

# CANADA MAKES CHANGES TO CROSS-BORDER HAZARDOUS WASTE AND RECYCLING REQUIREMENTS

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On February 26, 2021, the federal government enacted the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* (the “**Regulations**”)<sup>[1]</sup> under the *Canadian Environmental Protection Act, 1999* (the “**CEPA**”)<sup>[2]</sup>, the *Canada Shipping Act, 2001* (the “**CSA**”)<sup>[3]</sup>, the *Impact Assessment Act*,<sup>[4]</sup> and the *Environmental Violations Administrative Monetary Penalties Act*.<sup>[5]</sup> These Regulations will come into force on October 31, 2021.

The Regulations will replace three existing regulations under the CEPA:

- i. the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations* (the “**Export and Import Regulations**”);<sup>[6]</sup>
- ii. the *Interprovincial Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* (the “**Interprovincial Movement Regulations**”);<sup>[7]</sup> and
- iii. the *PCB Waste Export Regulations, 1996*.<sup>[8]</sup>

While the majority of current permitting and movement-tracking requirements will be maintained, the Regulations are intended to provide greater clarity and consistency with respect to these regulatory requirements. The Regulations consolidate the requirements for the import and export of hazardous waste and hazardous recyclable material for both interprovincial and international movement. The new Regulations will also modify the existing permitting process found in the current regulations, address the lack of flexibility to shift to an electronic movement tracking system, clarify inconsistencies with terminology, alter documentation requirements and change certain exemptions relating to the transportation of materials containing polychlorinated biphenyls (“**PCBs**”).

This bulletin outlines the incoming changes to cross-border hazardous waste management under the Regulations. Importers, exporters, customs brokers and authorized carriers of hazardous waste and hazardous recyclable material are responsible for providing the Canada Border Services Agency (the “**CBSA**”) with certain movement documentation, permits and reporting notifications. Therefore, these transporters should familiarize themselves with and prepare for these changes to existing requirements to avoid delays or logistical

challenges at the border arising from the shipment of hazardous waste or hazardous recyclable material.

The CBSA has not yet issued updated guidance including in the form of D Memoranda on the implementation of the new Regulations, but we will continue to monitor the status of any such CBSA guidance and update this bulletin accordingly when further guidance becomes available. The CBSA's Memorandum D19-7-3 on the *Export and Import Regulations* signifies its current guidance on the import, export and transit of waste and recyclable material across the Canadian border.<sup>[9]</sup>

## 1. Changes to Permitting Process

The Regulations provide for changes to the permitting process for the transportation of hazardous waste and hazardous recyclable material. The maximum duration for a permit will be extended from 12 months to 3 years for the transportation of hazardous recyclable material to pre-consented facilities in countries that are a member of the Organisation for Economic Co-Operation and Development (“**OECD**”). Facilities which are “pre-consented” are those listed in the March 15, 2004 OECD Decision, which Canada has implemented.<sup>[10]</sup>

The Regulations will also explicitly indicate the conditions that can lead to a permit being revoked, suspended or refused as well as the procedures for updating and/or changing information on the permit. Note that movements authorized by notifications (i.e. permit applications) submitted under the *Export and Import Regulations* before they are repealed, including imports into Canada, exports from Canada or material transported through Canada, will continue to be governed by the regulations and permitting regime currently in effect.

The Regulations will request specific information in each permit application depending on the type of permit sought. Schedule III lists the precise notification requirements for each form of permit application under the new Regulations. The Regulations will distinguish between:

- Permit for Import;
- Permit for Export;
- Permit for Export from an Import to Canada Following Transit Through a Foreign Country;
- Permit for Transit Through Canada;
- Permit for Return to Canada; and
- Permit for Return to Foreign Country of Origin.

The Regulations also streamline the information required for a notification. The insurance company, policy number, and copies of the insurance contracts for the exporter will no longer be required. Instead of these technical requirements, an applicant will have to provide a statement indicating that a valid insurance policy is in place. Applicants will also have to retain proof of insurance coverage and copies of the insurance contracts at

their place of business for 5 years.

## **2. Changes for Efficient Implementation of an Electronic Movement Tracking System**

A key goal of the Regulations is to transition to an electronic movement tracking system from the existing current paper tracking system to follow shipments under the *Export and Import Regulations*. The Regulations will allow for electronic tracking of movements by eliminating the prescribed form and stipulating the required information that must be included in the movement tracking process.

## **3. Changes to Definitions of Hazardous Waste and Hazardous Recyclable Material**

The Regulations will align the definitions of hazardous waste and hazardous recyclable material for interprovincial movements with those of international movements. The alignment is achieved through the consolidation of the *Export and Import Regulations* and the *Interprovincial Movement Regulations* under the new Regulations. This will provide clarity for transporters shipping within Canada and internationally. In addition, this will align the Canadian definitions with those of international agreements and those of other jurisdictions.

### *a. Application of UN Numbers*

UN Numbers are four-digit numbers that are assigned to a dangerous good being transported based on its composition and classification. The current requirement for a UN number on the notification and movement documents remains in effect if the criteria in Part 2 of the *Transportation of Dangerous Goods Regulations* (“**TDGR**”) is met,<sup>[1]</sup> which provides the criteria for the hazardous classification of substances. The Regulations do not expand the scope of the application of the TDGR requirements to substances that are not dangerous goods. This is despite an original proposal for the Regulations expanding the scope of the UN number requirement.

### *b. Batteries*

The Regulations will clarify that all types of batteries meet the definition for hazardous waste or hazardous recyclable material. The only exception is for batteries destined for recycling after moving interprovincially and that do not meet the criteria under the TDGR, such as for hazardous gasses, flammable solids and liquids, oxidizing substances, toxic substances, and corrosive materials. This recycling exemption in the Regulations is intended to promote domestic battery recycling programs.

### *c. Electrical and Electronic Equipment (“**EEE**”)*

“Circuit boards and display devices and any equipment that contains them” will fall within the definition of hazardous waste or hazardous recyclable material when it is destined for disposal or recycling operations.

These items were excluded from moving within OECD countries and interprovincially under the *Export and Import Regulations* and this does not change under the new Regulations. Instead, the Regulations clarify this obligation by explicitly identifying these types of items as hazardous waste or hazardous recyclable material.

*d. Mercury*

The Regulations will remove the small quantity exclusion for material that contains less than 50mL of mercury per shipment. Any waste or material containing mercury that also meets the definition of hazardous waste or hazardous recyclable material will be subject to the Regulations. However, this exclusion will remain in existence for interprovincial shipments of end-of-life products containing small quantities of mercury.

*e. Recycling Operation R14*

The current recycling operation R14 found in the *Export and Import Regulations* will be amended. This is the recycling operation for the “recovery or regeneration of a substance or use or re-use of a recyclable material” other than those explicitly stated in recycling operations R1 to R10. Under Part 2 of Schedule 1 of the Regulations, this operation will now be listed as recycling operation RC1.

The sole change to the description of this recycling operation is the removal of the words “use or re-use of a recyclable material”. This will limit the scope of its current, overly broad, application. Some recyclable material will not continue to be defined as hazardous, including used materials that are likely to be re-used immediately in another process that is not a listed recycling operation. This will align the Canadian guidelines with the *United Nations Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, which Canada has ratified.<sup>[12]</sup>

*f. Residual Quantities*

A new exclusion has been added to the Regulations for material transported in a container after that container’s original contents are removed and prior to its subsequent cleaning. This residual waste or recyclable material will not be captured in the definitions of hazardous waste or recyclable material.

*g. Toxicity Characteristic Leaching Procedure (“TCLP”)*

The Regulations will require the application of the TCLP and require its application for all waste shipped interprovincially or internationally. The TCLP assesses the potential for the release of contaminants found in hazardous waste and hazardous recyclable material. The Regulations clarify that the material undergoing testing must be shredded, instead of the current process in the *Export and Import Regulations*, which only requires the size of particles to be reduced to fit into the testing equipment. Stipulating the method of reducing size will result in consistent application of the TCLP.

#### *h. Waste and Recyclable Material Generated on Ships*

The Regulations will clarify that any waste or recyclable material generated from the regular operation of a ship is not considered hazardous waste or hazardous recyclable material. Provisions regarding transport and disposal of this waste are found in the CSA.

#### **4. Changes Regarding Waste Containing PCBs**

The Regulations will streamline the provisions relating to the export of waste containing PCBs. The provisions for the export of waste containing PCBs will also be integrated into those for hazardous waste and hazardous recyclable material. The existing prohibition on exports of waste with a PCB concentration of 50mg/kg will be removed as will the limitation of only exporting such waste to the United States. Exports of waste containing PCBs is only permitted where certain conditions are met and a permit under the Regulations is obtained.

[1] [\*Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations, SOR/2021-25\*](#)

[2] [\*Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33.\*](#)

[3] [\*Canada Shipping Act, 2001, S.C. 2001, c. 26 at s. 120\(1\).\*](#)

[4] [\*Impact Assessment Act, S.C. 2019, c. 28 at para 109\(b\).\*](#)

[5] [\*Environmental Violations Administrative Monetary Penalties Act, S.C. 2009, c. 14 at s. 5\(1\).\*](#)

[6] [\*Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations, SOR/2005-149.\*](#)

[7] [\*Interprovincial Movement of Hazardous Waste and Hazardous Recyclable Material Regulations, SOR/2002-301.\*](#)

[8] [\*PCB Waste Export Regulations, 1996, SOR/97-109.\*](#)

[9] Canada Border Services Agency, [\*Memorandum D19-7-3, Export and Import of Hazardous Waste and Hazardous Recyclable Material\*](#) (17 August 2020).

[10] [\*OECD Decision, C\(2001\)1007/FINAL at Case 2, Chapter II D\(2\).\*](#)

[11] [\*Transportation of Dangerous Goods Regulations, SOR/2001-286 at Part 2.\*](#)

[12] [\*Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1673 U.N.T.S. 126.\*](#)

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#### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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