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

October 22, 1993

Mr. John A. Clutter
Marathon Power Technologies
P.O. Box 8233
Waco, Texas 76714-8233

Dear Mr. Clutter:

Thank you for your letter of May 20, 1993, concerning the regulatory status of used nickel-cadmium batteries under the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. I understand that you also discussed your questions in comments that you submitted on the Universal Wastes proposal (58 FR 8102, February 11, 1993). As you recognize, many of the issues that you raise are integrally related to issues we are addressing in the development of the final Universal Wastes rule. I believe it is most appropriate to address these issues together in a holistic manner so that the impacts of each can be viewed relative to the whole universal wastes program. Thus, we will respond to the issues you have raised in the final universal wastes rule.

Two of the questions you asked, however, can be answered generally outside of the context of the universal wastes rule. First, you presented your interpretation that under the federal RCRA regulations used, vented, nickel-cadmium batteries that are returned to the manufacturer for regeneration (or eventual recovery) are not solid wastes because, although you agree they are reclaimed, you believe they do not fit into any of the categories of recycled secondary materials discussed in 40 CFR 261.2(c). The 40 CFR 261.2(c) regulatory structure that defines which recycled secondary materials are solid wastes, however, is based on the premise that all recycled secondary materials fit into one of the five categories. Nickel-cadmium batteries that have been used and can no longer be used for the purpose for which they were produced best fit into the category of spent materials. Thus, under 40 CFR 261.2(c)(3), used nickel-cadmium batteries are solid waste when

sent for recovery or regeneration.

Second, the vented nickel-cadmium battery repair process as generally described in your letter (replacing damaged separator material and electrolyte) appears to be the kind of process the Agency intended to exempt from regulation under 40 CFR 261.6(a)(3)(ii). As discussed in the preamble to the proposal for that provision (48 FR 14496), the Agency intended to exempt activities that are similar to recycling commercial chemical products, and specifically mentioned replacing electrolyte and damaged cells. Based on your description, replacing damaged separator material appears to be a similar type of operation in that malfunctioning parts of the battery are being replaced.

Please note, however, that beyond this general discussion of the federal RCRA regulations we are not able to address the specifics of your situation. The battery regeneration regulations are implemented by authorized state agencies (or the appropriate EPA regional offices), who are in a better position to assess the specifics of your process and to determine how the hazardous waste regulations apply. Thus, you should contact the agency that implements these regulations in the states in which your plants are located to determine how these regulations may be applicable to your specific activities. Please note also that state hazardous waste regulations may be more stringent than the federal regulations.

Thank you for your efforts to inform my staff of the details of your system and for your interest in environmentally protective management of waste batteries. Please contact Charlotte Mooney, of my staff, at (202) 260-6926 if you have any additional questions.

Sincerely,
Bruce Weddle
Acting Director,
Office of Solid Waste