

ANNEX E
The Environment Agency
Rio House
Waterside Drive
Aztec West
Almondsbury
BS124UD
4 November 2003

Ms Mariane Harinco
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue
Mail Code 2261A
Washington, D.C. 20460

Dear Ms Harinco,

COUNCIL REGULATION (EEC) NO 259/93
NOTIFICATION NO: USDC 170603
MOVEMENT OF EX USA NAVAL SHIPS BY MARAD TO ABLE UK LTD

I write to you in your capacity of competent authority of export, to inform you that you need to take immediate steps to secure the return to the USA of the ships presently on route to the UK pursuant to the above notification.

You should be aware from previous communications with your officers, that ABLE UK Ltd required a number of further permissions and authorisations in order to permit it to dismantle the notified ships in dry dock conditions, at Hartlepool, anticipated by the parties to the shipment. Outstanding issues relating to those permissions and a number of recent regulatory developments associated with the waste management licence held by ABLE UK Ltd for TERRC site now mean that ABLE UK is neither in a position to receive or recover the waste in accordance with its licence.

In particular,

There is a dispute on the matter of local authority (Hartlepool Council) planning permission for the dry docking operation to proceed and whether ships can be accepted at the TERRC site. This matter is subject to High court proceedings which may take some time to resolve.

The company has also applied for two "FEPA licenses" (Licenses from Government permitting the deposit of waste or works carried out in the sea) necessary to permit the construction of the dry dock. It transpires that these were not in place when the trans-frontier shipment was notified, and indeed they have still not been granted.

The company also needs to reach a commercial agreement with the Crown Estates Commissioners, owners of the seabed in the port, which is also required for the dry docking operation and this may also be dependant on the appropriate planning permission being in place.

Finally, the modification to the waste management license sought by ABLE UK Ltd. (to include waste ships within the waste types permitted to be recovered at the TERRC site and to increase the tonnage of waste that could be received at the site) to allow the storage and recovery operation has been challenged. Following careful consideration of that challenge, the Agency has concluded that its decision to modify the licence cannot stand.

As a consequence of that conclusion, the TERRC facility is not currently licensed to receive and recover the ships notified under the notification, hi particular, the total quantity of waste that the site is permitted to accept annually under the terms of the licence, as it presently stands, is 24,500 tonnes. Accordingly, should the first shipment, comprising the vessels Caloosahatche and Canisteo, arrive at the TERRC site then a breach of the site's licence would occur.

For technical legal reasons, this limitation on quantities in the waste management licence currently held cannot be increased by means of a licence modification. Instead Able UK Ltd will need to apply to the Environment Agency for a new waste management licence to change this annual permitted amount of waste. The outcome of any such application, should ABLE UK Ltd choose to proceed with one, cannot be predicted at this stage.

For these reasons, it is the Agency's view as Competent Authority of destination that the arrival of the shipments presently in transit at the TERRC site will result in a breach of international rules and Community law. Therefore the shipments cannot be completed and in these circumstances we are informing you that the only appropriate course of action is that the waste (ships) be returned to the USA until all outstanding issues relating to the licensing issues at ABLE UK Ltd's TERRC facility have been resolved, and a new trans-frontier shipment notification accepted.

I look forward to receiving your outline of your authority's proposed course of action in accordance with Article 25 of Council Regulation (EEC) No. 259/93, the contract agreed between MARAD and ABLE UK Ltd, and the associated letter of comfort. For the avoidance of doubt, please take this as a reasoned request under the OECD Decision in the circumstances where the consented shipment cannot be completed in accordance with the terms of the contract.

Please note our understanding that the first two ships are some 1000 nautical miles from TERRC and the second flotilla is believed to be west of the Azores, so that a course change to bring the vessels back to the USA would appear to be a valid course of action, subject to environment and safety risks. We emphasise that it is our legal view that it is your responsibility to take immediate steps to secure the return of the ships to the USA

Copies of this letter go to MARAD and to ABLE UK Ltd.

Yours faithfully,

Barbara Young
Chief Executive
The Environment Agency