AGREEMENT BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

and

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

CONCERNING THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES FROM THE PHILIPPINES TO THE UNITED STATES.

The Government of the United States of America (the United States) and the Government of the Republic of the Philippines (the Philippines), hereinafter referred to as "The Parties,"

RECALLING, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the "Basel Convention");

RECALLING, Article 4 (5) of the Basel Convention, which provides that a Party shall not permit hazardous wastes or other wastes to be exported to a non-Party;

RECALLING, also Article 11 (1) of the Basel Convention, which provides that, notwithstanding Article 4 (5), a Party may enter into an agreement with a non-Party provided that such agreement does not derogate from the environmentally sound management of hazardous wastes as required by the Convention and that such agreement stipulates provisions not less environmentally sound than those provided by the Convention;

HAVE AGREED AS FOLLOWS:

ARTICLE 1
Definitions

For purposes of this Agreement:

(a) "Competent authority" means, in the case of the Philippines, the Environmental Management Bureau of the Department of Environment and Natural Resources. and in the case of the United States, the United States Environmental Protection Agency.

(b) "Hazardous Wastes" means those materials that are regulated as hazardous wastes under either Philippine or United States law.

(c) "Management" means the collection, transport and disposal, recycling, treatment and disposal of hazardous wastes.

(d) "Environmentally sound management of hazardous wastes" means taking all practicable steps to ensure that hazardous wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes.

(e) "Contract" means the legally-binding agreement between the exporter and the importer for environmentally sound management of the hazardous wastes.

(f) "Exporter" means any person under the jurisdiction of the Philippines who arranges for hazardous wastes to be exported.

(g) "Importer" means any person under the jurisdiction of the United States who arranges for hazardous wastes to be imported.

ARTICLE 2
Purpose and Scope

The purpose of the Agreement is to provide a framework for the transboundary movement of hazardous wastes that are shipped from the Philippines to the United States for environmentally sound management.

ARTICLE 3
General Obligations

The Parties hereby undertake to comply with the terms and conditions applicable to them under this Agreement, in particular with regard to transboundary movements of hazardous wastes undertaken pursuant to this agreement, and acknowledge that with regard to such movements the Philippines agrees to apply relevant provisions of the Basel Convention not included herein.

ARTICLE 4
Notice and Consent

1. The competent authority of the Philippines shall notify in writing the competent authority of the United States of the proposed transboundary shipments of hazardous wastes to be carried out under this Agreement.

2. The notice referred to in paragraph 1 above may cover an individual shipment or a series of shipments extending over a twelve - month or lesser period where the hazardous wastes in question have the same physical and chemical characteristics and are shipped regularly to the same facility via the same customs office of exit in the Philippines and the same customs office of entry in the United States. If any information in the notice changes, then a new notice shall be provided.

3. The notice referred to in paragraph 1 above shall contain the declarations and information, written in the English language, specified in Annex V of the Basel Convention.

4. With respect to materials that are regulated as hazardous wastes under United States law:

(a) The competent authority of the United States shall, in accordance with applicable United States law, respond to the competent authority of the Philippines in writing, consenting to the shipment with or without conditions, denying permission for the shipment, or requesting additional information. The competent authority of the United States shall seek to respond within 30 days of receipt of this notice.

(b) The consent of the competent authority of the United States, including a conditional consent, may be withdrawn or modified for good cause; in such case, the United States shall notify the Philippines within (30) days of the United States Competent Authority's discovery of the good cause. "Good cause" means the introduction of new facts or developments or the discovery of fraudulent information that render incomplete or invalid the prior basis for consent or conditional consent.

5. With respect to materials that are regulated as hazardous wastes under Philippine law, but not under United States law:

(a) The United States shall not object to the import of materials that are not hazardous wastes under United States law. This provision shall serve as the United States written confirmation for imports of materials that are not hazardous wastes under United States law. This provision shall not apply to wastes which are contaminated by other materials to the extent that they are regulated as hazardous wastes under United States law or to materials that are prohibited from import or restricted under United States law.

(b) Where information provided in a notice under paragraph 1 of this article is based on fraudulent or inaccurate information, Article 6 of this agreement may apply. Further, the United States reserves the right to rescind non-objection to these imports.

(c) Nothing in this paragraph precludes the United States from taking enforcement action against appropriate persons or vessels (liability in rem) for violation of United States law.

6. The Philippines shall not allow a transboundary shipment to commence until:

(a) its competent authority has received written official confirmation from the exporter of the existence of a contract between the exporter and the importer in the United States specifying:

(i) The environmentally sound management of the hazardous wastes in question by the importer (which would be satisfied by specifying that the hazardous wastes in question will be managed in accordance with applicable United States law); and

(ii) Alternative arrangements, including which party to the contract is to pay for alternative arrangements for the proper management in an environmentally sound manner of the hazardous wastes in question in the United States or the Philippines in the case where the importer cannot or will not accept the hazardous wastes; and

(b) In the case of materials that are defined as hazardous wastes under United States law, its competent authority has received from the competent authority of the United States written consent to the shipment.

7. The Philippines shall not allow a transboundary shipment to commence if it has reason to believe that the hazardous wastes in question will not be managed in an environmentally sound manner.

8. The management of hazardous wastes, once subject to the jurisdiction of the United States, shall be subject to applicable United States law.

ARTICLE 5
Cooperative efforts

1. The Parties shall cooperate to ensure, to the extent possible, that transboundary movements of hazardous wastes comply with applicable tracking document and manifest requirements.

2. The Parties shall cooperate to ensure, to the extent possible, that transboundary movement of hazardous wastes conform to the requirement of applicable law of both Parties and of this Agreement.

ARTICLE 6
Illegal Traffic

1. In the case of a transboundary movement of hazardous wastes not in accordance with this Agreement as a result of conduct on the part of the exporter, the Philippines shall ensure that the hazardous wastes in question are taken back by the exporter, or, if necessary, by itself, to the Philippines, or are managed pursuant to the provisions of the Basel Convention, within thirty days from the time that the Philippines has received notice of the illegal traffic or such other period of time as the Parties may agree. To this end, the Parties shall not oppose, hinder, or prevent the return, of those hazardous wastes to the Philippines.

2. In the case of a transboundary movement of hazardous wastes not in accordance with this agreement as a result of conduct on the part of the importer, the United States shall take appropriate enforcement measures to require the importer to manage the hazardous wastes in question in an environmentally sound manner as soon as feasible from the time the illegal traffic has come to the attention of the United States. To this end, the Parties shall cooperate, as necessary, in the management of the hazardous wastes by the importer in an environmentally sound manner.

3. In the case where responsibility for the illegal traffic cannot be assigned either to the exporter or to the importer, the Parties shall cooperate to ensure that the hazardous wastes in question are managed as soon as possible in an environmentally sound manner.

ARTICLE 7
Insurance

The United States may require, as a condition of entry, that any import of hazardous wastes be covered by insurance or other financial guarantee in respect of damage caused during any part of the entire movement of hazardous wastes, including loading and unloading, and in case an alternative arrangement for its management in an environmentally sound manner or its return to the Philippines is necessary.

ARTICLE 8
Dispute Settlement

Any dispute between the Parties to this agreement arising out of the interpretation or implementation of this Agreement shall be settled amicably through diplomatic channels.

ARTICLE 9
Amendment

This Agreement may be amended by the written consent of the Parties. Any such amendment shall enter into force in accordance with the provision on entry into force in Article 10.

ARTICLE 10
Entry Into Force

This agreement shall enter into force on the date of the latter written notification by the Parties through diplomatic channels, indicating that its domestic legal requirements for entry into force have been complied with. However, the Parties agree to give provisional effect to this agreement prior to its formal entry into force.

ARTICLE 11
Validity and Termination

This Agreement shall remain in force indefinitely, unless terminated in writing by either Party through diplomatic channels. Termination shall take effect one hundred eighty (180) days following the date of notification.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Manila, in duplicate, this 20TH day of SEPTEMBER, 2001, in duplicate copies in the English language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES