BAN answers questions raised regarding Intercon Solutions hazardous waste exportation to developing countries and e-Stewards® Certification denial

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On blogs, phone and on email, BAN has been asked numerous questions regarding the actions we have taken with the Chicago area recycler, Intercon Solutions (see story on homepage of BAN website). With this document we hope to answer some of these questions. Feel free to ask us any others directly by writing to inform@ban.org. As new questions arise we can update this document.

What does BAN think about Intercon Solutions’ efforts to petition the shipping line for more information about the “true” exporter?

The overwhelming evidence remains that Intercon Solutions has been an exporter of hazardous electronic waste to developing countries (China). This petition by Intercon to the shipping line would appear to be an effort to maintain the appearances and distract from facts at hand. It is very likely that the petition, even if responded to, is unlikely to reveal anything. It is very likely that Intercon has used a Freight Forwarding Agent to ship materials and thus entered the name of that agent as the shipper on the Bills of Lading. This is done by those wishing to hide their identity as shipper. Thus, it is quite likely that Intercon knows that the Bills of Lading do not list their name anywhere. Possibly the only way records of Intercon as shipper will be revealed is through court action which can force the forwarding agents / brokers (and no the shipping line) to reveal their books.
Intercon claims some other entity trespassed on their property and dropped off and filled the containers with hazardous electronic waste. What does BAN think of this theory?

According to news reports, Intercon recently received a $75,000 grant from the State of Illinois to provide sophisticated security systems at the Chicago Heights site to prevent data and other IT asset security risks. It is believed that this was a prerequisite of their award of Department of Defense contracts for handling of highly sensitive data and equipment. They are also recipients of a NAID certification, which requires extensive surveillance camera monitoring. It is, therefore, unlikely that such a blatant breach of security could take place under monitored remote cameras and other security measures put in place as a result of the grant. If this did occur, such a breach would give cause for alarm about the diligence of Intercon Solutions in all of its operations and assurances of security to its customers.

Further, it is difficult to imagine a motivation for a third party that just happens to also be in the electronic waste business to park containers within the Intercon fenced facility even if they were to find a way in. Every day a container is leased and sits, it costs the shipper money for no gain. Intercon Solutions is not in a convenient location to park containers for anyone else. Finally, the manager of LKQ, the company which co-leases the property, told BAN without equivocation that the containers in question belonged to Intercon, observing that “Intercon parks them there all of the time.” The claim of trespass therefore made by Intercon CEO Brundage stretches normal bounds of credulity.

Why is Intercon the first company for BAN to take such serious action against when other companies involved in BAN programs were caught exporting in the past?

Prior to the e-Stewards Certification program, BAN managed the e-Stewards Pledge program which was not nearly as comprehensive. Under the Pledge program, BAN’s policy for violators of the Pledge was “two strikes and you are out” to give the violator one opportunity at corrective action.

Under the much more rigorous certification program, BAN realized that previous policies needed to be strengthened. BAN now has a policy in place that considers a class of willful violations it refers to as “critical non-conformities.” These are violations that could be so damaging to the program that they could lead to a denial of licensing the company as an e-Stewards Recycler. That policy has now been formulated and has been provisionally adopted while awaiting final revision and adoption by the e-Stewards Leadership Council. It was on the basis of this new policy that the action on Intercon Solutions was taken. This new policy now applies to all prospective or
Is BAN being too harsh on companies with a one-strike policy and should there not be some sort of arbitration system instead?

By now, any recycler that still doesn't know that the e-Stewards program prohibits the export of hazardous electronic waste to developing countries is clearly negligent. Even if this requirement is initially misunderstood at the outset of the e-Stewards Certification process, any recycler preparing for the e-Stewards audit must understand the entire standard. The prohibition on export rules are defined front and center in the standard. Intercon Solutions had tried unsuccessfully to be qualified under the Pledge program, and was now trying to become certified to an even higher standard.

Further, apart from the e-Stewards Standard, the export of hazardous waste to developing countries is well known in the industry following exposes in 60 Minutes, Frontline, 20/20, and the broad coverage by the trade press. e-Waste export causes great, tangible harm to human health and the environment. No company in the e-recycling industry can credibly claim ignorance of this fact.

The entire value of a certification is diminished if companies game the certification system, keep double books, set up shell companies to do their exporting for them, or do something else to hide information from auditors. If such violators only got a slap on the wrist, there is little incentive for others to do the right thing and uphold the standard. Without accountability, the certification process has no value for anyone.

Arbitration for matters of willful violation is inappropriate. It must be remembered that this is a voluntary program. Those that choose to be part of it are committing themselves to meet a rigorous standard. For those that willfully violate the standard, as opposed to making an honest mistake, it is important to take punitive action to maintain the integrity of the program. While BAN will always keep its ears open to extenuating circumstances or mistakes, it will not arbitrate what has already been made clear in the licensing contract and in the Standard.

The e-Stewards contract does not say a company has to be perfect. Indeed, most non-conformities discovered during an audit are not considered "critical." But that contract does say that if a recycler's actions seriously devalue or discredit the program, BAN has the right to withhold or withdraw the license to be an e-Stewards Recycler.
Why does BAN say that a company may have violated the law rather than giving us a definitive statement? Haven’t you done your homework?

BAN has identified the laws it believes are likely to have been violated by the actions of Intercon Solutions. But it would be irresponsible for BAN to presume to take on the role of government and assume guilt before it is proven in a court or plea. BAN cooperates with enforcement bodies such as US EPA, Hong Kong EPD and Interpol, but does not pretend to do their job.

Why does BAN state that the import to Hong Kong was hazardous waste? How do you know?

BAN had alerted Hong Kong Environmental Protection Department of containers coming from Intercon Solutions. They opened the container and found that the shipment contained hazardous waste as determined by Hong Kong. They subsequently required that the shipment be returned to the U.S. Hong Kong law forbids the importation of hazardous waste electronics such as cathode ray tubes (CRTs) and batteries. More information regarding the facts of this case and the Hong Kong importation laws is available by contacting Hong Kong EPD. For those wishing to make such contact BAN can provide the email addresses and names of the competent authorities there.

I thought that the results of audits are meant to stay confidential. Did BAN violate that principle?

BAN did not violate the audit confidentiality agreement. The violation was discovered outside of the audit process in surveillance that BAN conducts in various cities across the U.S. Rather, BAN requested that the Certifying Body conducting the e-Stewards audits at Intercon present the findings to determine if there was an explanation. Intercon presented nothing to the auditors that could allay or alter our concerns about the discovered exports. Stating this fact does not in any way violate the confidentiality agreement.

Why would Intercon actively pursue certification if they knew they could not meet the requirements of the e-Stewards Standard?

Of course this is impossible to know. Unfortunately, some companies may try to achieve what they do not deserve. Even in a comprehensive certification audit, shipping records can be falsified or missing and thus auditors can get an incomplete picture. Our supplemental evidence provided by the tracked containers indicated that this was a distinct possibility. It is for this reason that BAN maintains an added layer of verification with the e-Stewards certification by conducting unannounced surveillance. e-Stewards is currently the only electronics recycling certification that provides this kind of additional
verification. E-Stewards is also currently the only e-recycler certification program that can remove egregious violators from the program and revoke or deny certifications.

What should long-time customers of Intercon Solutions do?

Intercon Solutions advertises that they are the preferred vendor of many large and sensitive customers including the Department of Defense, Department of Energy, NASA, Sony, and Texas Instruments. It is known that many state agencies also are using Intercon Solutions. Customers of Intercon Solutions or any other company shown to be exporting should take such evidence as presented in this case by BAN very seriously. The larger the generator, the higher the risks from illegal or damaging exportation of hazardous e-waste. All generators should conduct their own due diligence to protect their interests and the interests of stockholders and stakeholders. Those who might have been misinformed about services should consider appropriate action.

Will BAN conduct similar investigations on other recyclers?

BAN intends to continue its practice of spot-checking random locations for e-waste export. Most electronic waste exportation is illegal under international law (e.g. Basel Convention) and BAN’s mission is to uphold the laws and agreements of the Basel Convention. We do these checks without prejudice to certifications held. BAN’s intention is to make the recycling industry a truly responsible one. Many recyclers are doing the right thing but suffer because of the lack of a level playing field caused by countries like the United States not ratifying the Basel Convention and the Basel Ban or by poor enforcement. Unscrupulous recyclers make more money on illegal export while others are spending great amounts of money to protect people and our environment. This must stop. BAN will continue its efforts to make sure it stops.

Why did BAN only sanction Intercon Solutions for two years rather than permanently?

BAN’s goal is to reform the electronics recycling industry and therefore believes that companies should be allowed in time, to correct their ways. Many recyclers that once exported hazardous e-waste do developing countries are now recycling responsibly by internalizing costs and following international rules. However, some punitive action against egregious violators is necessary to reward those doing things the right way and to ensure the integrity of the program. BAN believes a two-year sanction is the appropriate balance.
What is the situation with payments of fees in the case of a denied certification?

Some confusion seems to have arisen following a story in Resource Recycling’s online newsletter regarding payment of fees. BAN was asked if Intercon Solutions would be obliged to pay the audit fees. Audit fees are a contract matter between the recycler and the certifying body, in this case, SAI Global and Intercon Solutions. BAN is not privy to those arrangements. On the other hand, BAN gets paid a license and marketing fee for administration and promotion of the program. These fees are normally paid after a company passes the e-Stewards audit conducted by the certifying body and then signs the licensing agreement with BAN. Because Intercon was denied entry into the e-Stewards program, no license fee will be collected by BAN.

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