of hazardous materials and the generation of hazardous wastes. Canada must create legislation and regulations that place environmental protection and the public good ahead of private interests.

Members of the Toxics Caucus of the Canadian Environmental Network (CEN) agree that the proposed amendments must be adequate to assure safe transport and management of hazardous wastes for recycling and disposal. However the more fundamental guiding principle of our members is that the new regulations must reduce production of hazardous waste. Regulations that include incentives to sustain or increase waste production are unacceptable. The regulations must control and curtail the waste trade, not enable and facilitate the use of Canada as a toxic dumping ground.

***Recommendation:***

***Members of the Toxics Caucus of the CEN agree that the proposed amendments must be adequate to assure safe transport and management of hazardous wastes for recycling and disposal. However the more fundamental guiding principle of our members is that the new regulations must reduce production of hazardous waste. Regulations that include incentives to sustain or increase waste production are unacceptable.***

Further, member organizations are clear that regulations should not be used to isolate one element of a complex problem from primary and underlying causes. Regulations should reach as far into related areas as possible. In this case, there should be extensive upstream linkages with mechanisms that would affect production methods, trade and consumption patterns.

Recycling valuable materials may have a lower environmental impact than the creation of virgin materials, but reducing use and curtailing obsolescence are critical means of conservation. Reduction in the production of hazardous waste will reduce the trade in these wastes. In addition, ways must be found to reduce the use of hazardous materials (e.g., cars, batteries, etc.) in order to reduce their re-processing and/or recycling.

The amendments to the *Export and Import of Hazardous Wastes Regulations* (EIHWR) must be based on realistic evaluations of the regulations' past performance. The nearly six-fold increase of imported hazardous wastes since the EIHWR was adopted in 1992 and the more than doubling of those exported suggests that hazardous waste production is being facilitated rather than reduced.

Enforcement and monitoring is essential to ensure regulations are more than paper tigers to be side-stepped in pursuit of profits. Implementation and accountability must be assured by practical mechanisms and the assignment of adequate resources and personnel.

### **3. The Consultation Process**

With the exception of consultation in Toronto, the environmental non-governmental organization (ENGO) representatives who attended the consultations were very satisfied with the process. The process was well organized and conducive to the exploration of major issues. Most of the CEN participants agreed that the consultations have been well facilitated to ensure an inclusive milieu and that all views were aired. There was adequate time for discussion, and comments from the ENGO representatives were clearly welcomed and often requested for balance.

In the Toronto consultation meeting, however, there was dissatisfaction from the ENGO representatives. The number of attendees here was much higher and overwhelmingly from industry. This means that it was much more difficult to have satisfactory interactive discussions. Despite the imbalance, the facilitator ensured ENGO representatives got to speak. In addition, much of the time at the Toronto consultation was taken up by facilitator response. Environment Canada should have played the responder role.

ENGO participants appreciate their involvement in the early stages of this amendment process. Involvement at this stage is more effective than submitting reactionary comments on a final consultation document. Notes from any related meetings with stakeholders should be made available to the CEN and the interested public upon request to guarantee the continuity of openness in this process.

***Recommendation:***

***Involvement at this stage is more effective than submitting reactionary comments on a final consultation document. Notes from any related meetings with stakeholders should be made available to the CEN and the interested public upon request to guarantee the continuity of openness in this process.***

The mix of participants at the consultations was generally good except for the absence of people from the First Nations. Without the First Nations' presence, we lose an opportunity to learn from and respond to their views and to understand the issues particular to First Nations' communities. These communities are sometimes targeted as the sites for hazardous waste disposal or recovery facilities. The social and economic factors involved in these developments and their environmental impacts on First Nations are part of the political economy of hazardous waste management and should be reviewed openly and understood by everyone in this process.

***Recommendation:***

***The social and economic factors involved in these developments and their environmental impacts on First Nations are part of the political economy of hazardous waste management and should be reviewed openly and understood by everyone in this process.***

#### **4. “Decoupling” of Recyclables from Regulations Affecting Disposables**

Decoupling of hazardous wastes destined for recycling from the regulations affecting those going to final disposal (*Canadian Environmental Protection Act (CEPA) 1999*) is intended to “minimize any unnecessary interference with the trade in recyclable materials while maintaining controls [re: obligations to OECD and Basel] . . .”

Since the old (and still coupled) EIHWR was adopted in 1992, the percentage of hazardous wastes imported or exported for recycling purposes has increased substantially. Almost half of the hazardous waste imports are now recyclable wastes. More than three quarters of the hazardous waste exports are now recyclables (Statistics from Environment Canada Transboundary Movement Division). These data show that the old EIHWR has not been a serious barrier to the movement of hazardous wastes for recycling.

Decoupling of recyclables makes them part of a more lax regime than the disposal stream. These easier requirements include tacit consent, lower insurance requirements, pre-approval, and exemption from waste reduction plans. This can only be expected to further increase the traffic of “recyclable” hazardous wastes.

The recoverable portion of recyclable hazardous wastes is usually only a small part of the gross shipment. Most of the waste, and often the most hazardous parts, are left as residues in the receiving country requiring hazardous waste disposal. This and the fact that “recyclables” are now most of the total hazardous waste traffic, suggests that the smoother road for recyclables is effectively a less regulated final disposal stream with fewer incentives for reduction. Decoupling recyclables creates a very large loophole in the EIHWR through which hundreds of thousand of tonnes of hazardous wastes more easily pass without the curbs of regulations aimed at reduction.

The notion behind the decoupling of recyclables is that recycling is both an environmental and economic good not to be discouraged. While it may be true that in many cases recycling recovers valuable materials with a lower environmental impact than the mining or production of new materials, two factors offset this advantage.

- Recycling of hazardous waste (even when it is not de facto creation of even larger volumes of waste, profiteering, or merely disguised long term storage, which endanger watersheds and aquifers) is still an activity that requires handling, transportation and processing of hazardous goods, with all the inevitable opportunities for accident and error.
- Recycling does little to discourage de novo production of hazardous materials. While it may be environmentally sound to recover valuable metals (including lead) from computer components and cathode ray tubes, it would be better to provide incentive to redesign products for longer use with less dependence on hazardous materials (modular car parts, more efficient rechargeable batteries, etc.). Waste reduction plans imposed on the manufacturers would create incentives for redesign of products that would then need recycling less often. This extended producer responsibility is already being implemented by the European Union for vehicles and electrical and electronic goods.

These factors explain why reduced primary production is preferred to recycling in the waste reduction hierarchy.

***Recommendation:***

***The above factors explain why reduced primary production is preferred to recycling in the waste reduction hierarchy.***

Many ENGO stakeholders oppose a more lax regime for hazardous recyclable wastes unless “recycling” is strictly defined to mean that no hazardous waste residue is created as a result of the recycling process. In addition, “energy recovery” should not be included in the definition of hazardous recyclables. Even if this strict definition of hazardous recyclable wastes is adopted, Environment Canada should ensure that strict controls exist for the movement and handling of these hazardous materials throughout their entire lifecycle.

**Recommendation:**

*Many ENGO stakeholders oppose a more lax regime for hazardous recyclable wastes unless “recycling” is strictly defined to mean that no hazardous waste residue is created as a result of the recycling process.*

**Recommendation:**

*“Energy recovery” should not be included in the definition of hazardous recyclables. Even if this strict definition of hazardous recyclable wastes is adopted, Environment Canada should ensure that strict controls exist for the movement and handling of these hazardous materials throughout their entire lifecycle.*

## **5. Waste Reduction Plans**

CEPA 1999 gives Environment Canada the authority to require *exporters or a class of exporters* to prepare and implement a plan to reduce hazardous wastes being exported *for final disposal*.

Unfortunately, CEPA 1999 does not give Environment Canada the authority to require hazardous waste importers to provide reduction plans. The exclusion of importers of hazardous wastes from responsibility for the waste reduction plans does nothing to reduce waste imports to Canada. The regulations should be reciprocal; importers should show how they plan to reduce the generation of wastes they dump in Canada. This would be consistent with the Basel Convention’s emphasis on waste reduction.

**Recommendation:**

*The EIHWR regulations should be reciprocal; importers should show how they plan to reduce the generation of wastes they dump in Canada. This would be consistent with the Basel Convention’s emphasis on waste reduction.*

Furthermore, CEPA 1999 does not give Environment Canada the authority to require waste reduction plans from those exporting hazardous wastes for recycling. As has been discussed in section 5 above, recyclable wastes remain a threat to the environment and should therefore also require reduction plans.

**Recommendation:**

*Recyclable wastes remain a threat to the environment and should therefore also require reduction plans.*

Since exporters and importers are often waste management companies or brokers, the generators themselves should be accountable for the amount of waste exported along with the parties responsible for developing, providing and implementing waste reduction plans.

Waste reduction plans, above and beyond the concept of Environmentally Sound Management, need to be partnered with pollution prevention programs (CEPA 1999) and any current or emerging provincial plans for waste reduction (CCME). Waste reduction plans should be developed to include all upstream linkages to the generation of the waste and be aimed at waste avoidance and elimination. All factors including manufacturing and production regimes,

marketing and consumption patterns, alternative products, component materials and production techniques, trade regulations and international trade agreements (NAFTA, FTAA), should be considered in a waste reduction analysis and strategy. Voluntary waste reduction programs should not be substituted for regulated ones unless they are more stringent and proven dependably accountable.

***Recommendation:***

***Waste reduction plans, above and beyond the concept of Environmentally Sound Management, need to be partnered with pollution prevention programs (CEPA 1999) and any current or emerging provincial plans for waste reduction (CCME). Waste reduction plans should be developed to include all upstream linkages to the generation of the waste and be aimed at waste avoidance and elimination. All factors including manufacturing and production regimes, marketing and consumption patterns, alternative products, component materials and production techniques, trade regulations and international trade agreements (NAFTA, FTAA), should be considered in a waste reduction analysis and strategy.***

***Recommendation:***

***Voluntary waste reduction programs should not be substituted for regulated ones unless they are more stringent and proven dependably accountable.***

Reduction goals in the plans need to be stated so that the effectiveness of the reduction program can be measured through the reduction of waste generated year by year. Each waste reduction plan must include specific reduction targets with timelines. To supply some level of accountability, above and beyond government compliance monitoring, these plans and their targets must be available to the public. Future permit applications from the same applicant should be refused if these reduction targets have not been met. Diversion of hazardous wastes from disposal into the recycling stream as an alternative to (or in avoidance of) reduction should be evaluated for its impact on overall reduction goals and net environmental impacts.

***Recommendation:***

***Each waste reduction plan must include specific reduction targets with timelines. To supply some level of accountability, above and beyond government compliance monitoring, these plans and their targets must be available to the public.***

***Recommendation:***

***Future permit applications from the same applicant should be refused if reduction targets outlined in waste reduction plans have not been met.***

***Recommendation:***

***Diversion of hazardous wastes from disposal into the recycling stream as an alternative to (or in avoidance of) reduction should be evaluated for its impact on overall reduction goals and net environmental impacts.***

## **6. The Need for Upstream and Downstream Links to Manufacturing and Trade Regulations and to Treatment Sites**

This topic crosses through several other concerns and is also discussed in sections 3 and 4 above. Unless the EIHWR can be linked to manufacturing regulations and trade agreements (NAFTA, FTAA, WTO) to allow considerable upstream intervention and regulation, it cannot be very effective in protecting health and the environment. The regulation will only function to facilitate the lucrative trade in trafficking and recycling of hazardous wastes. Waste generation is the critical problem, and our obligations to reduce it can only be effectively met by intervention at the headwaters of the waste stream, not by widening the culverts. EIHWR must be linked with other regulations and partnered with jurisdictions that can affect the generation of waste at its source.

### ***Recommendation:***

***EIHWR must be linked with other regulations and partnered with jurisdictions that can affect the generation of waste at its source.***

Unless Canadian liability laws are extended to harmonize with the U.S. Superfund provisions, Canada will continue to develop as a toxic dumping ground for U.S. generators trying to avoid the responsibilities for reduction and Environmentally Sound Management (EMS) inherent in financial liability.

The amended EIHWR should also facilitate links between federal, provincial and municipal jurisdictions with regard to regulating brokers (federal), generators (provincial) and waste disposal or treatment facilities (federal, provincial and municipal). Regulatory accountability must also reach downstream to the siting and regulation of waste disposal and treatment facilities to ensure that there are no dangerous or compromising impacts on adjacent communities. Such facilities are usually found to be undesirable and are sometimes sited near communities that are disadvantaged, dependent and powerless, and where environmental considerations have a lower priority than economic ones. Some of these issues may be dealt with under the emerging ESM criteria which are in an early stage of development (See section 8 below).

### ***Recommendation:***

***The amended EIHWR should facilitate links between federal, provincial and municipal jurisdictions with regard to regulating brokers (federal), generators (provincial) and waste disposal or treatment facilities (federal, provincial and municipal). Regulatory accountability must also reach downstream to the siting and regulation of waste disposal and treatment facilities to ensure that there are no dangerous or compromising impacts on adjacent communities.***

The function of EIHWR must not be to sustain a waste disposal and recycling industry that compromises the well being of vulnerable communities. In 1991, a waste disposal company attempted to site a "recycling and recovery" facility for imported hazardous wastes in a small community in the Maritimes. The proposal was defeated by a community group that was concerned that the site would be used for final disposal whereby materials would be buried "temporarily" in steel drums on a thousand-acre site awaiting favourable market conditions for recovery or recycling. This coincided with the original drafting consultations of the EIHWR

which were needed to assure dependable trans-boundary rules so brokers could buy wastes on the spot market and ship them directly to treatment facilities, avoiding delays requiring storage. The requirement for a time period in which disposal and recycling are completed, as proposed in the new draft, is one welcome avenue to address the issue.

Some industries and government express concerns that there may not be sufficient hazardous waste to sustain Canadian waste management facilities like Swan Hills in Alberta and that export may become the only option for Canadian waste generators. (In the case of Alberta the reason for the apparent dearth of waste may be the failure to classify Albertan oil and gas industry wastes as hazardous, which allows disposal by pumping the waste into the empty wells.) A better option to increasing hazardous waste exports is the reduction and elimination of wastes so that we don't need such a large waste disposal industry. This is not a negative situation if we turn from GDP to GPI (Genuine Progress Indicators) accounting that subtracts the cost of environmental and social damage from the generation of wealth.

There are also concerns that Canada is becoming a dumping ground for waste imports, be they for disposal or recycling. The members of the Toxics Caucus of the CEN share a general public approbation of such a development, which must be dealt with by "harmonizing" Canadian and American standards so that U.S. generators and dealers have no hidden incentives such as lax standards to encourage export to Canada.

***Recommendation:***

***There is a need to "harmonize" Canadian and American standards so that U.S. generators and dealers have no hidden incentives such as lax standards to encourage export to Canada.***

The EIHWR should be examined and amended from the perspective of promoting the local use of those waste materials that cannot be reduced or eliminated by pollution prevention, rather than entrenching an inefficient (when all "external" costs are counted) linear industrial system. Linkages with manufacturing regulations could leverage the development of "eco-industrial parks" which cluster industrial facilities so that waste streams flow into feed stocks of adjacent factories in a closed loop. This would eliminate the need for long distance transport.

***Recommendation:***

***The EIHWR should be examined and amended from the perspective of promoting the local use of those waste materials that cannot be reduced or eliminated by pollution prevention, rather than entrenching an inefficient (when all "external" costs are counted) linear industrial system. Linkages with manufacturing regulations could leverage the development of "eco-industrial parks" which cluster industrial facilities so that waste streams flow into feed stocks of adjacent factories in a closed loop.***

## 7. NAFTA and FTAA

NAFTA and FTAA are of special concern as they are effectively supranational and are interpreted by some people as being a basis to force Canada to compromise its regulatory initiatives under threat of fines and retaliation (NAFTA Chapter 11) if they are perceived to impede the profits of foreign investors. These could include waste managers, recyclers, generators or exporting manufacturers of hazardous products. The NAFTA tribunal award to S.D. Meyers could cost Canada US\$20 million for an interim ban on PCB exports between '95 and '97 and could prevent Canada from taking certain future regulatory initiatives. Decisions like these have the coercive effect of causing us to restrain our own governance to avoid such possible challenges and makes environmental protection second to foreign investment and trade. It is urgent that Canada finds a way to excise either itself or Chapter 11 from NAFTA. The EIHWR amendments should not be weakened in an effort to ensure that the new regulations will not offend the corporate waste trade's stake in NAFTA and the forthcoming FTAA.

### *Recommendation:*

*The EIHWR amendments should not be weakened in an effort to ensure that the new regulations will not offend the corporate waste trade's stake in NAFTA and the forthcoming FTAA.*

There are a number of question arising from this such as whether Alberta will be able to refuse to import wastes while treating its own. The existing links between inter-provincial trade regulations and NAFTA could allow a challenge to Alberta's right to refuse hazardous waste imports because other provinces accept them. Could U.S. generators that export wastes to Canada be required to prepare and implement waste reduction plans? (See section 10 for ESM / NAFTA.) The answers to these questions are still open for debate and the Federal government should not out of fear back off from strict EIEHR controls.

## 8. Prohibition of Exports to non-OECD Countries

Canada has not ratified the Basel ban of 1995, which would prohibit the export of hazardous wastes to non-OECD countries (non-Annex VII according to Basel) although CEPA 1999 provides the authority for its ratification.

Canada hesitates to include recyclable wastes in the ban and is uncomfortable with the inclusiveness of banning exports to *all* non-OECD countries. If all were not included in the ban, then the determination of which country outside of OECD requirements on waste trade would be an acceptable recipient would too easily fall from a regulatory regime to a political one. Canada should ratify the ban and help bring it into force. To do otherwise would be to diminish the already tenuous controls that exist for hazardous wastes, increasing the risk that they be handled unsoundly. The discussions about this, rather than being held separately, should be part of the consultation process in the interest of respecting the spirit of the Basel Convention, which Canada has signed, and in trying to protect human health and the environment throughout the world.

***Recommendation:***

*Canada should ratify the Basel ban and help bring it into force.*

## **9. Permits of Equivalent Levels of Environmental Safety (PELES)**

CEPA 1999 provides regulators an opportunity to use some discretion to establish “alternative” regulatory systems for unique conditions. Different but equivalent standards can be applied rather than those that would normally apply under the forthcoming *Export and Import of Hazardous Wastes and Hazardous Recyclable Materials Regulations* (EIHWRMR). This would allow the Minister to award a permit where the standard regulations cannot be met as long as he judges that equivalent levels of safety can be achieved by other means. That is, through discretionary power the Minister could permit movements contrary to regulations. There are to be criteria in this regard that the Minister “must” or “should” (it is not sure which) follow. PELES are another level of relaxation of the EIHWR in addition to that provided by decoupling of recyclables. The increase of discretionary powers allows for political rather than regulatory goals to be met, opens opportunities for abuse, and provides a large potential loophole.

ENGO stakeholders have suggested that well-designed regulations do not need such provisions for permits beyond the regular process that ensures a level playing field for all competitors. It is noted that efficient and expeditious administration, such as a functional e-filing and reporting system, should eliminate the need for extraordinary exceptions to process. PELES should not be part of the EIHWRMR.

***Recommendation:***

*PELES should not be part of the EIHWRMR.*

## **10. Environmentally Sound Management Criteria (ESM)**

Although it is in its early conceptual stages and not yet well defined, ESM criteria guided by the Basel Convention framework could provide effective principles for the regulation of disposal and recycling facilities and raise Canadian landfill standards. Currently, Canadian standards are now lower than U.S. standards and therefore create an export pressure from the U.S. ESM must also be implemented for both domestic and international movements between federal and provincial jurisdictions and First Nations.

ESM has the potential to provide up and downstream links to all the facilities and activities in the waste stream but it must be used to raise standards to the highest and not the lowest common denominator for the whole system. Special concern should be given to ESM requirements for storage and treatment of recyclables to balance the effect of “decoupling”.

***Recommendation:***

*ESM must be used to raise standards to the highest and not the lowest common denominator for the whole system. Special concern should be given to ESM requirements for storage and treatment of recyclables to balance the effect of “decoupling.”*

Under Article 4 of the Basel Convention, permits to export or import could be refused if ESM criteria cannot be met in the treatment of wastes or recyclables. Clear ESM criteria for treatment and disposal facilities that are at least as strong as those in the U.S. will also be necessary for hazardous waste import challenges under NAFTA and FTAA. (See section 7) While the Basel Convention requires that any hazardous waste imported into a country be managed in an “environmentally sound manner,” a strong definition of ESM is required to fulfil this obligation.

***Recommendation:***

***Clear ESM criteria for treatment and disposal facilities that are at least as strong as those in the U.S. will also be necessary for hazardous waste import challenges under NAFTA and FTAA. To achieve this, a strong definition of ESM is necessary.***

In order to give the Minister power under the CEPA 1999, ESM must be well defined, because it would be the basis on which the Minister could prohibit a proposed disposal practice. A definition of ESM would also be essential to defend a decision to refuse an import or export against a trade challenge (NAFTA), as any such action would have to have a definitive basis.

ESM could be incorporated into an international certification system to ensure uniform high standards for waste movements but should only apply to OECD countries where controls and verification are possible. ENGOs should be involved early in the discussions on this development.

***Recommendation:***

***ESM could be incorporated into an international certification system to ensure uniform high standards for waste movements but should only apply to OECD countries where controls and verification are possible.***

***Recommendation:***

***ENGOs should be involved early in the discussions regarding ESM.***

## **11. Insurance and Liability**

The current insurance requirements for Canadian importers and exporters are \$1million for shipments to recovery operations and \$5 million for shipments to disposal facilities or to non-OECD countries. This seems very low considering the potential damage from a train wreck or a truck spill, especially in comparison with the \$1 million that most motorists and homeowners carry in personal liability. Current insurance levels are not high enough to cover the cost of a cleanup or personal damage from a major accident.

The revised regulations should concur with the spirit of the 1999 Basel Protocol to set realistic minimum insurance requirements and strict liability of the exporter. Residual liability, however, should remain with the generator as is done in the U.S. rather than being transferred to the receiving facility as is the current practice in Canada. This difference in liability provisions makes it attractive to export hazardous wastes from the U.S. to Canada. When the generators are

not only morally responsible but also fiscally liable for their wastes, through transport to disposal or recycling, they will become more accountable. This liability would provide strong incentives for waste reduction and would lower the import pressure on Canada.

***Recommendation:***

***The revised EIHWR should concur with the spirit of the 1999 Basel Protocol to set realistic minimum insurance requirements and strict liability of the exporter. Residual liability, however, should remain with the generator as is done in the U.S. rather than being transferred to the receiving facility as is the current practice in Canada.***

Canada should also consider adopting the U.S. Superfund approach where all parties with past involvement in a waste pollution site or event retain liability on a “deepest pockets pay” basis. Since most of our waste trade is with the U.S., this enhancement of liability would further level the playing field and stimulate even greater interest in waste reduction, local treatment and higher landfill standards including the standards for pre-treatment of wastes destined for landfill. Lower liability and pre-treatment standards in Canada compared to the U.S. account for much of the 20% increase of the import waste stream going to disposal between 1998 and 1999, especially to landfills in Ontario.

***Recommendation:***

***Canada should also consider adopting the U.S. Superfund approach where all parties with past involvement in a waste pollution site or event retain liability on a “deepest pockets pay” basis.***

## **12. Clarifying Definitions, Criteria and Lists**

The apparent anarchy over a scheme to define and classify infectious substances/biomedical wastes, chronically or environmentally hazardous or leach able toxic wastes and recyclables should be settled in a way that is consistent with Basel, OECD, the U.S., and the provinces. Several ENGO stakeholders are clear that, in light of the booming waste trade in Canada, necessary adaptations should raise, not lower the bar in any jurisdiction.

Distinguishing hazardous wastes from recyclables or products may require more innovation than the extension or revision of the current list of inconclusive criteria. One option could be an example-based document accompanying the improved criteria to assist and guide the reader. Another option could be a review process to determine the specific risks as each substance is managed or moved. If, in the end, we are left with the disposal of hazardous materials, whether products, disposables or recyclables, it might make more sense to treat them in accordance with the specific risks posed in each segment of their path: 1- transit, 2-reuse, recycling or recovery process, and 3-disposal (of residues). Comprehensive lists could be compiled of all materials covered by the regulations to indicate their inherent hazardous properties. Then they could be managed according to their risk at each path segment regardless of their definition (disposable, recyclable, product, etc.).

**Recommendation:**

*Distinguishing hazardous wastes from recyclables or products may require more innovation than the extension or revision of the current list of inconclusive criteria. One option could be an example-based document accompanying the improved criteria to assist and guide the reader. Another option could be a review process to determine the specific risks as each substance is managed or moved.*

Canada appears to emphasize harmonizing with Basel rather than with U.S. federal law (RCRA). Given the increasing imports of hazardous waste from the U.S. for disposal in Canada, it is important that the two countries be in agreement on definitions and regulations of hazardous wastes. The problem becomes clear if we compare Canadian federal hazardous waste definitions with those in Ontario and the U.S.

Canada defines hazardous waste in two ways: by listing particular wastes in schedules, and by testing (to characterize them as toxic, corrosive, etc.). Ontario now defines hazardous waste in four ways: 1) lists, 2) by characteristic, 3) the mixture rule (when wastes are mixed with hazardous waste the mixture is a hazardous waste), and (4) the derived from rule (wastes derived from hazardous waste are also hazardous waste). The U.S. defines hazardous waste *seven* ways: Ontario's four plus three more: 1) groundwater, soils and sediments contaminated with hazardous waste are themselves hazardous waste, 2) hazardous waste-contaminated debris is hazardous waste, and 3) land ban wastes (anything resulting from the treatment of hazardous waste - even if it may have lost the hazardous waste characteristic - may still be banned from land disposal).

The U.S. requirements increase the scope of wastes that must be managed as hazardous waste. This leaves a wide gap in definition and management between the U.S. on one hand, and Ontario and Canada on the other. Ontario is moving in the right direction and needs to go further, but there is concern that Canadian definitions and management regimes are so much less inclusive that they are encouraging the import of dangerous wastes to Canada.

**Recommendation:**

*Canada and U.S. should have agreement on the definitions and regulations of hazardous wastes.*

Many waste generators want to de-list their wastes. If there is to be a process for de-listing it must be a clear and two-way process that also includes the requirements for listing wastes. It should be based on the actual hazard characteristics, not whether it is intended for recycling or disposal. The elimination of the "red" list from the OECD and Basel lists of recyclable wastes raises the question of where those wastes will now appear. If they were never sent for recycling, will they now be sent for disposal? Or will some of them be reclassified to the "amber" list?

**Recommendation:**

*If there is to be a process for de-listing it must be a clear and two-way process that also includes the requirements for listing wastes. It should be based on the actual hazard characteristics, not whether it is intended for recycling or disposal.*

There needs to be more public input to this area as it is a potential weakness in the regulations. If definitions and criteria remain unclear it will be difficult to interpret and enforce regulations.

**Recommendation:**

*The process of de-listing and listing of wastes should include public involvement.*

### **13. Guarantees of Accountability, Information, Compliance and Enforcement**

It is getting harder to track shipments and to determine which carriers are authorized or operators are certified due to the growth in the number of small carriers. Manifests are often improperly signed or forgotten by inexperienced drivers. Sub-contracted multiple carriers exacerbate these problems. Even if there is an above 90% compliance rate, missing almost 10% of the manifests indicates a very serious loss of accountability when **they are the only record of completion for a shipment of hazardous materials.**

This must be corrected either with more administrative procedures at each stage of transit and/or with a more efficient and possibly electronic filing system. A system could be devised using bar coded information labels which could be read out and forwarded to the receiver (and copied to the regulator's computer file) with a tag to indicate each carrier transfer. There could also be an e-list of trained and certified drivers with encoded licences that could be used as part of the e-filed information at any transfer point. This could provide efficient tracking with a reduced paper burden.

**Recommendation:**

*To increase efficiency in tracking shipments of hazardous wastes, improvements to the administrative procedures at each stage of transit and/or improved electronic filing system are necessary.*

The requirements for the completion of shipment and treatment of hazardous waste should be revised to clarify how notification is to be done. Revisions should also clarify the obligation to repatriate stranded wastes to the exporter or find an acceptable alternative to the intended treatment within clear timelines. U.S. facilities that ignore Canadian reporting requirements and are delinquent in filing reports should be removed from the list of approved destinations. With certified carriers and improved reporting and liability, Canadian generators and importers should be brought into compliance.

**Recommendation:**

*The requirements for the completion of shipment and treatment of hazardous waste should be revised to clarify how notification is to be done. Revisions should also clarify the obligation to repatriate stranded wastes to the exporter or find an acceptable alternative to the intended treatment within clear timelines. U.S. facilities that ignore Canadian reporting requirements and are delinquent in filing reports should be removed from the list of approved destinations.*

Access to information is critical to ensure accountable management of shipments. Full public disclosure of sufficient information will facilitate monitoring and enforcement. Environment Canada should post notices of imports and exports on the CEPA Registry that include not only

the name and country of the exporter or importer and the type of waste, but also the quantity and frequency of their shipments, the actual destination of proposed shipments and reduction plan information (including their past records of reduction). In addition, this information should be provided for the actual shipments – not just proposals for shipments. This would allow public scrutiny, discourage systemic abuses of the regulations and compel enforcement procedures.

***Recommendation:***

***Environment Canada should post notices of imports and exports on the CEPA Registry that include not only the name and country of the exporter or importer and the type of waste, but also the quantity and frequency of their shipments, the actual destination of proposed shipments and reduction plan information (including their past records of reduction). This information should be provided for the actual shipments – not just proposals for shipments.***

The CEPA Registry on its own does not provide adequate access to information for the public. Most Canadians never search the CEPA Registry. The company applying for a permit to export or import hazardous wastes for disposal or recycling should be required to provide public notice in the community that would receive the wastes. This notice should include the details listed in the previous paragraph. The notice should include contact information for both the applicant and the government jurisdiction that the application has been made to. The notice should also include a timeframe for making public comment.

***Recommendation:***

***The company applying for a permit to export or import hazardous wastes for disposal or recycling should be required to provide public notice in the community that would receive the wastes. This notice should include the details listed in the previous paragraph as well as contact information for both the applicant and the government jurisdiction that the application has been made to, and a timeframe for making public comment.***

In addition, the CEPA Registry should be modified to make it easier for people to gather information on waste imports and exports. Postings should be made at least monthly (preferably weekly) and should be searchable by community, district or county, waste type, hauler, disposal or recycling company, and generator.

***Recommendation:***

***The CEPA Registry should be modified to make it easier for people to gather information on waste imports and exports. Postings should be made at least monthly (preferably weekly) and should be searchable by community, district or county, waste type, hauler, disposal or recycling company, and generator.***

For the amended regulations to be effective there must be adequate resources to ensure accountability and enforcement. Unfortunately, enforcement resources have been cut at both federal and provincial levels and must be restored to allow adequate inspection and surveillance. Some of this may be possible by cost recovery in duties, fees and fines.

To ensure overall accountability of the whole system an Ombudsman for Hazardous Wastes Movements (both domestic and trans-boundary) could be appointed outside and independent of

the Department. The Ombudsman would provide a critical and comprehensive evaluation of the overall regulatory program. S/he would determine how well the regulations were working by vigilant scrutiny of the system, including compliance records, success of reduction plans and changes in waste traffic volumes. S/he could also monitor general progress, the functioning of upstream and downstream linkages and the positive and negative impacts of the regulatory regime.

***Recommendation:***

***To ensure overall accountability of the whole system an Ombudsman for Hazardous Wastes Movements (both domestic and trans-boundary) could be appointed outside and independent of the Department.***

## **14. Conclusion**

The amendment process should make it clear that the “ultimate goal is to eliminate the generation of hazardous waste”(Environment Canada *Green Lane*) not to facilitate traffic in waste. It should be stated as an overarching principle that revisions of EIHWR will incorporate all devices and mechanisms necessary to achieve that goal while ensuring the safe and accountable movement of wastes as an interim strategy towards their reduction and elimination.

According to statistics, our hazardous waste imports are accelerating and now growing by about 20% per year, apparently sustained rather than reduced by the current regulations (EIHWR, 1992). Wastes have been sustained as commodities that are traded on spot markets and moved rapidly across borders to avoid costly storage licensing requirements. If hazardous wastes could not move across either provincial or national boundaries but were dealt with at point of generation, the generators and the local economic community would be compelled to find ways to reduce wastes through closed loop and other re-designs or to substitute better “greener” products.

Trans-boundary movements for recycling and recovery must only be allowed where clear environmental and health benefits can be demonstrated, and then only with a serious reduction plan. There needs to be a directional dynamic built into the regulatory regime with structured leverage towards reduction and elimination of hazardous waste. That the current trend is opposite to this is evident from the statistics.

Finally, Environment Canada and provincial departments must have sufficient resources for enforcement and accountability in order to give the process credibility.