

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C 20460

MAR 22 1994

Mr. Jean Ouellette
Canadian National Railways
Safety and Regulatory Affairs
Montreal, Quebec, Canada

Dear Mr. Ouellette:

Thank you for your letter of October 18, 1993, requesting clarification of requirements for preparing the Uniform Hazardous Waste Manifest in the case of shipments of hazardous waste that are transported by rail from Canada to the United States. You specifically asked who is responsible for generator requirements and how the manifest is handled for imports of hazardous waste via rail.

Who is the generator of waste originating in Canada and who prepare the manifest?

Although the actual generator of the waste is the Canadian party who produces the hazardous waste, RCRA regulations can only apply to U.S. parties. When hazardous waste is imported from, Canada, the U.S. importer would be responsible for carrying out the generator requirements under RCRA. Special requirements for importers of hazardous waste can be found at 40 CFR 262.60. These regulations clarify how the manifest should be prepared when hazardous waste is imported. According to 40 CFR 262.60 (b)(1) and (2), "In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used." The foreign generator's name and address can be placed in Box 15, "Special Handling and Additional Information" on the Uniform Hazardous Waste Manifest.

It may be that more than one party is the importer in the situations you describe. A U.S. importer or his agent as well as the transporter may be responsible for imports of hazardous wastes¹. The requirements at 40 CFR 263.10(c) state that "A transporter of hazardous waste must also comply with 40 CFR Part 262, "Standards Applicable to Generators of Hazardous Waste," if he...Transports hazardous waste into the United States from abroad..." When more than one person is the importer, all of the parties, as contributors to the importation of hazardous waste, would be held jointly and severally liable for compliance with the generator requirements of 40 CFR Part 262.

¹ For the purposes of the U.S. hazardous waste regulations under RCRA, "consignee" is defined in 40 CFR 262.51 as "the ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent." EPA soon will be promulgating a rule which will change the definition of consignee in certain circumstances.

Through mutual agreement, however, one of the parties may assume and perform the generator duties on behalf of all the parties. The party in the best position to assume the generator responsibilities should normally take on these responsibilities on behalf of others.

It appears that the United States agent arranging for the importation of hazardous waste may be in the best position to assume the generator responsibilities. For a discussion of some relevant factors to consider in determining which party is in the best position to assume the generator responsibilities, see attached, 45 F.R. 72024,72025 (October 30, 1980) where an analogous situation is addressed.

Who is responsible for sending forward copies of the manifest for waste originating in Canada?

The existing domestic regulations for shipments by rail do not require that the manifest travel with the waste shipment, nor do they require that intermediate rail transporters sign the manifest. For shipments via rail, carriers must have a shipping paper "containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures)..." as per 40 CFR 263.20(f)(2). [See 51 Federal Register 28677 (August 8, 1986) and 45 FR 86970, and 96971 (December 31, 1980), for further discussion of special requirements for rail transporters.]

The generator (or person assuming generator responsibilities) must forward copies of the manifest in compliance with the requirements at 40 CFR part 262.23(d), which state that:

For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to: (1) The next non-rail transporter, if any; or, (2) **The designated facility if transported solely by rail** (emphasis added); or, (3) The last rail transporter to handle the waste in the United States by rail.

Thus, if the waste is transported solely by rail the person assuming generator responsibilities should send the appropriate copies of the manifest to the designated facility. The generator may write the name of rail carrier in the transporter box, and send the manifest without the signature of the transporter to the TSD.

If you have questions regarding this letter, please contact Ann Codrington of my staff at (202) 260-4777. Thank you for your interest in the safe transportation of hazardous waste.

Sincerely,

Michael Shapiro
Director, Office of Solid Waste

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