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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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K.G. Wiman
Chief, Office of Engineering
U.S. Department of Transportation
U.S. Coast Guard (G-ECV-5B)
Washington, DC 20593

Dear Mr. Wiman:

This is in response to your letter of September 23, 1987, concerning the RCRA regulations and the generation of ATON batteries. As you noted, my office recently issued an interpretive memo to EPA Region X concerning generation of these batteries. As discussed below, we do not view the memo as a departure from past EPA policy, and for that reason, it did not occur to my staff to consult with the Coast Guard.

The definition of generator for the purposes of RCRA is by site, rather than by central facility. A site may include each vessel that is a point of waste generation. EPA dealt with a situation analogous to yours when it promulgated its small quantity generator regulations on March 24, 1986. In the preamble to that rule, we clarified that off-shore drilling facilities are separate generation points, and as such are subject to the 40 CFR Part 262 generator requirements. (See 51 FR 10162.) Also, when EPA amended the hazardous waste regulations to exempt waste generated in product or raw material tanks and vessels, EPA used examples of units that would be regulated absent the exemption that included vessels (i.e., water craft). (See 45 FR 72025; October 30, 1987.) Therefore, we have always considered waste generation at-sea as potentially subject to regulation, and the July 30, 1987 memo to Region X correctly interprets current EPA regulations.

Since the July 30, 1987, memo was sent from OSW to Region X, I understand that our staffs and staff from the U.S. Navy have met and discussed this issue. From that discussion, there are three points that I would like to clarify. First, if a buoy is brought onto a ship and the ATON battery is removed, the ship can be considered the generation site (instead of the buoy.) This may help reduce paperwork for you, as each servicing vessel could

comply with 40 CFR Part 262 instead of each buoy. Second, so long as the spent batteries remain on-site, i.e., on board the ship, the 90-day accumulation provision of 40 CFR 262.34 would allow storage of the batteries if the regulatory conditions are met. Third, while it is generally true that a facility must have a RCRA permit or interim status to receive hazardous waste from off-site, please note that 40 CFR Section 261.4(c) does allow storage of hazardous waste in DOT-approved containers for 10 days or less at transfer facilities without a permit or interim status. Your shore bases may be able to operate under this "10-day rule" in lieu of becoming RCRA storage facilities.

Also, as a result of that meeting, my staff has concluded that EPA should re-evaluate the exemption in Section 261.4(c) for product and raw material vessels to determine whether it should be expanded to cover other vessels. At this meeting we also discussed resource limitations that would affect the timing of a formal reevaluation of the exemption. One way to expedite this evaluation and possible rulemaking would be for the Coast Guard to provide staff support for the project, i.e., perhaps a three day per week detail over several months. If this were possible, we could begin this effort much sooner.

If you have further questions in this area, please contact Mike Petruska of my staff at (202) 475-9888. Also, please feel free to contact Mike on whether a detail would be feasible.

Sincerely,

Jeffery D. Denit
Acting Director
Office of Solid Waste