

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515-6115

Dear Congressman Dingell:

Thank you for your letter of June 9, 2004, concerning Canadian waste and the status of implementing the "*Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste*" for municipal solid waste shipments. I am pleased to provide an update on EPA's progress in addressing this issue.

As you know, EPA does not have the necessary authority to provide notice and consent for transboundary movements of municipal solid waste under the bilateral agreement. The Resource Conservation and Recovery Act (RCRA) sets up a cradle to grave system in Subtitle C for managing hazardous waste; however, Congress did not provide similar authority for municipal solid waste. Amendments to RCRA would be needed to implement notice and consent for municipal solid waste imports and exports. In addition, specific statutory requirements and prohibitions are needed for importers and exporters to ensure that the bilateral agreement provisions are met before municipal solid waste can be shipped. Absent these statutory authorities, EPA cannot require a notice and consent process for all municipal solid waste shipments. Once the Administration's legislative package is submitted to Congress, we will be pleased to provide additional details to you.

After both the U.S. and Canada obtain the necessary authority, we expect the notice and consent process for municipal solid waste to be similar to the current hazardous waste notice and consent process. The process works as follows: prior to exporting a hazardous waste to the U.S., the Canadian exporter is required to notify Environment Canada of its intent to export. When it receives this notice, Environment Canada forwards the notice to EPA. After receiving the notice, EPA either consults directly with the appropriate State agency or reviews previously-submitted State information to confirm that the receiving facility is permitted to manage all of the

specific wastes identified in the notice, and that the State believes that the wastes will be handled consistent with Federal and State requirements. If environmental problems are found, EPA does not consent to the receipt of the waste. Otherwise, EPA transmits consent to Environment Canada. Once the U.S. consents to the shipment, Environment Canada issues an approval to the Canadian exporter. The Canadian exporter is prohibited from shipping the hazardous waste to the U.S. until consent is obtained.

You raise concerns regarding the voluntary nature of the pilot project EPA is exploring with Environment Canada to test the notification process for municipal solid waste imports. Given the lack of authority for EPA and Environment Canada to require notification from exporters, any activity to seek such notification must rely on voluntary participation.

Please find enclosed specific responses to your questions. EPA is committed to addressing the important waste management issues that you and other congressional members have raised and to ensure that municipal solid waste is managed in an environmentally sound manner. We continue to discuss these matters with Environment Canada, the provincial and local Canadian governments, the Michigan Department of Environmental Quality, the U.S. State Department and the Department of Homeland Security.

Thank you for your interest in the progress being made regarding the notice and consent provisions of the bilateral agreement with Canada. Please contact me if I can be of further assistance, or your staff may contact Holly Smithson in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1609.

Sincerely,

Michael O. Leavitt

Enclosure

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Enclosure

Responses to Questions Contained in June 9, 2004 letter from Rep. Dingell and Sen. Levin

- 1. Why has Canada not notified the United States, under the treaty, of the waste shipments coming from Toronto? Do you agree that this information is readily available to Canadian officials, and such notification would be in accordance with the "best efforts" provision of the treaty?**

EPA is aware that Canada, like the U.S., does not yet have the domestic regulatory authority to implement the bilateral agreement for municipal solid waste. Further, Canada has not received any notifications of proposed municipal solid waste shipments from exporters that would allow a notification under the "best efforts" provision of the bilateral agreement. Although Canadian officials are aware that municipal solid waste is currently exported to the U.S. and have had numerous discussions with EPA officials about these shipments, they have indicated that they do not possess the detailed information that is to be provided in the country-to-country notification, as specified in the bilateral agreement. The U.S. is in a similar situation of not being notified by exporters regarding municipal solid waste shipments to Canada.

- 2. Additionally, has the United States requested that Canada exercise "best efforts" to comply with the terms of the Bilateral Agreement?**
- 3. If the United States has requested that Canada exercise "best efforts," please provide us with the documentation associated with the request.**

As stated in our April 19, 2004, response to you concerning these questions, the U.S. has established strong working relations with Canada to ensure governmental coordination and progress on the bilateral agreement. EPA met with Canadian officials in September 2001 and March 2003 to discuss the development of statutory and regulatory authority, as well as implementation issues we anticipate will arise once we can fulfill the bilateral agreement with respect to municipal solid waste. In December 2003, we met with officials from the Ontario Ministry of the Environment, the City of Toronto, and the Regions of Peel, Durham and York to learn more about the strategies, goals, milestones and techniques that are in place or planned for future waste management. We briefed Congressional staff about this meeting on December 18. We also are working on a trilateral basis with Canada and Mexico under the auspices of the Commission for Environmental Cooperation (CEC), established under the North American Agreement on Environmental Cooperation, to address transboundary waste

movements of both hazardous waste and municipal solid waste. Additionally, on June 4, 2004, during our regularly scheduled bilateral meeting with Canada, we held preliminary, staff-level discussions with Environment Canada to explore a possible pilot project to test implementation of the bilateral agreement process for providing advance notice of municipal solid waste shipments from Canada to the U.S. We discussed the pilot project conceptually, without addressing operational details. Although Environment Canada was willing to consider such a project, they raised a number of questions and made no formal commitment. Additional governmental consultations are needed before a pilot program can be pursued. EPA will be happy to share additional information regarding the pilot project as the pilot project develops. We are still in the process of considering Environment Canada's views on a pilot program.