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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAR 4 1991

Richard A. Svanda  
Director  
Hazardous Waste Division  
Minnesota Pollution Control Agency  
520 Lafayette Road  
Saint Paul, Minnesota 55155-3898

Dear Mr. Svanda:

This letter responds to your January 16, 1991 request for an interpretation concerning the regulatory exemption found at 40 CFR 261.6(a)(3)(ii) for "used batteries (or used battery cells), returned to a battery manufacturer for regeneration." In your letter you explain that the Minnesota State Legislature has passed a bill making it illegal to dispose of four types of waste battery cells in municipal solid waste landfills. The bill went further by requiring manufacturers to establish a system for proper handling and disposal of such batteries.

You are requesting that EPA interpret the exemption for used battery regeneration to include material recovery. In this way, the management of the batteries would-be exempt from the otherwise applicable hazardous waste regulations (e.g., manifesting and storage), thus facilitating the recycling of these materials. As alternatives to this interpretation, you request that EPA either: 1) revise 40 CFR Part 266 Subpart G, "Spent Lead-Acid Batteries Being Reclaimed," to include all waste batteries being reclaimed; or 2) recommend to the State regulatory agencies that they use enforcement discretion in implementing the applicable regulations.

In promulgating the exemption for used batteries that are "regenerated," the Agency discussed its reasons for doing so (see the April 4, 1983 proposal preamble, 48 FR 14496). The main reasons were that there was minimal risk of environmental damages and that the activity of regenerating the batteries was very similar to the recycling of a commercial product. Such activities are generally not considered waste management

activities, but are more akin to a manufacturing operation. In the January 4, 1985 final rule preamble (see 50 FR 633), EPA defined reclamation to include the "regeneration" of waste materials and the processing of waste materials to recover usable products, but not all reclamation is exempt. In the preamble discussion, the Agency drew a distinction between regeneration (i.e., processing to remove contaminants in a way that restores a product to its usable original condition, as in the reclamation of spent solvents through distillation) and material recovery (i.e., processing to recover usable material values as the end-products of the process, as in the reclamation of metal values by the smelting of a secondary material). EPA's long-standing policy is that smelting is not regeneration, and batteries sent for smelting are therefore not exempt under this provision, i.e., the definition of "regeneration" is well established and does not include metals recovery. A change in the meaning of "regeneration" is not interpretive, but would require a regulatory change (i.e., amending 40 CFR 261.1(c)(4)), and would have far-reaching implications, e.g., the standards at Part 266 Subpart G for spent lead-acid batteries that are reclaimed would not apply to anything if the spent lead-acid batteries were exempt.

Regarding your request that the Agency extend the current reduced regulatory requirements applicable to spent lead-acid batteries that are reclaimed to all waste batteries, EPA may consider such an amendment to encourage the recycling of waste batteries provided that protection of human health and the environment can be ensured. The reasons for the special requirements for spent lead-acid batteries destined to be reclaimed were discussed in the April 4, 1983 proposal (see discussion 48 FR 14498-99) to the January 4, 1985 final rule. While EPA required hazardous waste permits for storage at reclamation sites (e.g., secondary smelters and battery crackers), EPA did not believe that regulatory controls on generators and transporters were necessary because there were other incentives outside of RCRA that would ensure that the materials would both arrive at their intended destination and would not be improperly managed before their reclamation. For example, spent lead-acid batteries were an established valuable commodity and were customarily reclaimed (indeed, the secondary lead smelting industry is based on the reclamation of lead-acid batteries) and mishandling during transportation was considered unlikely due to Department of Transportation requirements under

40 CFR 122. Also, the Agency believed that the storage of the spent batteries by retailers, wholesalers, or local service stations would be properly managed because these establishments rely heavily on good public relations with the consumer. To the extent that the same considerations are evidenced in the management of other types of waste batteries, the Agency may consider providing a similar regulatory framework in a future rulemaking.

Finally, with regard to your third alternative, it is certainly within the purview of an authorized State to use discretion in how it implements its own hazardous waste program, including how it sets its enforcement priorities. However, EPA has a policy against giving definitive assurances, written or oral, outside the context of a formal enforcement proceeding, that EPA will not proceed with an enforcement response for a violation of an environmental protection statute or regulation.

We share your interest in finding alternatives to control the disposal of potentially hazardous waste streams that are typically managed in municipal landfills. The situation you described will be considered in efforts underway to address multiple concerns regarding the regulation of hazardous waste recycling. If you have further questions regarding the regulations applicable to these waste types, you may contact Mr. Mike Petruska, Chief of the Regulatory Development Branch, at (202) 475-8551.

Sincerely,

Original Document signed  
"Jeff Denit for"

Sylvia K. Lowrance  
Director  
Office of Solid Waste