

9462.1994(01)

RESPONSE TO A REQUEST FOR MODIFICATION OF 40 CFR PART 262
REGARDING TRANSPORTATION OF RECYCLABLE HAZARDOUS WASTES

November 9, 1994

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
Office of Solid Waste and Emergency Response

Jean M. Beaudoin, Chairman
Environmental Committee
Battery Council International
Weinberg, Bergeson & Neuman
1300 Eye St., N.W.
Suite 1000 West
Washington, D.C. 20005

Dear Ms. Beaudoin:

Thank you for your letter to the Administrator of August 16, 1994 concerning the transportation of certain recyclable hazardous wastes. Specifically, you requested a modification of 40 CFR Parts 262 and 263 to allow recyclable hazardous wastes identified in Appendix XI of 40 CFR Part 266 to be transported under a new recyclable materials tracking document instead of the Uniform Hazardous Waste Manifest. The materials would then be regulated principally under the Department of Transportation's hazardous materials' regulations (40 CFR Part 170-179), to which they are currently subject.

As you may know, EPA's Office of Solid Waste (OSW) had a Definition of Solid Waste Task Force which recently recommended changes in the Agency's regulation of hazardous waste recycling under the Resource Conservation and Recovery Act (RCRA). The recommendations are contained in a report entitled "Reengineering RCRA For Recycling" (September 1994). One of the recommendations of the report is that recyclable hazardous wastes should be transported under a system similar to the one suggested by your organization. The recommendation was based in part on the high transportation costs incurred by transporters using the Uniform Hazardous Waste Manifest, which some parties believe may not be necessary for all hazardous waste destined for recycling.

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The Task Force recommendations will be presented to the Assistant Administrator for Solid Waste and Emergency Response for his review in November 1994. Your suggestion will receive full consideration as the Agency evaluates the range of possible changes in how recyclable materials are regulated.

We appreciate your interest in this important issue, and I hope this letter has addressed your concerns. If you have any further questions, please call Marilyn Goode of my staff at 202-260-6299.

Sincerely,
Michael Shapiro, Director
Office of Solid Waste

Attachment

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August 16, 1994

Carol M. Browner
Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Room W1200
Washington, D.C. 20460

Dear Ms. Browner:

This is a petition for a modification of the Environmental Protection Agency's ("EPA") hazardous waste transportation regulations (see footnote 1). The petition requests limited changes that would allow certain recyclable materials to be shipped in commerce using a new recyclable materials tracking document and not the Uniform Hazardous Waste Manifest. This change would advance recycling, eliminate unnecessary costs and fully protect public health, safety and the environment. The proposed modification also is fully consistent with recommendations adopted by EPA's Definition of Solid Waste Task Force after numerous meetings and months of study on ways to remove burdens on recycling without jeopardizing the integrity of the solid waste program.

Specifically, the Battery Council International ("BCI") seeks a modification of EPA's transportation rules (40 C.F.R. Parts 262 and 263) to allow recyclable hazardous wastes identified in 40 C.F.R. Part 266 Appendix XI ("Appendix XI wastes") to be transported in commerce under a new recyclable materials tracking document. In addition, because the materials could be shipped without a hazardous waste manifest, they would not be subject to EPA's transportation requirements and would not have to be shipped by a hazardous waste transporter. See 40 C.F.R. § 263.10. Nevertheless, the new tracking document BCI is proposing would

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require disclosure of the same information as required by a hazardous waste manifest and thus, no data collection or tracking capabilities would be lost. Moreover, all substantive transportation requirements in EPA's rules would still apply. The source of the requirements, however, would be the Department of Transportation's Hazardous Material Regulations ("DOT's HMR"), 49 C.F.R. Parts 170 to 179, not EPA's regulations.

From an environmental standpoint, recycling undoubtedly is the best way to manage the Appendix XI wastes. Yet, because the existing hazardous waste transportation requirements have become unjustifiably expensive, the present system, requiring the use of hazardous waste manifests and hazardous waste transporters, is an impediment to recycling. Indeed, the costs of transporting Appendix XI recyclable wastes to the recycling facility under the existing system often exceeds the net value created from recycling the materials. Where this is the case, the current system creates economic disincentives for handling the Appendix XI materials and is unjustifiable in light of the fact that an alternative, less burdensome but equally protective transportation scheme is available.

Accordingly, BCI requests that the EPA amend sections of the hazardous waste management regulations, 40 C.F.R. Parts 260 to 299, so that (a) recyclable hazardous wastes identified in 40 C.F.R. Part 266, Appendix XI, may be transported in interstate and intrastate commerce for recycling accompanied by a tracking document other than the Uniform Hazardous Waste Manifest (40 C.F.R. Part 262, Subpart B) and (b) these same wastes can be carried by an authorized hazardous materials transporter other than a transporter meeting all of the requirements of 40 C.F.R. Part 263 and any related requirements imposed by various states (see footnote 2).

BACKGROUND

BCI is a not-for-profit trade association representing commercial entities involved in the manufacture, distribution, sale and recycling of lead-acid batteries ("lead batteries"). BCI's members include manufacturers and distributors of lead batteries and the secondary smelters that reclaim or recycle lead batteries once they are spent. BCI's membership represents more than 99 percent of the nation's domestic lead battery manufacturing capacity and more than 84 percent of the nation's lead battery recycling or secondary smelting capacity.

BCI strongly supports lead battery recycling. BCI actively promotes the enactment of mandatory recycling laws, sponsors campaigns to encourage recycling and, through its members, is directly involved in the recycling of lead batteries. In part as a result of BCI's efforts, thirty-seven states have adopted comprehensive lead battery recycling laws and five additional states have adopted disposal bans that have the practical effect of forcing recycling. Due to these measures, the U.S. battery lead recycling rate has been at or above 94 percent for the last three years.

In addition to batteries, BCI's members also collect and recycle other lead bearing materials. For example, virtually all of the by-products generated in the course of producing a battery (e.g., baghouse dust, waste water treatment sludge, plant scrap, dross, floor sweepings and others) have recoverable lead values and are collected and sent to secondary lead smelters for recycling. All of the recyclable materials coming to, or produced at, a secondary lead smelter are recycled, including first-run slags, baghouse dust, treatment sludge and plastic casings.

Recyclable materials handled by BCI's members are identified in 40 C.F.R. Part 266 Appendix XI. This appendix lists those recyclable wastes that are so similar in character to primary materials that they are considered feedstock, not wastes, when reclaimed. See 40 C.F.R. Part 266, Subpart H. Appendix XI materials are generated by manufacturers, assemblers and other entities in the lead processing and affiliated industry. Once generated, the materials either are collected by or sent to secondary smelters for reprocessing. Certain Appendix XI materials also are generated by secondary smelters who send them to other smelters for further reprocessing and recovery of lead.

DISCUSSION

A. The Issue

Some Appendix XI materials are regulated as hazardous wastes when reclaimed. When these materials are transported from one location to another, they must be accompanied by a Uniform Hazardous Waste Manifest and the generator and transporter must comply with the relevant portions of 40 C.F.R. Parts 262 and 263. These regulations require that shipments meet the applicable

packaging, labeling, marking and placarding standards in DOT's HMR.

Transporters also must comply with all applicable requirements in the HMR, must have a valid EPA identification number, and must respond to any discharge or releases occurring during transportation. See 40 C.F.R. §§ 262.30 to 262.33.

Notably, with the exception of the transporter's obligation to have an EPA identification number, the packaging, labeling, marking, placarding and other transportation related requirements imposed under EPA's rules (Parts 262 and 263) are identical to those required for common carriers of hazardous materials under the HMR. That is, the requirements that presently apply to shipments of Appendix XI materials would still apply by virtue of the HMR even if EPA's Parts 262 and 263 rules did not exist. See 49 C.F.R. §172.101.

While there is no difference in the substantive requirements involved in handling Appendix XI materials under EPA's Parts 262 and 263 rules or the DOT's HMR, the costs associated with shipping under the two schemes are significantly different. RCRA hazardous waste must be transported by a licensed hazardous waste hauler. The cost of shipping a RCRA manifested hazardous waste in a hazardous waste hauler is much higher than the cost of shipping essentially the same material in a common carrier licensed to carry hazardous materials. In an informal survey conducted by one BCI members, the costs of shipping RCRA manifested hazardous wastes were more than double the cost of shipping DOT hazardous materials even though in all instances the materials being transported were fundamentally the same.

The cost differential between shipping under RCRA's rules and the HMR is attributable primarily to additional requirements imposed by various states on transporters of materials requiring a RCRA hazardous waste manifest. These extra state requirements include such things as special training or equipment, higher limits for liability insurance, local taxes or fees and additional reporting requirements. See, e.g., Pennsylvania Code, Title 25, § 263.23 (imposing a hazardous waste transportation fee on transportation of manifested wastes paid into the State Hazardous Sites Cleanup Fund); Alabama Hazardous Waste Management Regulation, § 335-14-4-04 (requiring applicants for transporter permits to submit a performance bond guaranteeing compliance with, among other

things, the regulations, permits, orders and corrective action measures); Arkansas Hazardous Waste Management Code, §§ 16, 11(r) (charging \$2.00 per manifest issued); Maryland Hazardous Waste Rules § 26.13.04 (requiring hauler certificates, performance bonds, special training for drivers and instructor's of drivers, annual registration fees on cabs, containers and trucks, vehicle inspections); New York Waste Transport Permits Regulations § 364.5 (requiring \$5,000,000 in liability insurance for vehicles carrying 10,000 pounds or more of wastes requiring manifest; federal requirements are \$1,000,000 in liability insurance).

States impose additional requirements either because they perceive a need for tighter restrictions on hazardous waste transporters than on common carriers or, as is evident from some of the state schemes, because they see this area as a potential source of additional revenues. The motive in some cases may be both. Regardless of the reason, BCI is confident that no state has focused on the adverse impact these added transportation rules have on legitimate recycling.

Moreover, neither the DOT nor EPA have concluded that the vast array of additional requirements imposed by states are necessary to protect the public health, safety or the environment. To the contrary, EPA's Definition of Solid Waste Task Force found that the high costs arising from the added state requirements adversely affect the waste management system. The added cost eliminates competition between carriers as fewer carriers are willing to compete in the hazardous waste transportation market with the added requirements and associated increased burdens and cost of doing business. Further, the fact that requirements vary from state-to-state adds to the complexity and cost. And, as noted above, the higher costs of transportation create a disincentive to recycling where the recyclable materials have a low recovery value relative to the high cost of transporting the material to the recycling facility.

Because it is impracticable to seek changes on a state by-state basis, BCI requests a federal response.

B. The Solution

Transporting Appendix XI hazardous wastes destined for recycling under EPA's rules costs twice as much as shipping the same materials under the HMR. The substantive requirements of EPA's rules and the HMR are virtually identical, and no added protection

to health, safety or the environment is gained by the additional costs. Yet, the added cost of EPA's rules affects the efficiency of the hazardous waste management system by reducing competition and impeding a preferred method of managing certain recyclable wastes.

EPA could eliminate these disincentives to recycling by adopting a rule applicable to Appendix XI materials that would allow those materials to be shipped in commerce with a "Recyclable Materials Tracking Document" and not a hazardous waste manifest. The Recyclable Materials Tracking Document would require the same information as a hazardous waste manifest with the exception of certain information that is relevant only to shipments under Parts 262 and 263, e.g., a transporter's U.S. EPA ID Number, waste minimization certification and land disposal restriction notification (see footnote 3). Like the manifest, the tracking document would follow the shipment to its destination and the receiving entity would be required to acknowledge receipt, noting any discrepancies.

Because Appendix XI materials would not be required to be transported with a manifest, transporters of these materials would not have to comply with 40 C.F.R. Part 263. See 40 C.F.R. § 263.10. Nevertheless, as noted above, all of the requirements that would have applied (e.g., labeling, placarding) will still apply pursuant to the HMR.

Finally, under BCI's proposal, a state or EPA's ability to track shipments and the substantive shipping requirements will not change. What will change, however, is that the state requirements applicable to shipments requiring a Uniform Hazardous Waste Manifest will not apply to Appendix XI materials unless the states, after notice and open debate, determine such requirements are needed for this limited class of recyclable materials.

BCI appreciates your attention to this matter and stands ready to provide whatever additional information you may need in conducting your evaluation of this request.

Very truly yours,
Jean M. Beaudoin, Chairman
BCI Environmental Committee

1 This petition is submitted in accordance with Section

4(e) of the Administrative Procedure Act, 5 U.S.C. §553(e).

- 2 Not all of the wastes listed in Appendix XI are hazardous wastes when being reclaimed. The transportation of nonhazardous wastes, while not subject to the requirements of the Solid Waste Disposal Act ("RCRA") set forth in 40 C.F.R. Parts 262 and 263, may be subject to similar state transportation requirements, i.e., California's transportation rules. Accordingly, this petition is intended to cover all Appendix XI wastes whether or not they are RCRA hazardous wastes subject to the manifesting and transportation related requirements in 40 C.R.F. Parts 262 and 263.
- 3 The waste minimization certification would not be applicable to materials shipped under a Recyclable Materials Tracking Document because it would be understood that these materials were to be recycled and the generator thus was engaged in waste minimization. For the same reasons, a land disposal restriction notification would be unnecessary.