



# WASHINGTON WATCH

## The EPA Proposes Changes to RCRA Hazardous Waste Export and Import Regulations

By Lynn L. Bergeson

Prompted by a 2013 Commission for Environmental Cooperation (CEC) report on hazardous waste exports from the United States (CEC, 2013) and changes to the 2001 Organisation for Economic Cooperation and Development's (OECD) Council Decision for waste exports and imports, the United States Environmental Protection Agency (EPA) announced on October 19, 2015, proposed changes to its regulations under the Resource Conservation and Recovery Act (RCRA) regarding the export and import of hazardous wastes from and into the United States (EPA, 2015). EPA also proposed changes to address and respond to concerns outlined in the EPA's Office of the Inspector General's (OIG) July 6, 2015, report entitled "EPA Does Not Effectively Control or Monitor Imports of Hazardous Waste" (EPA OIG, 2015). This article summarizes key proposed changes.

### Background

EPA's regulations regarding the transboundary shipment of hazardous waste are found at 40 Code of Federal Regulations (CFR) Part 262, Subparts E, F, and H. Part 262, Subpart E applies to exporters of hazardous waste and is designed to ensure that hazardous waste is not exported to a foreign country without that country's prior consent. Part 262, Subpart F contains

the regulations that apply to importers of hazardous waste. Part 262, Subpart H contains the regulations implementing the OECD Decision Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations (OECD, 2001, 2008). The proposal would modify the requirements under Subpart H and expand the jurisdictional scope of the Subpart to include shipments now subject to Subparts E and F.

### **Proposed Rule**

EPA is proposing certain amendments to the current RCRA regulations governing imports and exports of hazardous waste and certain other materials in Part 262 to improve protection of public health and the environment by achieving greater harmonization with regard to procedures and documentation required for such exports. The proposed revisions of the existing regulations will, according to EPA, consolidate and streamline some of the requirements and enhance the documentation of the movement and disposition of hazardous wastes and other materials. The amendments will also enable regulated entities and the government to benefit from the efficiencies afforded by electronic submission of data and will consolidate the notification process with foreign governments under a unified regulation, consistent with the requirements of the OECD controlling transboundary movements of hazardous waste.

The proposed rule is one of the Agency's priority actions under its plan for periodic retrospective reviews of existing regulations, as called for by Executive Order 13563, Improving Regulation and Regulatory Review (White House, 2011). Certain other revisions to the regulations are needed, according to EPA, to fulfill the direction set forth in Executive Order 13659, Streamlining the Export/Import Process for America's Businesses (White

House, 2014), concerning the electronic management of international trade data by the US Government as part of the International Trade Data System (ITDS).

As noted above, EPA's determination that some revisions to the import and export regulations are needed is bolstered by the 2013 CEC report and its recommendations. The CEC report found that the United States net exports of spent lead acid batteries (SLAB) to Mexico for recycling had increased by an a whopping 449 to 525%, and that there were significant discrepancies between summary data on export shipments reported to the EPA annually and individual export shipment data collected under US Census Bureau (Census) authority. Based on its findings, the CEC report recommended that the United States:

- Require the use of manifests for each international shipment of SLABs,
- Require exporters to obtain a certificate of recovery from foreign recycling facilities,
- Explore establishing an electronic export annual report, and
- Better share import and export data between environmental and border agencies (CEC, 2013).

EPA's proposed rule discusses at length the CEC report and the EPA's related analysis of its findings. EPA has expressed particular interest in comments from those persons importing or exporting hazardous wastes managed under the special management standards in 40 CFR Part 266 (*e.g.*, spent lead acid batteries) and 40 CFR Part 273 (*e.g.*, universal waste batteries, universal waste mercury lamps).

## Key Proposed Changes

A key change under the proposal is the reorganization of Subpart H requirements, the requirements that apply to the transboundary shipment of wastes destined for recovery between the United States and OECD member countries, excluding Canada and Mexico. The rule would consolidate the hazardous waste import and export standards into one set of requirements under 40 CFR Part 262, Subpart H. The rule proposes mandatory electronic reporting to the EPA. Among the changes to be aware of include the proposed requirement to submit electronically to the EPA certain documents relating to the export of hazardous waste or cathode ray tubes (CRT) exported for recycling, annual reports for hazardous waste shipments or CRTs destined for recycling, and exception reports for exports of hazardous waste, among related documents set forth in the proposal.

The rule would link the consent to export with the exporter declaration submitted to US Customs and Border Protection (CBP), which should provide for more efficient compliance monitoring. In addition, EPA seeks to ensure clearer matching of waste stream level consent numbers with waste streams listed on RCRA hazardous waste manifests for import and export shipments. EPA is also proposing to require the filing of export consent information as part of the exporter's electronic declaration to CBP. The proposal also would require traders who arrange for the export of hazardous waste but do not themselves generate, transport, treat, store, or dispose of such waste to obtain an EPA ID number from the EPA Region or authorized state agency where the entity is located.

One of the more significant changes is EPA's proposal that shipments of SLAB exported for reclamation be accompanied by international shipping

documents, akin to hazardous wastes manifests. Currently, there is no requirement that SLAB exports be covered by such documents. The EPA's determination that some revisions to the SLAB import/export regulations are needed is featured in the 2013 CEC report and its recommendations (CEC, 2013). Based on its findings, the CEC report recommended that the United States require the use of manifests for each international shipment of SLABs, require exporters to obtain a certificate of recovery from foreign recycling facilities, explore establishing an electronic export annual report, and better share import and export data between environmental and border agencies. EPA proposes to incorporate most of these recommendations into the revised regulations.

## **Discussion**

The changes contemplated under the proposal are important. In effect, the requirements under Subparts E and F would be swept into Subpart H, and shipments subject to Subparts E and F would be regulated under Subpart H, including the proposed regulations in the proposal and existing Subpart H regulations not subject to any proposed change. Perhaps the most significant proposal relates to SLABs destined for offshore recovery. If implemented, the proposed SLAB notification requirements would address the concerns noted in the CEC report referenced above and provide for more robust tracking of SLAB reclamation operations, particularly those in Mexico. On the whole, the proposal is significant and likely to be implemented, and thus worthy of careful consideration now. Comments were due by December 18, 2015.

## References

Commission for Environmental Cooperation (CEC). (2013). Hazardous Trade? An examination of the US-generated Spent Lead-acid battery exports and secondary lead recycling in Canada, Mexico, and the United States. Independent Secretariat Report, Commission for Environmental Cooperation. Available at: <http://www3.cec.org/islandora/en/item/11220-hazardous-trade-examination-us-generated-spent-lead-acid-battery-exports-and-en.pdf>

Organisation for Economic Co-Operation and Development (OECD). (2001, 2008). Decision of the Council concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations. Last Amended November 18, 2008 (C [2008]156). Available at: <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=221&InstrumentPID=217&Lang=en&Book=False>

US Environmental Protection Agency (EPA) (2015). Hazardous Waste Export-Import Revisions. 80 Federal Register (FR) 201 pgs. 63284-63320. October 19, 2015. Available at: <http://www.federalregister.com/Browse/Document/usa/na/fr/2015/10/19/2015-25348>

US Environmental Protection Agency, Office of Inspector General (EPA OIG). (2015). EPA Does not effectively control or monitor imports of hazardous waste. Report No. 15-P-0172. July 6, 2015. Available at: <http://www.epa.gov/sites/production/files/2015-09/documents/20150706-15-P-0172.pdf>

White House. (2011). Improving Regulation and Regulatory Review. Executive Order 13563. Federal Register Vol. 76, No. 14. Friday, January 21, 2011, pp 3821-3823. Available at: [https://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563\\_01182011.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563_01182011.pdf)

White House. (2014). Streamlining the Export/Import Process for America's Businesses. Federal Register Vol. 79, 10657, February 25, 2014, pp. 10657-10660. Available at: <https://www.gpo.gov/fdsys/pkg/FR-2014-02-25/pdf/2014-04254.pdf>

---

**Lynn L. Bergeson** is Managing Partner of Bergeson & Campbell, P.C. (B&C<sup>®</sup>), a Washington, D.C. law firm focusing on conventional, nanoscale, and biobased industrial, agricultural, and specialty chemical product regulation and approval matters, environmental health and safety law, chemical product litigation, and associated business counseling and litigation issues. Lynn is President of The Acta Group, with offices in Washington, D.C., Manchester, UK, and Beijing, China, and President of B&C<sup>®</sup> Consortia Management, L.L.C. (BCCM) with offices in Washington, D.C.