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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

January 28, 1993

James C. Ross
Logistics Manager
Sanyo Energy (U.S.A.) Corporation
2001 Sanyo Avenue
San Diego, CA 92173

Dear Mr. Ross:

Thank you for your letter of January 4, 1993. In your letter, you asked a number of questions regarding movements of hazardous waste nickel cadmium batteries from Mexico to Japan via the United States.

You asked if hazardous waste generated in Mexico shipped under a U.S. Customs bond through the United States to Japan is subject to the Resource Conservation and Recovery Act (RCRA). Regardless of where hazardous waste is generated or its Customs tariff classification, it is subject to RCRA and RCRA regulations while within U.S. jurisdiction, namely, within U.S. borders. With regard to imported hazardous waste, from the moment the hazardous waste enters the U.S., it is subject to and must be in compliance with all applicable provisions of the RCRA Subtitle C hazardous waste program. This means that the U.S. importer for the hazardous waste must possess an EPA identification number; must use appropriate DOT packaging, labels, and markings for hazardous waste shipments; must prepare a hazardous waste manifest for use during transportation in the U.S.; must use a transporter which also possesses an EPA identification number; and must comply with other requirements found in 40 CFR Part 262. Transporters transporting hazardous waste in the U.S. are subject to 40 CFR Part 263.

If the shipments of hazardous waste are then exported from the U.S. to Japan, then export provisions found at 40 CFR Part 262 Subpart E also apply. These include requirements to submit a notification of intent to export to EPA; to attach an EPA Acknowledgement of Consent to the shipment's manifest once consent

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is received from the importing country government; to submit an annual report documenting the shipment; and other Subpart E requirements.

You also ask if the hazardous waste batteries would qualify for an exemption from regulation found at 40 CFR Part 261.6(a)(3)(ii). Section 261.6(a)(3)(ii) states "The following recyclable materials are not subject to regulation under parts 262 to 266 or parts 268, 270, and 124 of this chapter, and are not subject to the notification requirements of section 3010 of RCRA: (ii) Used batteries (or used battery cells) returned to a battery manufacturer for regeneration; . . . ". Unfortunately, your letter does not provide sufficient information for such a determination to be made, saying only that the batteries will be sent to Japan for recycling, rather than being sent to a manufacturer for regeneration, as stipulated in the exemption. However, based on your telephone conversation with Angela Cracchiolo of my staff, the operations to be conducted in Japan would include smelting of the nickel cadmium batteries, an activity not within the scope of the 261.6(a)(3)(ii) exemption. In addition, Part 262.11 requires that the generator of a solid waste make the determination if that waste is a hazardous waste.

The hazardous waste manifest for a shipment of hazardous waste batteries going from Mexico to Japan via the U.S. would be prepared showing the name and address of both the U.S. importer and the foreign (Mexican) generator and the EPA identification number of the U.S. importer in the generator block and the name and site address of the foreign (Japanese) consignee in the designated facility block.

If you have any questions regarding this response, please contact Angela Cracchiolo of my staff at (202) 260-4779. Thank you for your interest in safe and effective management of hazardous waste.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste