



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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

APR 11 2014

Mr. Thomas M. Tuori
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604-2711

Dear Mr. Tuori:

I am responding to your letter of January 21, 2014 to Barnes Johnson where you seek confirmation from EPA on two questions regarding the shipment of materials originating in Mexico, with transit across the United States to a destination facility located in Quebec, Canada where these materials would be reclaimed primarily for their silver content. First, you ask whether intact unused off-spec dental x-ray packs and trimmings from unused dental x-ray packs generated at a Carestream facility in Mexico and destined for reclamation in Canada would be excluded from RCRA regulations in the United States. Second, you seek confirmation on whether such a non-waste determination would dictate the regulatory status of the materials for purposes of import, transit in the United States, and export regardless of whether any states along the route of transit would regulate these materials as hazardous wastes, or regulate these materials more stringently. In particular, you mention in your letter that the transporter of these materials may possibly stop while in transit across the United States at other Carestream facilities (e.g., Windsor, Colorado and Rochester, New York) to consolidate other off-spec dental x-ray packs and trimmings from unused dental x-ray packs generated at these facilities.

First, you are correct that federal RCRA hazardous waste regulations, per 40 CFR 261.2(c)(3) and Table 1 of 40 CFR Part 261, do not regulate the reclamation of off-spec commercial chemical products and characteristic byproducts provided these materials are reclaimed legitimately. Even if Mexico and/or Canada considered these materials hazardous waste, the U.S. does not under the federal regulations. Since these materials are not hazardous wastes under the federal regulations, EPA's hazardous waste import/export requirements would not apply. Therefore, under the federal regulations, if these materials were to solely transit across the United States from Mexico to Canada, they would only need to comply with applicable Department of Transportation requirements. However, please note that there could be a situation where a RCRA authorized state regulates these materials more stringently than the federal program and may impose requirements for these materials.

For situations where the shipment is simply transiting a state with more stringent requirements than the federal program for these materials, we believe the state's requirements would not likely apply to transit only activity. This is because when no activity other than transiting is occurring

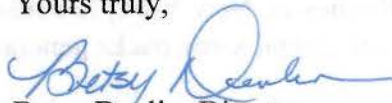
there is no activity that is typically regulated (e.g., import, export or any other type of management activity) to trigger the more stringent state requirements. However, should the transporter stop at a facility in a state with more stringent requirements than the federal program to consolidate a shipment of like materials subject to the more stringent state regulations, then the transporter is no longer engaging in transit only activity. As a result of this consolidation activity, then the state's regulations would apply to this additional activity.

For example, should a state view such materials as a shipment of recyclable hazardous materials destined for precious metal recovery rather than a characteristic byproduct being reclaimed, the facility receiving the initial import shipment from Mexico, conducting the consolidation activity, and initiating the consolidated export shipment to Canada would have additional requirements. These would include complying with the authorized state's regulations equivalent to 40 CFR Part 266 Subpart F (Recyclable Materials Utilized for Precious Metal Recovery), the initiation of a hazardous waste manifest upon entry of the original shipment into the United States under the authorized state's regulations equivalent to 40 CFR Part 262 Subpart F (Imports of Hazardous Waste), and complying with all applicable export requirements under the authorized state's regulations equivalent to 40 CFR 262 Subpart E (Exports of Hazardous Waste) prior to exporting the consolidated shipment to Canada.

Therefore, because of the complexity of this issue and possibility of a state's regulations being more stringent than the federal program, we recommend you contact your state environmental agency to definitively determine what regulations, if any, may be applicable to your shipment.

Should you have any further questions, please contact Jim O'Leary of my staff at (703) 308-8827, or oleary.jim@epa.gov.

Yours truly,



Betsy Devlin, Director

Materials Recovery and Waste Management Division