

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

NOVEMBER 12, 1991

Jan S. Eastman
Secretary
State of Vermont
Agency of Natural Resources
103 South Main Street
Center Building
Waterbury, Vermont 05671-0301

Dear Ms. Eastman:

Thank you for your letter of October 9, 1991, expressing support for special regulations for small, dry, sealed nickel-cadmium batteries that are destined for reclamation. You suggest that these regulations should be modeled after the 40 CFR Part 266 regulations governing recycled lead-acid batteries. We are pleased that you support such regulations since we plan to publish a proposed rule in the near future that will facilitate the battery collection and take-back programs being developed by various states. The proposed regulations, known as special collection system regulations, will address not only nickel-cadmium batteries but all hazardous waste batteries. We believe that as recycling programs mature, collection of other types of hazardous waste batteries will also warrant special collection regulations. The proposal will request comment on various approaches to facilitating the collection of hazardous waste batteries while ensuring protection of human health and the environment.

In your letter you also recommended that we explore interim rules suspending applicability of the Toxicity Characteristic to nickel-cadmium batteries while the special collection system regulations are developed. As you probably know, the Battery Products Alliance (BPA) requested that we grant immediate relief from the Toxicity Characteristic for small batteries destined for reclamation.

After receiving this request, we met with BPA to discuss their concerns. BPA stated that applying hazardous waste regulations to batteries impedes recycling efforts because persons who manage these batteries must obtain permits or interim status and comply with the regulations for managing hazardous waste.

We agree with BPA that encouraging recycling of these batteries is an important and environmentally worthwhile goal. After considering BPA's request for an immediate exemption from the hazardous waste regulations for these batteries, however, we determined that EPA is not in a position to pursue this type of all-or-nothing solution on a temporary basis. Rather, we will continue to work on

special collection system regulations specifically tailored to encourage recycling of certain hazardous wastes. We believe that focusing our resources on developing tailored regulations for these wastes will better encourage recycling as an integral and permanent part of our program than would diverting these resources toward evaluating and developing a limited and temporary exemption. Any such tailored special collection system will be designed to maximize incentives for recycling while ensuring the necessary level of environmental protection.

Finally, in addition to those facilities that have permits or interim status to manage these wastes, several existing exemptions in the Resource Conservation and Recovery Act regulations will allow recycling of many dry cell batteries to continue in the interim until the special collection system regulations are promulgated. Specifically, hazardous waste batteries generated by households are not subject to the hazardous waste regulations (see 40 CFR 261.4(b)(1)), and batteries generated by conditionally exempt small quantity generators (generators that generate 100 kilograms per month of hazardous waste or less) are subject only to limited controls (see 40 CFR 261.5).

I strongly encourage you to review the special collection system proposal when it is published and give us your thoughts on the best approach to encouraging the recycling of hazardous waste batteries while ensuring protection of human health and the environment. The input of state agencies involved in battery collection programs will be critically important to the success of this project. If you have any further questions please call me at (202) 260-4637, or have your staff call Charlotte Mooney, of my staff, at (202) 260-6926.

Sincerely,

David Bussard
Director, Characterization and
Assessment Division