CONSULTATIVE MECHANISM FOR THE EXCHANGE OF INFORMATION ON NEW AND EXISTING FACILITIES FOR THE MANAGEMENT OF HAZARDOUS AND RADIOACTIVE WASTES WITHIN 100 KM OF THE US-MEXICO BORDER

This document was developed by the U.S./Mexico Hazardous and Solid Waste Workgroup in recognition of the public concern on both sides of the border regarding past, current, and proposed waste storage, treatment and disposal facilities. This Mechanism is consistent with Article 6 of *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*, known as the La Paz Agreement, which allows the parties to undertake "periodic exchanges of information and data on likely sources of pollution in their respective territory which may produce environmentally polluting incidents." This Mechanism recognizes the sovereignty of each country to make siting/permitting decisions on proposed waste treatment, storage, and disposal facilities within its borders in accordance with its domestic laws, regulations, and policies. The workgroup has developed the following Consultative Mechanism to ensure ongoing exchange of information regarding siting of facilities within 100 kilometers of the border.

The Consultative Mechanism reflects the firm commitment of the Co-Chairs of the Hazardous and Solid Waste Workgroup to implement the actions detailed below, without giving rise to any legal obligations, within the legal framework of each country. The content and usefulness of the Mechanism will be revisited upon any formal adoption of a process for Transboundary Environmental Impact Assessments.

The exchange of information under this Mechanism may be carried out in written or electronic form.

A. <u>Facilities Covered Under This Mechanism</u>

Due to the differences in the regulatory systems of the United States and Mexico, this Mechanism will apply to a different group of facility types in each country.

1. This mechanism for consultation will apply to the following types of facilities in the United States:

a. Commercial facilities which treat or dispose of hazardous waste generated off-site;

b. Commercial facilities which store hazardous waste generated off-site for more than 10 days;

c. Storage facilities which require permits under Federal law for storing hazardous waste generated on-site for more than 90 days;

d. Commercial facilities which recycle hazardous wastes generated off-site;

e. Facilities which dispose of radioactive waste.

2. This mechanism for consultation will apply to the following types of facilities in Mexico:

a. Commercial facilities which treat or dispose of hazardous waste.

b. Commercial facilities which incinerate hazardous waste.

c. Facilities which recycle hazardous waste.

d. Commercial facilities which temporarily store hazardous waste.

e. Facilities which dispose of radioactive waste.

B. Initial Notification on New Sites

1. Notifications and requests for information shall be in writing through the Co-Chairs of the U.S./Mexico Hazardous and Solid Waste Workgroup. Each Co-Chair will send copies of notifications to the border states in their respective countries.

2. Within 30 days of the time they become aware of a newly-proposed facility within the scope of this mechanism, the EPA Co-Chair, for sites within the United States, and the INE Co-Chair, for sites within Mexico shall notify the other Co-Chair in writing of the proposed facility. A copy of each notification shall simultaneously be transmitted to the foreign ministry of the notifying Co-Chair.

3. This initial notification shall include the following:

a. Name and address of company or entity proposing the facility;

b. Location of proposed facility;

c. Nature and proposed capacity of the facility and general description of wastes to be handled, where disclosure is consistent with applicable laws and regulations;

d. Principal regulatory agency(ies) which will be making permitting/licensing decision (with name, address, and telephone number of contact(s) at regulatory agency(ies));

e. Estimated start date for public comment on the proposal and anticipated timetable for public meetings and/or public hearings, where applicable; and

f. Location of the administrative record for the permit/license proceedings.

C. Consultative Mechanism For Exchanging Further Information on New Sites

1. A Co-Chair may request that the other Co-Chair provide further information. The responding Co-Chair need only provide information contained in the original permit/license application, where disclosure is consistent with applicable laws and regulations. Requests shall specify the exact type of information desired from the application.

2. A Co-Chair may also request information not required as part of a permit/license application. The responding Co-Chair will make a reasonable effort to obtain additional requested information (e.g. compliance history of permit applicants).

3. The responding Co-Chair should provide the information within thirty calendar days of receipt of the request.

4. The responding Co-Chair shall provide one copy of the requested information. Duplication and translation of the requested information shall be the responsibility of the requesting Co-Chair. A copy of the cover letter transmitting the information shall be transmitted through the foreign ministry of the responding Co-Chair to the foreign ministry of the requesting Co-Chair.

5. The responding Co-Chair shall also provide a brief summary of the Federal/State/local permitting/licensing process (if this information has not been transmitted previously). It is the responsibility of the requesting Co-Chair to utilize the normal public involvement and permitting/licensing procedures of the responsible agency(ies) to provide input.

6. The Co-Chairs shall provide each other every six months with a written status report on the permitting/licensing of all new facilities. These reports shall be transmitted in January and July of each year.

7. Either Co-Chair may request informational briefings or meetings of technical experts to discuss new facility proposals. It shall be the responsibility of the Co-Chair requesting such a meeting to host and provide translation services for the meeting.

D. Exchange of Information on Existing/Operating Sites

1. Each Co-Chair shall prepare an inventory of all existing/operating facilities within the scope of these guidelines and shall transmit it to each other by January 31, 2000. Obligations under sections B and C of this Mechanism shall not come into force until both parties have completed this initial exchange of information on existing facilities.

2. The two Co-Chairs shall notify each other of any major expansions or modifications to existing/operating facilities within the scope of these guidelines, such as would

require a significant permit modification (e.g. expansion of capacity, change in processes, or addition of new types of waste). Within 30 calendar days of the time either Co-Chair becomes aware of such an expansion or modification, they shall notify each other in writing of the proposed action.

E. Facilities Outside the 100 km Zone

Nothing in this Mechanism shall be construed to limit similar cooperation regarding facilities outside the 100 km zone through formal diplomatic or other channels.

F. Entry into Force of this Consultative Mechanism

G. This Mechanism will enter into force upon signature by the Co-Chairs of the Hazardous and Solid Waste Workgroup.

For the U.S. EPA:

Jeff Scott
U.S. Co-Chair

For the National Institute of Ecology:

Cristina Cortinas de Nava
Mexican Co-Chair

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Tucson, AZ, USA