



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 15 2005

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

Mr. Alberto Montero  
Pacific Trans Environmental Services, Inc.  
1452 North Johnson Avenue  
El Cajon, CA 92020

Dear Mr. Montero:

Thank you for your letters of April 1, 2005 and April 7, 2004, in which you request clarification of Federal policy on several issues related to the use of the hazardous waste manifest for import shipments of maquiladora hazardous wastes into the United States. Specifically, you ask if Federal regulations allow hazardous waste importers to consolidate individual hazardous waste shipments and, if so, how one should document consolidated shipments on manifest forms. The answers to your questions are detailed below.

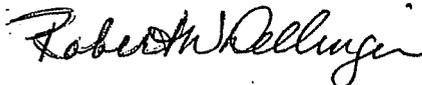
Federal regulations under the Resource Conservation and Recovery Act (RCRA) allow importers to physically consolidate hazardous waste shipments before they enter the United States as long as the consolidated shipment is reflected accurately on the manifest. The manifest must describe the proper shipping names, hazardous waste types, quantities, and containers, etc., for materials that are being transported into the U.S. In addition, the manifest must identify the individual foreign sources (*i.e.*, the generators) that contributed hazardous wastes to the consolidated shipment, and the hazardous waste types and quantities that each source contributed to the consolidated load.

The regulatory basis for these manifest requirements stems from 40 CFR 262.60(b), which specifies that the import manifest must contain "the name and address of the foreign generator and the importer's name, address and EPA identification number." According to 40 CFR 260.10, a "generator" is defined as "any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation." Therefore, service companies or treatment, storage, and disposal facilities (TSDFs) importing maquiladora hazardous wastes into the United States from Mexico are not themselves "generators" as defined in RCRA; instead, it is the individual maquiladora plants that are the generators and, therefore, must be shown on the manifest.

It is possible to consolidate hazardous waste shipments for import and to supply the information required by our import regulations without having to complete separate manifests for each foreign hazardous waste source. For example, you could choose to document the individual hazardous waste sources on one consolidated manifest, in which case you must identify by name and address each foreign generator of the maquiladora hazardous waste on the manifest and indicate the hazardous waste quantities and types associated with that foreign generator. This detailed information could be shown in the waste description block of the manifest, or by using a continuation sheet or other attachment. In addition, you must identify the importer's name, address, and EPA identification number on the manifest. Another method would be to prepare a "cover" manifest that describes the contents of the entire shipment, and attach the supporting manifests or shipping documents that indicate the contributions from each generator. These methods are examples of how one could satisfy Federal regulations for manifest completion for consolidated shipments, but they are not necessarily the only acceptable approaches. Also, it is important to check with appropriate state programs to make sure that your manifest arrangement is acceptable to them.

Thank you for your interest in the RCRA hazardous waste program. Should you need more information, please contact Bryan Groce on (703) 308-8750.

Sincerely yours,

  
*for* Matt Hale, Director  
Office of Solid Waste

cc: David B. Jones, EPA Region 9  
Tomas Torres, EPA Region 9  
Emily Pimentel, EPA Region 9  
Willie Kelley, EPA Region 6  
Robert Snowbarger, EPA Region 6  
Kim Wilhelm, California Hazardous Waste Management Program



**Pacific Trans Environmental Services, Inc.**

1452 North Johnson Avenue, El Cajon, CA 92020 (619) 441-1818 Fax (619) 441-2535

-Control to HWID  
Give til next Friday  
Notify sender of status.

OSW-0507

April 1, 2005

Matt Hale  
Deputy Director  
US EPA, Office of Solid Waste  
Mail Code 5301W  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Via Federal Express Air Bill No.: 8463 7056 4816**

Ref: Request for a response to our letter dated April 4, 2004 to the EPA regarding Imports of Hazardous Waste from Foreign Countries

Dear Mr. Hale,

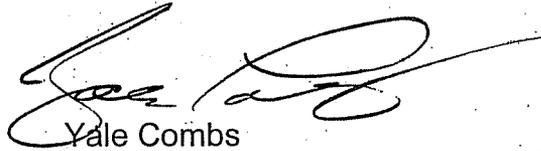
Nearly one year ago, on April 7<sup>th</sup> 2004, we sent a letter to your office requesting clarification of the accepted practices of documentation of imports of *maquiladora* hazardous wastes from Mexico. EPA still has not issued an opinion in regards to this matter and these importations continue to occur without any information given to EPA about the original Mexican sources of these wastes. There are economic benefits that the *maquiladora* sector can derive from regulatory correct waste consolidations, but we feel that it is important that EPA clarify the documentation requirements in order to assure the continued regulatory compliance by these U.S. owned plants, that are returning their hazardous wastes to the United States.

We are attaching copies of repeated e-mail inquiries, along with EPA responses to those inquiries that we have made in the last 12 months in seeking a response from EPA. In the last communication we had from EPA, Mr. Bryan Groce of your office indicated that the response to our letter was in the final stages of review. This was over six months ago and we feel that, given this issue's importance, a position from EPA is long overdue. We sincerely hope that your office can clarify this issue by responding to this letter in a timely manner. If you have any question at all regarding this matter please contact Al Montero at 619-401-1900, ext. 102 or via e-mail at [almontero@ptesinc.com](mailto:almontero@ptesinc.com).

Respectfully yours,



Al Montero  
General Manager



Yale Combs  
President

Enclosures (4)

cc: Rick Piccardi  
US EPA, Office of Solid Waste  
Mail Code 5301W  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

Bryan Groce  
US EPA, Office of Solid Waste  
Mail Code 5304W  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Tomas Torres  
US EPA Region 9  
US-Mexico Border Program Coordinator  
610 West Ash St. (905)  
San Diego, CA 92101

David B. Jones  
Associate Director  
Waste Management Division  
EPA Region 9 (WST-1)  
75 Hawthorne Street  
San Francisco, CA 94105

Emily Pimentel  
Border Coordinator  
Waste Management Program  
75 Hawthorne Street  
San Francisco, CA 94105



OSW 0507



**Pacific Trans Environmental Services, Inc.**

1452 North Johnson Avenue, El Cajon, CA 92020 (619) 441-1818 Fax (619) 441-2535

April 7, 2004

**Request for Clarification of Accepted Practices of Documentation of Imports of Maquiladora Hazardous Wastes from Mexico**

Via Certified Mail Receipt No.:

Matt Hale  
Deputy Director  
US EPA, Office of Solid Waste  
Mail Code 5301W  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Mr. Hale,

We bring to your attention a situation that is occurring with the documentation of *consolidated* return shipments of hazardous wastes to the United States from *maquiladora* operations based in Mexico.

The situation of concern stems from the practice of some service companies or TSD's along the Mexican side of the US-Mexico border that are commingling various generators' wastes prior to their importation into the United States. These companies are shipping the consolidated wastes under one document or Uniform Hazardous Waste Manifest per shipment. In some cases said wastes are not physically commingled but the various generators' wastes are consolidated to one shipping document or hazardous waste manifest per designated disposal facility in the US. In all cases these companies are declaring themselves as the Mexican source of the waste in section 3 of the Uniform Hazardous Waste Manifest. Generally, a US affiliate of the company acts as the importer of these shipments to the US and is also declared on the generator section of the manifest.

As my company is one of the more active importers of *maquiladora* waste through our region, we hope that you can provide guidance on whether this type of shipment is permissible, and, if so, what should be the acceptable standards to properly document the same.

By contrast our company, along with a few others in our region, is not commingling different generators' wastes but rather is pre-notifying and importing wastes from individual *maquiladoras* separately. In other words, we prepare and utilize one Uniform

Hazardous Waste Manifest per *maquiladora* plant, per designated disposal facility, per shipment. In section 3 of each such document we are identifying the US Importer and the *maquiladora* plant which generated the waste and the date in which the pre-notification to EPA and/or state authorities took place.

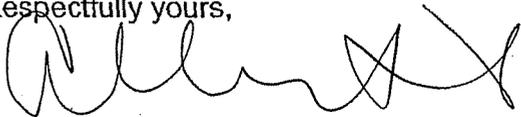
Our company believes that the method we utilize as described above is the correct one given current regulations governing trans-boundary shipments of hazardous wastes between Mexico and the United States.<sup>1</sup> As you can appreciate, however, this method requires more extensive, and therefore more costly, documentation and tracking systems. The result for our company is that we are finding it increasingly difficult to compete commercially with those importers that are employing the *consolidated waste* methods. Our company recognizes the economic advantages provided by the consolidation of compatible hazardous wastes prior to their delivery to end disposal sites. We, like our competitors, would very much like to take advantage of such a process and offer the costs savings that can be derived from it to our customers, the *maquiladora* plants. We would only do so, however, in a lawful fashion.

Accordingly, we request that the EPA undertake the following so as to allow lawful compliance on an even playing field:

1. Advise whether waste consolidations, either physical or in documentation, of hazardous wastes for import are permitted and can be legally documented in an officially recognized manner. If so, please advise of the proper way to perform the consolidation either physically, via documentation, or both.
2. We further request that if we are interpreting the regulations correctly, and there is not yet an officially recognized instrument or mechanism through which importers can legally document shipments of consolidated *maquiladora* wastes, that non-complying importers be ordered to cease and desist from employing consolidated waste management documentation methods.

We are grateful for your attention to this matter. If you have any questions at all regarding this letter, please do not hesitate to call me at 619-401-1900, ext. 102 or I can be contacted via e-mail at [almontero@ptesinc.com](mailto:almontero@ptesinc.com).

Respectfully yours,



Alberto Montero  
General Manager  
PTES, SA de CV

<sup>1</sup> We have generated an internal memo which describes our thoughts as to why our current practice of non-consolidation is appropriate. A copy is enclosed.

cc: Rick Picardi  
US EPA, Office of Solid Waste  
Mail Code 5301W  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

David B. Jones  
Associate Director  
Waste Management Division  
EPA Region 9 (WST-1)  
75 Hawthorne Street  
San Francisco, CA 94105

Emily Pimentel  
Border Coordinator for Waste Programs  
EPA Region 9 (WST-1)  
75 Hawthorne Street  
San Francisco, CA 94105

Tomás Torres  
US EPA Region 9  
US-Mexico Border Program Coordinator  
610 West Ash Street (905)  
San Diego, CA 92101

Kim Wilhelm, Chief  
Statewide Compliance Division  
Hazardous Waste Management Program  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

OSW 05017

INTERNAL COMPANY MEMO

TO: FILE  
RE: WASTE CONSOLIDATION DOCUMENTATION

This situation potentially violates Annex III of the La Paz Agreement between Mexico and the United States. This practice may also compromise the ability of Mexico and U.S. environmental authorities to track the flow of hazardous wastes across the Mexican border as no information on the original source of these waste materials is being provided by importers employing this documentation method.

U.S. manufacturing plants, known as *maquiladoras*, which are established mainly along the Mexican side of the border, temporarily import their raw materials into Mexico to manufacture their products. These plants are obligated to return their finished products to the United States along with any residuals generated by their manufacturing processes. When these residuals are a hazardous waste as defined by U.S. federal or state regulations, the importer of these wastes must comply with the applicable U.S. federal and state regulations and also with bilateral U.S.-Mexico agreements. Annex III, of the La Paz Agreement between Mexico and the United States sets forth the basis for admitting trans-boundary shipments of hazardous wastes between the two nations. Summarizing the annex, the process it describes for trans-boundary shipments involves a series of country-to-country notifications through diplomatic channels with specific timelines for responses from each of the parties. Article XI of said Annex essentially exempts hazardous wastes generated from raw materials admitted "in-bond" from the provisions of the annex by stating:

*"Hazardous waste generated in the process 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 XI applies only to wastes generated from raw materials that were imported temporarily to the exporting country, i.e. to the *maquiladora* plants in our case. By service companies acting as importers, through their US affiliates, and as Mexican source of hazardous wastes, they are failing to provide information of the true primary source, i.e. the *maquiladora* plant that generated these wastes. The result is that U.S. and Mexico regulators are unable to verify that the waste is indeed being generated from one of the processes described in Article XI. Conversely, a *maquiladora* generator that is returning their hazardous wastes through an importer that utilizes this documentation method, would be unable to offer documentary proof that their returns were effected by means consistent with current laws and regulations if required by a regulatory agency.

We believe that 40 CFR already provides the mechanism for tracking these shipments from pre-import to disposal. We also believe that it allows regulators the opportunity to determine which notification method under Annex III of the La Paz Agreement will apply to each case. Section 264.12(a)(1), "Required Notices", of 40CFR provides:

*"The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Regional Administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required."*

We believe that in this required notice the importer, through the U.S. receiving facility, must disclose the true foreign source of the waste, i.e. the manufacturing plant. This would allow the regional administrator the opportunity to verify or determine whether or not the waste and source described in the notice qualify as those described in Annex III, Article XI of the La Paz Agreement. If the waste does not qualify as such, we believe that the agency should direct the owner or operator of the facility to follow the notification procedures prescribed in Annex III of the cited Agreement in order to permit the facility to receive the wastes. If the intended importer, through the owner or operator of the facility, is not disclosing the original foreign source, but rather cite their Mexican affiliate as the foreign source, then the Regional Administrator would be unable to verify or determine which procedure of import would be applicable under the Agreement. This is important since many of the service companies, including ours, are permitted TSD's in Mexico which generally provide their services to both *maquiladoras* and Mexican national companies. Since the nearest permitted Mexican hazardous waste landfill to our region is located in the state of Nuevo Leon, more than 2500 kms. from Tijuana, it is not difficult to conceive that these companies would find it economically attractive to export Mexican national wastes, along with *maquiladora* wastes, to facilities located in California, Arizona and Nevada. This could be done by simply notifying it as *maquiladora* waste citing their Mexican Company as the source. This would effectively allow the circumvention of the notification procedures outlined in Annex III of the La Paz Agreement.

We further believe that the process to allow the Regional Administrator to track these wastes does not end with the required notice described above. We believe that, in fact, the tracking process continues by the importer using the same foreign generator's name and address (together with the importer's name, address and EPA identification number) in Section 3 of the manifest used to document the ensuing import shipment. We believe that this would be consistent with 40 CFR Sections 262.60 (a) and (b)(1), which state:

*Any person who imports hazardous waste from a foreign country to the United States must comply with the requirements of this part and the special requirements of this subpart.*

*When importing hazardous waste, a person must meet all the requirements of Sec. 262.20(a) for the manifest except that:  
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.*

We feel that this is the only means by which the Regional Administrator can verify that the wastes and sources contained within the respective notification are the same wastes and sources that are being actually imported.

OSW-0507

**Alberto Montero**

---

**From:** groce.bryan@epamail.epa.gov  
**Sent:** Friday, August 06, 2004 8:51 AM  
**To:** Alberto Montero  
**Subject:** RE: EPA manifest requirements for maquiladora hazardous wastes from Mexico

Mr Montero:

A response to your letter is in the final stages of review. Currently, my management is reviewing the response. I, however, cannot give you a definitive completion date, but I imagine a final response will be completed very soon.

Bryan Groce  
Office of Solid Waste  
(703) 308 - 8750

|             |   |   |
|-------------|---|---|
| Rich        | Alberto Montero<br><albertom@ptesinc.com> | To: Bryan Groce/DC/USEPA/US@EPA<br>cc: Charlotte Mooney/DC/USEPA/US@EPA,<br><br>LaShier/DC/USEPA/US@EPA |
| maquiladora | 08/03/2004 01:51<br><br>PM                | Subject: RE: EPA manifest requirements for<br><br>hazardous wastes from Mexico                          |

Mr. Groce,

Please advise regarding expected time for EPA to issue response to our letter. On our last telephone conversation you indicated that the response would be received by the end of July.

Please let me know.

Respectfully,

Alberto Montero  
General Manager  
PTES, SA de CV

> -----Original Message-----  
> From: groce.bryan@epamail.epa.gov  
[SMTP:groce.bryan@epamail.epa.gov]  
> Sent: Friday, June 04, 2004 5:12 AM  
> To: Alberto Montero  
> Cc: Mooney.Charlotte@epamail.epa.gov;  
lashier.rich@epamail.epa.gov  
> Subject: re: EPA manifest requirements for maquiladora  
hazardous wastes from Mexico  
>  
>  
>

>  
>  
> Mr. Montero:  
>  
> Thank you for your email to follow up on your April 7, 2004 letter to  
> Matt Hale, requesting clarification on accepted practices of manifest  
> completion for imports of maquiladora hazardous wastes from Mexico.  
You  
> raised a number of issues that require some research and coordination  
> with other EPA offices. We expect to fully respond by the end of this  
> month.  
>  
> Sorry for the delay, and thank you for your interest in the hazardous  
> waste management program.  
>  
> Bryan Groce  
> US EPA, Office of Solid Waste  
> (703) 308-8750  
>

OSW 0507

**Alberto Montero**

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**From:** Alberto Montero  
**Sent:** Tuesday, January 25, 2005 3:54 PM  
**To:** 'Bryan Groce'  
**Cc:** 'Rich Lashier'; 'Charlotte Mooney'; 'Rick Picardi'  
**Subject:** RE: EPA manifest requirements for maquiladora hazardous wastes from Mexico

Mr. Groce,

Should our company still expect a response from EPA regarding this issue? Comingled hazardous wastes from different maquiladora plants continue to be imported into the United States from Mexico. In order to level the playing field among importers it is imperative that EPA clarify the documentation requirements.

Please advise,

Alberto Montero  
General Manager  
PTES, SA de CV

-----Original Message-----

**From:** Alberto Montero  
**Sent:** Tuesday, October 12, 2004 12:15 PM  
**To:** 'groce.bryan@epamail.epa.gov'  
**Subject:** RE: EPA manifest requirements for maquiladora hazardous wastes from Mexico

Mr. Groce,

I apologize for the insistence but it has been two months since your last reply regarding EPA's response to our letter. This issue is extremely important to us. Please let us know if and when we should still expect a response.

Thank you,

Alberto Montero  
General Manager  
PTES, SA de CV

-----Original Message-----

**From:** groce.bryan@epamail.epa.gov [mailto:groce.bryan@epamail.epa.gov]  
**Sent:** Friday, August 06, 2004 08:51 AM  
**To:** Alberto Montero  
**Subject:** RE: EPA manifest requirements for maquiladora hazardous wastes from Mexico

Mr Montero:

A response to your letter is in the final stages of review. Currently, my management is reviewing the response. I, however, cannot give you a definitive completion date, but I imagine a final response will be completed very soon.

Bryan Groce  
Office of Solid Waste  
(703) 308 - 8750

OSW-2507

**Alberto Montero**

---

**From:** Alberto Montero  
**Sent:** Monday, May 31, 2004 2:40 PM  
**To:** 'hale.matt@epa.gov'  
**Cc:** 'picardi.rick@epa.gov'; 'jones.davidb@epa.gov'; 'pimentel.emily@epa.gov';  
'Torres.Tomas@epa.gov'; 'kwilhelm@dtsc.ca.gov'  
**Subject:** Follow up to Pacific Trans' letter to EPA dated April 7, 2004.

Dear Mr. Hale,

The purpose of this message is to follow up on letter sent by our company, Pacific Trans Environmental Services, Inc., to EPA on April 7, 2004 whereby we requested clarification of accepted practices of documentation of imports of *maquiladora* hazardous wastes from Mexico. Please let me know if you require any additional information regarding this matter in order to give us your response.

I thank you in advance for your attention to this message.

Respectfully,

Alberto Montero  
General Manager  
PTES, SA de CV