

Draft Guidance on EPA Identification of U.S. Pre-Approved Facilities to Receive Hazardous Waste Imports from OECD Member Countries

Purpose and Overview

The purpose of this draft guidance document is to suggest an approach on how U.S. recovery facilities may request that EPA identify them as a ‘pre-approved’ facility for purposes of receiving RCRA hazardous wastes, originating in OECD Member countries, for recovery in the United States. We have posted this draft guidance document on <http://www.epa.gov/epawaste/hazard/international/oecd-slab-rule.htm> and are seeking comment on it. Based on comments that EPA receives on this draft guidance document, EPA will decide whether to finalize the draft guidance, and describe a procedure for identifying U.S. pre-approved facilities. If EPA finalizes this guidance document, EPA may revise this document from time to time, as EPA gains experience in implementing this procedure. However, although sections of this document specifically reference regulatory requirements, this document is intended to provide guidance and does not impose legally binding requirements on EPA, the states or the regulated community. In addition, it does not substitute for any EPA rule, nor is it intended to constitute a rule.

The OECD Decision and Pre-Approved Status for Receiving Facilities

The “Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as amended by C(2004)20” (hereafter ‘Amended 2001 OECD Decision’) allows the option for Member countries to pre-approve domestic facilities receiving hazardous waste for recovery, from other Member countries. Facilities designated by their domestic competent authority as pre-approved may qualify for streamlined notification and consent procedures for receiving hazardous waste from OECD Member countries¹. The Amended 2001 OECD Decision specifies that the standard time-frame in which a country of import may provide consent/objection would be reduced from the standard thirty (30) working days to seven (7) working days (after the issuance of the Acknowledgement of Receipt of notification by the country of import) for hazardous waste imports destined for a facility with pre-approved status. In addition to the shortened time-frame for consent/objection, the country of import may extend the period during which a consent would be valid for import of specified wastes from one (1) year to a maximum of three (3) years.

Therefore, if EPA identifies a U.S. recovery facility as pre-approved for purposes of receiving certain hazardous wastes for recovery from OECD Member countries, EPA would generally process the export notification it receives from the country of export in seven (7) working days (starting from EPA’s Acknowledgement of Receipt of the notification). In certain cases, EPA may have to notify the country of export that it will

¹ More information on the OECD procedures under the Amended 2001 Decision is available at [http://www.oilis.oecd.org/oilis/2001doc.nsf/LinkTo/NT000009BA/\\$FILE/JT00160078.PDF](http://www.oilis.oecd.org/oilis/2001doc.nsf/LinkTo/NT000009BA/$FILE/JT00160078.PDF).

need the standard thirty (30) working days, rather than the seven (7) working day review period (e.g., in order to determine whether the wastes listed in the notice are equivalent to the specified hazardous wastes for which the designated U.S. facility may accept as a pre-approved facility). Any consent that EPA provides for a hazardous waste shipment destined for a U.S. pre-approved facility would be valid for a three (3) year period.

Which facilities may be eligible for pre-approved status?

U.S. recovery facilities may be eligible for pre-approved status if:

1. The facility has received, and intends to continue to receive, RCRA hazardous waste, as defined in 40 CFR 262.80(a) originating from an OECD Member country. For purposes of this document, the term “OECD Member country” as used herein, means those countries identified in 40 CFR 262.58(a)(1), and Canada and Mexico.
2. EPA has previously consented to imports of the specified hazardous wastes originating from OECD Member countries for recovery at the U.S. facility, for a minimum of three consecutive years; and
3. The facility has received shipments of the specified hazardous wastes during that three year period.

U.S. facilities do not have to receive the specified hazardous wastes from the same exporter or even the same OECD Member country of export to establish a three-year import record. They do, however, need to receive the same specified hazardous waste, originating from an OECD Member country, for recovery purposes. For example, a U.S. facility recycling spent hydrotreating catalyst from petroleum refining operations that met the K171 listing may demonstrate a three-year import record for K171 based on imports from Canada in year one, from Mexico in year two, and from Canada in year three.

U.S. recovery facilities that have only recovered hazardous wastes from domestic sources or from non-OECD Member countries would not be eligible for identification by EPA as a pre-approved facility.

How may U.S. recycling facilities request EPA identification as a pre-approved facility?

EPA invites any U.S. recovery facility that is interested in requesting that EPA identify it as a pre-approved facility to submit a letter to EPA² requesting that the Agency

² The mailing address for letters requesting that a U.S. facility be identified as pre-approved is: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington DC 20460. The address for hand-delivered letters is: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Avenue, N.W., Washington, DC 20004.

identify them as a pre-approved facility on the basis of EPA's past consent for the facility's receipt of the same specified hazardous waste from OECD Member countries. EPA recommends that the letter list the name, address and EPA identification number of the recovery facility along with a request for EPA to identify the facility as pre-approved for those specified hazardous wastes it has already received from OECD Member countries for the past three years.

To facilitate EPA's review, we recommend that the letter also include the RCRA waste codes or universal waste classification along with the corresponding OECD waste code listed in Appendix 4 of the Amended 2001 OECD Decision (or equivalent waste description) for the specified hazardous wastes. If such waste information is not provided in the request, EPA may have difficulty in meeting a seven (7) working day period in which to consent or object to a proposed import notification. In such cases, the Agency will notify the country of export that it will need the standard thirty (30) working days, rather than the seven (7) working day review period in order to determine whether the wastes listed in the notice are equivalent to the specified hazardous wastes for which the designated U.S. facility may accept as a pre-approved facility.

Upon receipt of the letter, EPA intends to review the facility's import and compliance history (including contacting the State as appropriate) and, upon completion of its review, notify the facility in writing whether it has attained pre-approved status for the specified RCRA hazardous wastes. This type of review is similar to the standard notice review process that EPA currently undertakes when it receives import notices from foreign governments. If the Agency does not identify the facility as a pre-approved facility, the Agency will explain its reasons for not doing so. EPA welcomes a facility's request for reconsideration based on additional information if EPA has determined that pre-approved status for certain hazardous wastes destined for this facility would not be appropriate. Please note that a facility may continue to receive imports of hazardous waste under the standard notice and consent procedure, while it concurrently pursues obtaining pre-approved status from EPA.

Once EPA identifies a facility as pre-approved, this pre-approved status would be valid for imports of the specified hazardous wastes from any OECD Member country. EPA consent to notices it receives from OECD Member countries to send specified wastes to pre-approved U.S. facilities would be valid for three years. U.S. importers or recovery facilities may wish to advise their foreign customers to clearly indicate on their export notifications to EPA that the intended U.S. receiving facility is pre-approved for the specified hazardous waste. Without such indication, EPA may not immediately recognize the intended U.S. receiving facility as being a pre-approved facility which may affect the time period in which EPA responds to the notification (thirty (30) working days instead of seven (7) working days) and in which the consent will be valid (one (1) year instead of three (3) years). To indicate on the current OECD notification document that the U.S. recovery facility is pre-approved, EPA recommends that the foreign exporter simply check the box marked "yes" under Item C in Block 3.

As under the standard import notice procedures, EPA may revoke a U.S. receiving facility's pre-approval status or revoke its consent to a notice at any time should the Agency receive credible information that calls into question the facility's ability to manage the imported hazardous waste in an environmentally sound manner.

Would a facility need to re-request pre-approved status after a set time period?

After EPA identifies a facility as a pre-approved facility, EPA intends to review the facility's pre-approved status every three years, at a minimum, or when EPA receives a notification renewal notice. In cases where EPA intends to no longer identify a facility as a pre-approved facility, EPA plans to notify the facility in writing and include its reasons. A facility can assume that it remains a pre-approved facility unless or until it has been notified otherwise by EPA.

Could a facility request pre-approved status for additional hazardous wastes?

A facility may request EPA identification as a pre-approved facility to accept additional hazardous wastes beyond the specified hazardous wastes in connection with the facility's original pre-approval from EPA. A facility can make such requests at any time after it has established a three-year record of EPA consent allowing the facility to receive these additional hazardous wastes from OECD Member countries under the standard import notice procedures.

How would a recent change in ownership affect a facility's request for EPA identification as a pre-approved facility?

A facility that has recently changed ownership may still request EPA identification as a pre-approved facility based on the previous owner's three year history of EPA consent to receive the specified waste from OECD Member countries. The Agency intends to review such requests on a case-by-case basis.