

Intercon Solutions: Its Record of Export and Public Funding

Electronics Recycler Receives More than \$400,000 in Public Funds While Engaging in Irresponsible and Likely Illegal Export of Hazardous Waste

In the course of our legal defense activities, the Basel Action Network received substantial data and transport documents linking Intercon Solutions, a Chicago Heights electronics recycler—to the export of at least 167 inter-modal shipping containers to ports in Asia. Confirmed by export and shipping data from a third-party source (the Journal of Commerce’s PIERS database), the trucking receipts and railway inspection tickets demonstrate the consistent and systematic export of shipping containers in the years 2010 and 2011 from Intercon Solutions’ Chicago Heights facility to Hong Kong, China, Vietnam, and Malaysia via ports in California.

There is little doubt that the full extent of Intercon’s activities extended a long time before and after the two year time frame in which we happened to have received data.

During this same two-year period (2010-2011) Intercon Solutions rigorously touted a no-export policy in applications for public funding, on their website, and, in their lawsuit filed against the Basel Action Network (BAN). The State of Illinois awarded Intercon more than \$400,000 in funding between 2004 and 2009. Using misinformation to gain customers and taxpayer funded grants, could well constitute fraud.

Records of Export: Whistleblower Documents

An anonymous source—likely a truck driver who formerly worked for a transport company under contract with Intercon—sent BAN hundreds of Intercon container receipts and train inspection records. These documents recorded the dropping of empty and loaded containers at Intercon and the sending of loaded containers from Intercon to Long Beach and Los Angeles, California via the Logistics Park Chicago (LPC) BNSF railhead. Many of these documents listed the container contents as “material to be recycled properly” and the exports bound for several recipients including a company called Wai Mei Dat, a Hong Kong based waste broker.

Specifically, the whistleblower documents from the anonymous source include the following:

- 126 bills of lading for empty containers dropped at the Intercon Chicago Heights Facility. These originated from two intermodal container yards in Elwood Illinois called Logistics Park Chicago (LPC) and Bridge Terminal Transport (BTT); and from a company called Con Global.
- 71 bills of lading for loaded containers from Intercon that were sent to O Easy Development (OED). Descriptions on these forms claim that each container held 44,000 pounds of “material to be recycled properly.”
- 35 bills of lading for loaded containers from Intercon that were sent to Wai Mei Dat, a recycling and trading company based in Hong Kong. Descriptions on these forms claim that each container held 44,000 pounds of “material to be recycled properly.”
- 35 bills of lading for loaded containers dropped at Intercon. On forms on which the sender is listed, these originated from OED. Descriptions on the forms claim each container held 44,000 pounds of “material to be recycled properly.”

- 116 inspection tickets for BNSF railway. These are for Intercon containers to be shipped on a freight train from LPC, Illinois to ports in Los Angeles and Long Beach, CA.

These 383 slips and inspection tickets contain 197 unique intermodal container numbers. Of these 197 containers, third-party PIERS Journal of Commerce data (based on actual bills of lading processed by the Commerce Department, confirms that 167 were exported to Asia within days of leaving Intercon's Chicago Heights Facility.

Records of Export: Data on Exported Containers

Obtaining export and shipping line data through the PIERS database, BAN has confirmed that between February 2010 and August 2011 Intercon exported at least 167 containers to foreign ports in Asia. Among other information, the export data garnered from PIERS includes the date of export, the ultimate port destination, the reported contents of the 40-foot containers, and the city of origin. While all destinations were port cities in Asia, most (136) were sent to Hong Kong, with 16 going to ports in China and 14 going to Haiphong, Vietnam. The content for all the containers was pretty consistent and included descriptions such as waste, scrap, office supplies, metal scrap, butryal foam, and plastic. Several containers had other contents listed including "meat of bovine animals." Although several containers listed "unknown" as the city of origin, 153 containers had Chicago or Elwood, IL as the listed city.

Illustrative Examples of Documents and Data

Annexes A and B provide several highlighted illustrative examples of these documents.

Figures 1-2 in Annex A document the movement of a container with number ECMU 9406214 from Intercon to Hong Kong. These include:

- A receipt for the container when dropped off empty at Intercon's Chicago Heights Facility on April 14, 2011 with the description: "For John Chinese"
- A BNSF Railway inspection ticket for when the container was delivered from Intercon to the Logistic Park Chicago (LPC) railhead on April 20, 2011 with a rail destination of Long Beach, California.
- Data from the third-party source indicate that this container was exported from Long Beach to Hong Kong on May 11, 2011.

Figures 1-2 in Annex A document the movement of a container with number MSKU 4520644 from Intercon to Hong Kong. These include

- A receipt for the container dropped off empty at Intercon's Chicago Heights Facility on June 29, 2011 with the description: "For John (Chinese) Export"
- A BNSF Railway inspection tickets for when the container was delivered from Intercon to the Logistic Park Chicago (LPC) railhead on July 1, 2011 with a destination of Los Angeles, California.
- Data from the third-party source indicate that this container was exported from Los Angeles to Hong Kong on July 13, 2011.

Figures 1-3 in Annex B document the movement of a container with number MOTU 6423215 from Intercon to Haiphong, Vietnam. These include:

- A receipt for the container dropped off empty at Intercon Solutions, Chicago Heights Facility on November 23, 2010
- A slip for the loaded container from Intercon Solution bound for Wai Mei Dat dated November 29, 2010

- A BNSF Railway inspection ticket for when the container was delivered from Intercon to the Logistic Park Chicago (LPC) railhead on November 29, 2010 with a destination of Los Angeles, California.
- Data from the third-party source indicate that this container was exported from Los Angeles to Haiphong, Vietnam on December 8, 2010.

Figures 4-6 in Annex B document the movement of a container with number ECMU 916618-1 from Intercon to Hong Kong. These include:

- A receipt for the container dropped off empty at Intercon Solutions, Chicago Heights Facility on February 19, 2010
- A receipt for the loaded container from Intercon Solution bound for O Easy Development dated February 22, 2010
- A BNSF Railway inspection ticket for when the container from was delivered from Intercon to the Logistic Park Chicago (LPC) railhead on February 22, 2010 with a destination of Long Beach, California.
- Data from the third-party source indicate that this container was exported from Long Beach to Hong Kong on March 5, 2010.

Intercon Received \$430,000 in Public Funding

In 2012, BAN filed an Illinois State Freedom of Information request with the Illinois Department of Commerce and Economic Opportunity (DCEO) for copies of four Intercon applications for state funding in accordance with the Freedom of Information Act (FOIA). The grants, executed between 2004 and 2009, totaled \$430,000 and were intended to support Intercon's strategic planning, expansion, and security. In supporting three of these applications for funding, Intercon claimed a "no exportation" policy and discusses the problems with exporting electronic waste (e-waste) to developing countries.

A. Intercon received a 2004 DCEO grant for \$30,000 intended to assist the company in efficiently modernizing its plant activities. In the application for funding, Intercon states that their customers are assured that shipments are not sent overseas. For example, the company asserts that their customers "are assured that none of their equipment will be an environmental financial liability in the future because of contingent shipments to landfills or shipments off-shore." The firm also claims to be "the only computer recycling company that does not test and refurbish, or resell any of the equipment we handle;" however the documented shipments are sales to companies offshore. Further, Intercon states that "the management systems and our commitment to environmental compliance assures our customers and clientele that contingent liabilities associated with landfill disposal or overseas shipments will not come back to haunt them at a later date." Intercon also states that they are unlike many of their competitors "who routinely ship supposedly recycled materials off-shore for feedstock" and continues that "shipment off-shore is even more insidious because recycling in foreign lands may not be up to U.S. EPA standards and as such, can present health and safety problems that would ultimately find their way back to those e-manufacturers who sent their product to a supposed recycling firm."

B. In a 2005 DCEO grant for \$250,000 intended to improve Intercon's competitiveness, the company asserts: "Intercon's core recycling system is the most successful at diverting electronics from the waste stream (through complete domestic recycling)." Noting their competitive disadvantage in the industry, Intercon explains in their application that "viable competition comes from Asia where low labor costs and underdeveloped environmental regulations enable cheap material separation," adding that "many out-of-state domestic competitors regularly ship to Asia to have material processed inexpensively."

C. In 2005, Intercon received a \$75,000 DCEO grant for security enhancements to increase their electronic equipment recycling processing capacity. The application for this grant however did not include any statements on Intercon's processing techniques or their no export policy. Annex C includes highlighted excerpts from the first three applications for funding listed here.

D. In 2009, Intercon received a grant for \$75,000 to expand their electronic scrap recycling processing capabilities at the Chicago Heights facility. In their application for the funds, Intercon affirms a "no exportation" policy and a "Know Where It Goes" philosophy by which they "completely divert all electronics, metals, and plastics that we receive, from landfills or secondary markets, regardless of whether or not it would be more lucrative to do so."

Intercon's Public Statements of "No Export"

Intercon not only likely defrauded the state of Illinois through false statements in its request for public funds, they also similarly deceived customers by publicly touting their no export policy, commitment to the environment, and support for US jobs. On the Intercon website (removed in 2014), the firm states that it values being able to say they do not pack material in containers "headed for we know not where." Further, in the discussion of printed circuit boards on the Intercon site (removed in 2014), the company states: "we provide complete recycling with absolutely no reselling/remarketing, no landfilling, no incineration and no exporting." Finally, in an interview featured on the website, Intercon CEO Brian Brundage asserted that shipping to China is the "first instinct" of others in the recycling industry, but insists that this practice would hurt U.S. jobs by keeping all the manufacturing in China. Annex D includes screenshots from Intercon's website highlighting the "we know not where" and "no exporting" language.

Intercon Solutions Sues BAN for Defamation for Reporting Exports

The evidence BAN received from whistleblowers that demonstrated Intercon exported large amounts of material to China follows on the heels of BAN's Evidentiary Report that BAN made public and provided to the e-Stewards Certifying Body SGS in 2011. This report is required under the e-Stewards Certification's Critical non-Conformity Policy which allows BAN to bar companies from being Certified under BAN's e-Stewards electronic recycler certification program if the company is engaged in what are defined as "Critical non-Conformities".

In the Evidentiary Report, BAN reported that they had photographed and subsequently tracked 3 containers of e-Waste from Intercon's facility in Chicago Heights to China. One of the containers was returned by Hong Kong authorities and reported by them as being illegally imported e-waste. Intercon denied that they ever exported waste electronics. Intercon was the first processor to be denied the e-Stewards certification, but the company until very recently held its Responsible Recycling (R2) certification even after BAN provided the evidentiary report to R2 leadership upon publication.

In 2012 Intercon Solutions, one year after releasing the Evidentiary report, sued BAN and its director Jim Puckett for defamation. The suit consumed vast amounts of legal resources and time. BAN was fortunate to retain the generous pro-bono legal services led by John Phillips Law Firm in Seattle, and supported by Winston and Strawn in Chicago. During this period of time the lawyer for Intercon stated: "Intercon does not export hazardous waste."

Legal Questions

Basel Action Network (www.ban.org) is named after the Basel Convention, a United Nations treaty designed to halt the exploitation caused by the export and dumping of toxic wastes of all kinds on developing countries. While the United States is not a Party to the Basel Convention (we are the only developed country that has not ratified the Convention) nevertheless the trade of wastes from the US can violate the laws of importing or transit countries which are Parties to the Convention. This can happen in the following instances:

- a) when the export of hazardous electronic waste leaves the US for a Basel Party which is outside of the OECD group of developed countries.
- b) when the hazardous electronic waste is not first notified to the importing country and receives its consent prior to export.
- c) When the importing country has banned the importation of the waste on a national basis.

In the case of Intercon's exports to China all three of these violations occur. In the case of Intercon's exports to Vietnam at least a) and b) apply. Thus all of Intercon's exports could well be considered illegal from the standpoint of the importing countries.

With respect to US law, Intercon likely failed to abide by the US CRT rule which requires registration with US EPA prior to export.

Final Word

Basel Action Network (BAN) created the e-Stewards Standard and Certification program to ensure that responsible consumers and enterprises would be able to find recyclers that respected the Basel Convention obligations for environmental justice even in a country which failed to ratify that treaty. Intercon Solutions was not allowed to claim itself as a member of this select group of recyclers due to its being caught by BAN photographers, exporting hazardous waste with impunity. Once caught, they proceeded with a denial campaign, claiming that we were lying. Finally, three years later we have been vindicated. We urge all consumers of electronics to seek out and use only e-Stewards Certified Recyclers.

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