US EPA ARCHIVE DOCUMENT

ANNEX III TO THE AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND THE UNITED MEXICAN STATES
ON COOPERATION FOR THE PROTECTION AND IMPROVEMENT
OF THE ENVIRONMENT IN THE BORDER AREA
(aka the "La Paz" agreement)

AGREEMENT OF COOPERATION BETWEEN
THE UNITED STATES OF AMERICA
AND THE UNITED MEXICAN STATES
REGARDING THE TRANSBOUNDARY SHIPMENTS OF
HAZARDOUS WASTES AND HAZARDOUS SUBSTANCES

PREAMBLE

The Government of the United States of America ("the United States"), and the Government of the United Mexican States ("Mexico"), ("the Parties"),

Recognizing that health and environmental damage may result from improper activities associated with hazardous waste;

Realizing the potential risks to public health, property and the environment associated with hazardous substances;

Seeking to ensure that activities associated with the transboundary shipment of hazardous waste are conducted so as to reduce or prevent the risks to public health, property and environmental quality, by effectively cooperating in regard to their export and import;

Seeking also to safeguard the quality of public health, property and environment from unreasonable risks by effectively regulating the export and import of hazardous substances;

Considering that transboundary shipments of hazardous waste and hazardous substances between the Parties, if carried

out illegally and thus without the supervision and control of the competent authorities, or if improperly managed could endanger the public health, property and environment, particularly in the United States/Mexico border area;

Recognizing that the close trading relationship and the long common border between the Parties make it necessary to cooperate regarding transboundary shipments of hazardous waste and hazardous substances without unreasonably affecting the trade of goods and services;

Reaffirming Principle 21 of the 1972 Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm, which provides that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

Recognizing that Article 3 of the Agreement between the Parties on Cooperation for the Protection and Improvement of the Environment in the Border Area of 1983 provides that the Parties may conclude specific arrangements for the solution of common problems in the border area as annexes to that Agreement;

Have agreed as follows:

ARTICLE I

Definitions

1. "Designated Authority" means, in the case of the United States, the Environmental Protection Agency and, in the case of Mexico, the Secretariat of Urban Development and Ecology through the Subsecretariat of Ecology.

2. "Hazardous waste" means any waste, as designated or defined by the applicable designated authority pursuant to national policies, laws or regulations, which if improperly dealt with in activities associated with them, may result in health or environmental damage.

3. "Hazardous substance" means any substance, as designated or defined by the applicable national policies, laws or regulations, including pesticides or chemicals, which when improperly dealt with in activities associated with them, may produce harmful effects to public health, property or the environment, and is banned or severely restricted by the applicable designated authority.

4. "Activities" associated with hazardous waste or hazardous substances means, as applicable, their handling, transportation, treatment, recycling, storage, application, distribution, reuse or other utilization.

5. "Country of export" means the Party from which the transboundary movement of hazardous waste or hazardous substances is to be initiated.

6. "Country of import" means the Party to which the hazardous waste or hazardous substances are to be sent. This does not include "transit", as meaning transport of hazardous waste or hazardous substances through the territory of a Party without being imported through its Customs under applicable laws and regulations.

7. "Consignee" means the facility in the country of import which will ultimately receive the hazardous waste or hazardous substances.

8. "Exporter" means the physical or juridical person, whether public or private, acting on his behalf or as a contractor or subcontractor expressly or implicitly defined as exporter under the national laws and regulations of the country of export which specifically govern hazardous waste or hazardous substances.

9. "Banned or severely restricted" means final regulatory action, as designated or defined by the applicable designated authority, pursuant to national policies, laws or regulations:

a) Prohibiting, cancelling or suspending all or virtually all registered uses of a pesticide for human health or environmental reasons.

b) Prohibiting or severely limiting the manufacture, processing, distribution or use of a chemical for human health or environmental reasons.

ARTICLE II

General Obligations

1. Transboundary shipments of hazardous waste and hazardous substances across the common border of the Parties shall be governed by the terms of this Annex and their domestic laws and regulations.

2. Each Party shall ensure, to the extent practicable, that its domestic laws and regulations are enforced with respect to transboundary shipments of hazardous waste and hazardous substances, and other substances as the Parties may mutually agree through appendices to this Annex, that pose dangers to public health, property and the environment.

3. Each Party shall cooperate in monitoring and spot-checking transboundary shipments across the common border of hazardous waste and hazardous substances to ensure, to the extent practicable, that such shipments conform to the requirements of this Annex and its national laws and regulations. To this effect, a program of cooperation in this area should be concluded through an Appendix to this Annex, including the exchange of information resulting from the monitoring and spot-checking of transboundary shipments which may be useful to the other Party.

HAZARDOUS WASTE

ARTICLE III

Notification to the Importing Country

1. The designated authority of the country of export shall notify the designated authority of the country of import of transboundary shipments of hazardous waste for which the consent of the country of import is required under the laws or regulations of the country of export, with a copy of the notification simultaneously sent through diplomatic channels.

2. The notification referred to in paragraph 1 of this Article shall be given at least 45 days in advance of the planned date of export and may cover an individual shipment or a series of shipments extending over a twelve-month or lesser period and shall contain the following information for each shipment:

a) The exporter's name, address, telephone number, identification number and other relevant data required in the country of export.

b) By consignee, for each hazardous waste type:

i) A description of the hazardous waste to be exported, as identified by the waste identification number(s) and the shipping description(s) required in the country of export.

ii) The estimated frequency or rate at which such waste is to be exported and the period time over which such waste is to be exported.

iii) The estimated total quantity of the hazardous waste in units as specified by the manifest or documents required in the country of export.

iv) The point of entry into the country of import.

v) The means of transportation, including the mode of transportation and the type of container involved.

vi) A description of the treatment or storage to which the waste will be subjected in the country of import.

vii) The name and site address of the consignee.

3. In order to facilitate compliance with the requirements of the importing country for the exporter to provide information and documents additional to those described in paragraph 2 of this Article, the designated authority of the exporting country will cooperate by making such requirements for information and documents known to the exporter. To that end, the country of import may list such additional required information and documents in appendices to this Annex.

4. The designated authority of the country of import shall have 45 days from the date of acknowledgement of receipt of the notification provided in paragraph 1 of this Article within which to respond to such notification, indicating its consent, with or without conditions, or its objection to the export.

5. The country of import shall have the right to amend the terms of the proposed shipment contained in the notification in order to give its consent.

6. The consent of the country of import provided pursuant to paragraphs 4 and 5 of this Article, may be withdrawn or modified at any time, pursuant to the national policies, laws or regulations of the country of import.

7. Whenever the designated authority of a country of export requires notification of or is otherwise aware of a transboundary shipment that will be transported through the territory of the other Party, it shall, in accordance with its national laws and regulations, notify that Party.

ARTICLE IV

Readmission of Exports

The country of export shall readmit any shipment of hazardous waste that may be returned for any reason by the country of import.

HAZARDOUS SUBSTANCES

ARTICLE V

Notification of Regulatory Actions

1. When a Party has banned or severely restricted a pesticide or chemical, its designated authority shall notify the designated authority of the other Party that such action has been taken either directly or through an appropriate intergovernmental organization.

2. The notice referred to in paragraph 1 of this Article shall contain the following information, if available:

(a) the name of the pesticide or chemical that is the object of the regulatory action;

(b) a concise summary of the regulatory action taken, including the timetable for any further actions that are planned. If the regulatory action bans or restricts certain uses but allows other uses, such information should be included;

(c) a concise summary of the reason for the regulatory action, including an indication of the potential risks to human health or the environment that are the grounds for the action;

(d) information concerning registered pesticides or substitute chemicals that could be used in lieu of the banned or severely restricted pesticide or chemical;

(e) the name and address of the contact point to which a request for further information should be addressed.

ARTICLE VI

Notification of Exports

1. If the country of export becomes aware that an export of a hazardous substance to the country of import is occurring, the designated authority of the country of export shall notify the designated authority of the country of import.

2. The purpose of such notice shall be to remind the country of import of the notification regarding regulatory action provided pursuant to Article 5 and to alert it to the fact that the export is occurring.

3. The notice referred to in paragraph 1 of this Article shall contain the following information, if available:

(a) the name of the exported hazardous substance;

(b) for banned or severely restricted chemicals, approximate date(s) of the export;

(c) a copy of, or reference to, the information provided at the time of the notification of the regulatory action:

(d) name and address of the contact point for further information.

ARTICLE VII

Timing of the Notifications

1. Notification of regulatory actions, required pursuant to Article 5, shall be transmitted as soon as practicable after the regulatory action has been taken, and in any event not later than 90 days following the taking of such action.

2. When a Party has banned or severely restricted chemicals or pesticides prior to the entry into force of this Annex, its designated authority shall provide an inventory of such prior regulatory actions to the designated authority of the other Party.

3. Notification of exports required pursuant to Article 6, shall be provided at the time the first export of a hazardous substance is occurring to the Country of import following the regulatory action and should recur at the time of the first export of the hazardous substance each subsequent year to that country.

4. When the hazardous substance being exported has been banned or severely restricted prior to the entry into force of this Annex, the first export following the regulatory action shall be considered to be the first export following the provision of the inventory referred to in paragraph 2 of this Article.

ARTICLE VIII

Compliance with Requirements in the Importing Country

In order to facilitate compliance with the requirements in the importing country for the import of hazardous substances, the designated authority of the country of export will cooperate by making such requirements, including expected information and documents, known to the exporter. To that end, the country of import may list such requirements, information and documents in appendices to this Annex.

ARTICLE IX

Readmission of Exports

The country of export shall readmit any shipment of hazardous substances that was not lawfully imported into the country of import.

GENERAL PROVISIONS

ARTICLE X

Additional Arrangements

1. The Parties shall consider and, as appropriate, establish additional arrangements to mitigate or avoid adverse effects on health, property and the environment from improper activities associated with hazardous waste and hazardous substances. Such arrangements may include the sharing of research data as well as the definition of criteria regarding imminent and substantial endangerment and emergency responses, and may be included in appendices to this Annex.

2. The Parties shall consult regarding experience with transboundary shipments of hazardous wastes and hazardous substances and, as problems are identified in the special circumstances of the United States-Mexico border relationship may include through appendices to this Annex, additional cooperation and mutual obligations aimed at achieving when necessary a more stringent control of transboundary shipments, such as provisions to bring uniformity in those relating to both hazardous wastes and hazardous substances regarding compulsory notification to and consent by the importing country for each transboundary shipment, as may become permitted by new national laws and regulations adopted by the Parties.

ARTICLE XI

Hazardous Waste Generated From Raw Materials Admitted In-Bond

Hazardous waste generated in the processes of economic production, manufacturing, processing or repair, for which raw materials were utilized and temporarily admitted, shall continue to be readmitted by the country of origin of the raw materials in accordance with applicable national policies, laws and regulations.

ARTICLE XII

Information Exchange and Assistance

1. The Parties shall, to the extent practicable, provide to each other mutual assistance designed to increase the capability of each Party to enforce its laws applicable to transboundary shipments of hazardous waste or hazardous substances and to take appropriate action with respect to violations of its laws.

(a) Such assistance may generally include:

(i) the exchange of information;

(ii) the provision of documents, records and reports;

(iii) the facilitating of on-site visits to treatment, storage, or disposal facilities;

(iv) assistance provided or required pursuant to any international agreements or treaties in force with respect to the Parties, or pursuant to any arrangement or practice that might otherwise be applicable;

(v) emergency notification of hazardous situations; and

(vi) other forms of assistance mutually agreed upon by the Parties.

(b) Save in exceptional circumstances, requests for assistance made pursuant to this Article shall be submitted in writing and translated into the language of the requested State.

(c) The requested State shall provide the requesting State with copies of publicly available records of government departments and agencies in the requested State.

(d) The requested State may provide any record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own administrative, law enforcement, or judicial authorities.

2. The Parties may establish in an appendix to this Annex a cooperative program relating to the exchange of scientific, technical, and other information for purposes of the development of their own respective regulatory mechanisms controlling hazardous waste and hazardous substances.

ARTICLE XIII

Protection of Confidential Information

The Parties shall adopt procedures to protect the confidentiality of proprietary or sensitive information conveyed pursuant to this Annex, when such procedures do not already exist.

ARTICLE XIV

Damages

1. The country of import may require, as a condition of entry, that any transboundary shipment of hazardous waste or hazardous substances be covered by insurance, bond or other appropriate and effective guarantee.

2. Whenever a transboundary shipment of hazardous waste or hazardous substances is carried out in violation of this Annex, of the national laws and regulations of the Parties, or of the conditions to which the authorization for import was subject, or whenever the hazardous waste or hazardous substances produce damages to public health, property or the environment in the country of import, the competent authorities of the country of export shall take all practicable measures and initiate and carry out all pertinent legal actions that they are legally competent to undertake, so that when applicable in accordance with its national laws and regulations the physical or juridical persons involved:

a) return the hazardous waste or hazardous substances to the country of export:

b) return in as much as practicable the status quo ante of the affected ecosystem;

c) repair, through compensation, the damages caused to persons, property or the environment.

The country of import shall also take, for the same purposes, all practicable measures and initiate and carry out all pertinent legal actions that its authorities are legally competent to undertake.

The country of export shall report to the country of import all measures and legal actions undertaken in the framework of this paragraph, and shall cooperate with the country of import, on the basis of this Annex or of other bilateral treaties and agreements in force between the Parties, and to the extent permitted by its national laws and regulations, to seek in its courts the satisfaction of those matters covered in subparagraphs a) to c) of this paragraph.

3. The provisions of this Annex shall not be deemed to abridge or prejudice the Parties' national laws concerning transboundary shipments, or liability or compensation for damages resulting from activities associated with hazardous waste and hazardous substances.

ARTICLE XV

Effect On Other Instruments

1. Nothing in this Annex shall be construed to prejudice other existing or future agreements concluded between the Parties, or affect the rights or obligations of the Parties under international agreements to which they are Party.

2. The provisions of this Annex shall, in particular, not be deemed to prejudice or otherwise affect the functions entrusted to the International Boundary and Water Commission, in accordance with the 1944 Treaty on the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande.

ARTICLE XVI

Appendices

Any appendices to this Annex may be added through an exchange of diplomatic notes and shall form an integral part of this Annex.

ARTICLE XVII

Amendment

This Annex, and any appendices added hereto, may be amended by mutual agreement of the Parties through an exchange of diplomatic notes.

ARTICLE XVIII

Review

The Parties shall meet at least every two years from the date of entry into force of this Annex, at a time and place to be mutually agreed upon, in order to review the effectiveness of its implementation and to agree on whatever individual and joint measures are necessary to improve such effectiveness.

ARTICLE XIX

Entry into Force

This Annex shall enter into force upon an exchange of diplomatic notes between the Parties stating that each Party has completed its necessary internal procedures.

Article XX

Termination

This Annex shall remain in force indefinitely, unless one of the Parties notifies the other in writing through diplomatic channels of its desire to terminate it, in which case the Annex shall terminate six months after the date of such written notification. Unless otherwise agreed, such termination shall not affect the validity of any agreements made under this Annex.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Annex.

DONE at Washington, in duplicate, this twelfth day of November, 1986 in the English and Spanish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES: