

9497.1989(02)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

OCT 19 1989

E. L. Williams, Jr.
Colonel, USAF
Director of Environmental Protection
Defense Logistics Agency
Defense Reutilization and Marketing Service
Federal Center
74 N. Washington
Battle Creek, Michigan 49107-3092

Dear Colonel Williams:

This letter responds to your September 19, 1989 request for information regarding the regulatory status of spent lead-acid batteries stored by the Defense Reutilization and Marketing service (DRMS) before reclamation and the applicability of the speculative accumulation provision found at 40 CFR 261.2(c)(4).

The speculative accumulation provision (the requirement to recycle 75% of a material within one calendar year to demonstrate that the material is not a solid waste) is entirely separate and distinct from the regulations applicable to spent lead-acid batteries. The speculative accumulation provision is used to define a material as a solid waste. Because the only use for this provision is to bring under regulation as a solid waste those materials which are intended to be recycled in one year, but are not, the speculative accumulation provision is not applicable to those materials already defined as solid wastes (e.g., spent lead-acid batteries). This is evident in the definition of "accumulated speculatively" at 40 CFR 261.1(c)(8) which states that " ... (Materials that are already defined as solid wastes also are not to be included in making the calculation.)"

Under Federal regulations, the lead-acid batteries that DRMS collects and stores are spent materials that are reclaimed. As provided in Table 1 at 40 CFR 261.2(c), spent materials that are reclaimed are solid wastes. Assuming lead-acid batteries likely exhibit one or more characteristics of a hazardous waste, they are defined as hazardous wastes pursuant to 40 CFR 261.3(a)(2)(i). However, certain recyclable materials are regulated under special provisions. In the case of recycled spent lead-acid batteries, the appropriate regulatory section is 40 CFR Part 266 Subpart G.

Part 266 Subpart G states that "Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them are not subject to regulation under Parts 262 through 266 or Part 270 or 124 of the chapter, and also are not subject to the requirements of section 3010 of RCRA." Therefore, DRMS is not subject to regulation under RCRA for the storage of spent lead-acid batteries. (The spent

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batteries remain a solid waste and, if they exhibit a

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characteristic, a hazardous waste; however, if they are reclaimed, they are exempted from substantive regulation under RCRA).

You should note that State regulations may differ from, and, in fact, be more stringent than, Federal regulations. Therefore, you should also contact the appropriate State regulatory agencies to determine what State regulations may be applicable.

Thank you for your interest concerning the recycling of lead-acid batteries. If you have further questions regarding the applicability of Federal regulations, you, or your staff, should call the RCRA/CERCLA Hotline at 1-800-424-9346, or contact Mitch Kidwell, of my staff, at (202) 475-8551.

Sincerely,

Original Document signed

Edwin F. Abrams
Chief
Review Section

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