

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Timothy J. Lafond, Chair
Environmental Committee

and

Mr. Gerald Dubinski, Chair
Industry Relations Committee
Battery Council International
Howrey and Simon
1299 Pennsylvania Avenue, N. W.
Washington, D.C. 20004-2402

Dear Mr. Lafond and Mr. Dubinski:

Thank you for your letter of 22 December 1997 in which you express your concern regarding the timing of the processing of the Battery Council International's (BCI's) petition to the Environmental Protection Agency (EPA). The petition requests an exemption from hazardous waste manifest requirements for certain wastes (referred to as Appendix 11 wastes) routinely generated by BCI's membership.

As you indicate in your letter this issue was discussed in the Definition of Solid Waste Task Force which completed its work in late 1994, One of the recommendations the final report of the Task Force included was a "new recyclable materials manifest" that would eliminate the stigma associated with transportation of hazardous waste. The Task Force recommendation addressed all regulated hazardous waste recyclables, and as far as we can ascertain does not suggest that Appendix 11 materials should receive special consideration in advance or in lieu of any other recyclables. You may recall that this recommendation did not define specific elements that would constitute a "new" manifest. The recommendation indicates that it might: (1) look just like the existing manifest, but be renamed; (2) to the extent possible, eliminate the more stringent State requirement that attach to transportation of hazardous wastes; and (3) ensure that identical information is provided to States that rely on automated tracking of manifest data for hazardous waste enforcement programs. Finally, the Task Force also recommended that the Agency seek changes to the Department of Transportation (DOT) regulations that would render additional hazardous waste requirements, except for manifest procedures, unnecessary. In short, the Task Force made a recommendation that would require substantial additional work before such an "alternative" manifest could be proposed.

Elliott Laws, then EPA's Assistant Administrator for Solid Waste and Emergency Response, warmly welcomed the Task Force Report. However, the Task Force

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recommendation was never a formal Agency position and does not necessarily reflect all the perspectives that would determine an EPA position. After the Task Force completed its work, EPA decided instead to begin rule making to address the difficult question of jurisdiction. As your letter recounts, EPA did indicate that we would deal with the BCI petition in that context. It is also true that EPA recently decided it needed further data before it could proceed with the redefinition of solid waste rule making.

The most promising regulatory vehicle for addressing the BCI petition is the hazardous waste manifest regulation now under development. The broader state input, the work with the Department of Transportation and the consideration of Appendix 11 materials in the context of all hazardous waste recyclables and other wastes requiring a manifest, ensure that the important and complex issues related to hazardous waste transportation requirements will be reviewed. During the last two months EPA has conducted stakeholder outreach to obtain views on the strategies being considered for revamping the manifest, and has specifically sought comment on exempting recyclables from manifest requirements. We continue to evaluate a variety of alternatives for hazardous waste recyclables as a whole, but are not prepared to issue a decision on the BCI petition until such time as we are able to decide the overall direction of the revised manifest.

I recognize that EPA's decision not to give priority to BCI's petition is frustrating, however we must ensure that the issues are properly identified, analyzed, and subject to review by the appropriate parties, both inside and outside EPA. I cannot agree with your assessment that the time and resources required by EPA personnel to address the petition is not significant, because I do not believe there is necessarily a consensus in support of your petition or on the particular solution it urges EPA to adopt. I remain convinced that the best forum to develop this issue is the broader manifest project.

I look forward to the continued interest of BCI as we work through issues related to EPA's review of the petition. If you have questions about this response or EPA's plans for the manifest rule, you may call me directly at (703) 308-8869.

Sincerely,

Michele Anders, Chief
Generator and Recycling Branch
Office of Solid Waste

cc: David Bussard