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Discussion

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## Discussion After the Speeches of Jane Seigler and Robert J. Redhead\*

QUESTION, *Professor King*: What is going to change if the U.S. and Canada ratify the Basel Convention? Also, how do you settle disputes under the Convention?

ANSWER, *Ms. Seigler*: There are some provisions in the Basel Convention for dispute resolution on an arbitration-type basis. What will change after ratification and implementation of the Convention is that, as a matter of domestic United States' law, there will be a couple of additional hoops that generators and exporters will have to jump through in terms of information about what is going on in the receiving country from a regulatory standpoint. Presumably, such issues will be worked out by bilateral agreements.

COMMENT, *Mr. Redhead*: From the Canadian perspective, some of the legislation being developed is contrary to the Convention. The Basel Convention's ideas have been around for a long time. Many principles in the Transportation of Dangerous Goods Act — as far how Canadian wastes are to be controlled, contracted and managed — have been based on a certain underlying philosophy of the ideas that were in Basel. The concept of minimizing a waste to go out of any jurisdiction and into another is one that is being looked at very hard in Canada, and many of the government agencies feel the quest for self-sufficiency is very important.

One of the things we need in the U.S., however, is access to other facilities, at least in the short term, to manage some of the materials that we cannot now manage in Canada. One of the other things that might be very significant would be the movement of non-hazardous waste, because if, for example, Basel came into effect tomorrow, and Canada and the United States were regulated by it, the Convention would capture those types of materials under the notice provisions, and so the Greater Toronto area may find itself facing an interesting challenge.

QUESTION, *Professor King*: Are there differences in the definition of "hazardous waste" in Canadian law, U.S. law and the Basel Convention?

ANSWER, *Ms. Seigler*: The Convention contains a provision that says "hazardous waste" can be whatever the signatory nations say it is, in addition to the definitions that are given in the Convention itself. The

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\* The questions, answers and comments presented herein have been edited by the *Canada-United States Law Journal* for the purpose of clarity, and have not been edited or reviewed by the respective speakers.

definition of "hazardous waste", as a matter of U.S. domestic law, is one of the hot issues on the EPA screen this year, and probably will be for the next couple of years and into our implementation of the Basel Convention. It is an extremely difficult issue, and one about which we can expect to hear a great deal of discussion and dispute.

COMMENT, *Mr. Redhead*: From the Canadian perspective, there are definitions in the provincial legislation and in the Transportation of Dangerous Goods Act. Basel's definition are, again, a little different.

I think one of the big challenges that Basel put to both our countries is what impact does the adoption of that framework have on our domestic legislation? From what I understand, the U.S. challenge is greater than that of Canada, because U.S. definitions are more definitive, and there is certainly a concern about accepting a Basel definition when it would control things which are not controlled under our own domestic legislation.

QUESTION, *Mr. Brueckmann*: Isn't the distinction between hazardous wastes destined to be recycled and those that are not destined to be recycled very basic? Also, isn't the promotion of transporting hazardous waste for recycling, in fact, very positive and supportive of environmental protection goals?

ANSWER, *Ms. Seigler*: Clearly, the issue is finding some way to assure that what actually happens to the material when it leaves the exporting country is, in fact, legitimate recycling, as opposed to something that is being called recycling, but is it really disposal? There is another issue as to exactly what the recycling process amounts to and how much the exporting country wants to get involved in how the material is going to be reclaimed or recycled in the foreign country.

COMMENT, *Mr. Redhead*: It is an interesting and basic issue. I think as individuals who have been involved in this discussion for a long time, we feel very strongly, as managers of hazardous waste, that if waste material is being redirected from a generator to a recycling facility, that's a positive thing. It should be supported and encouraged. However, the material does not change its character or risk to the environment from the time that it leaves the place where it's produced to where it's going to be managed, regardless of whether it is going to a treatment facility or is going to a recycling facility.

So, we believe very strongly that controls of those materials, like a manifest system, should be in place. One of the arguments against manifesting those materials is that if something is considered to be a hazardous waste, it takes on a new aura, and another layer of regulation is added. What often gets overlooked is the fact that here is a way to point to materials that were in the universe of hazardous waste that are no longer there.

QUESTION, *Mr. Edwards*: At what stage of development is the

recycling technology? Is recycling a low-tech or high-tech business at this stage?

ANSWER, *Ms. Seigler*: The answer to your question depends on the material you're discussing. Certainly, if you're talking about municipal solid waste, it's a low-tech business. As much as we would like and are trying to develop markets for these materials right now, basically the only recyclable that pays for itself is aluminum cans. Everything else operates at a loss.

When you're talking about hazardous materials, again the answer depends on how high-tech or low-tech the recovery process is. It also depends on what you mean when you say "recycling". Is, for example, burning a high BTU waste as fuel in a cement kiln recycling? That's an issue. It really, really depends on the material being discussed.

COMMENT, *Mr. Redhead*: I think certainly there are high tech and not so high-tech alternatives in the recycling arena. I know materials, for example, from Canada get shipped into the United States for acid regeneration. They're acid wastes that go to regeneration facilities, and we do not have the specific capability in Canada to re-introduce those materials back into the market. Precious metal recovery, on the other hand, has come into Canada, and is done very specifically by companies that know when you can consider it to be in the waste management business. Many of those materials are richer in the base metals than the ores that are being mined today to produce them in the first place.

I think one has to look at what the opportunities are. It has to do with whether, in reality, something is being done to recover that material and reintroduce it into the resource stream, or whether it is a way to get out of the highly-regulated control side of things in terms of managing hazardous waste.

QUESTION, *Mr. Kirby*: It appears that the Canadian provinces are much more independent than states in the U.S. Since Ontario and Manitoba, for example, are in a different context from the federal system, what's to keep hazardous waste going from Ontario into Manitoba?

ANSWER, *Mr. Redhead*: Basically, I think that the difference lies in the way the permits are issued in Canada. Our permits indicate the sources of the waste that can come into a particular site. So, there is a decision to allow wastes to come to that facility from outside its jurisdiction at the time the permit is issued. I believe most of the permits in the U.S. are silent as to the source of the waste.

If, for example, a facility is built in Manitoba, that is in a position to receive waste from another province, the issue of the sources of waste that will be permitted to enter the facility would be addressed during the course of the facility's permit process.

Interestingly, however, all the solid waste facilities that dispose of garbage in a municipal landfill have very strict definitions of geography

that can be served. None of the facilities in Ontario, for example, can receive wastes from outside Ontario.