9441.1995(01)

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

January 12, 1995

Chris Bryant
The Technical Group, Inc.
1300 I Street, N.W.
Suite 1000 West
Washington, D.C. 20005

Dear Mr. Bryant:

Thank you for your letter of August 2, 1994, raising a number of questions about the Resource Conservation and Recovery Act hazardous waste regulations. I apologize for the delay in our response. Your questions concern 40 CFR 261.6(a)(3)(iii), a provision exempting "used batteries (or used battery cells) returned to a manufacturer for regeneration" from the hazardous waste regulations, and its applicability to lead-acid batteries.

When the regeneration provision was initially proposed on April 4, 1983, the Agency explained that the basis for the exemption was that regeneration presents minimal risk to the environment and thus full regulation is not necessary (48 FR 14496). Since the reasoning behind the exemption was based on the activity (regeneration) rather than the type of facility at which the activity is conducted, the Agency has historically interpreted the exemption to apply broadly to batteries that are regenerated at any type of facility. See Enclosure 1: question 6 from the September, 1985, RCRA/Superfund Hotline Monthly Summary. Note that the term regeneration means activities such as recharging, replacing electrolyte, and/or rewiring, in which the battery casing is not cracked to recover metal values.

You request clarification of whether the regeneration exemption would apply to various types of locations at which lead-acid batteries re regenerated. In short, based on the reasoning discussed above, the regeneration exemption would apply to batteries regenerated at any location, including all of those you describe in your letter.

You also ask if the applicability of the exemption would change if some handlers of the batteries assume they will be smelted to recover metal values rather than regenerated. Again, the exemption applies to any used batteries that are regenerated. Thus, once it is determined that a battery is to be regenerated, it is appropriate to manage it in accordance with the regeneration provision. I caution, however, that batteries that are not regenerated (e.g., if it is determined that regeneration is not possible) are subject, throughout their waste management cycle, to the usual hazardous waste provisions that would otherwise apply. For lead-acid batteries, this would be Subpart G of 40 CFR Part 266. For other hazardous waste batteries, this would be the full hazardous waste regulations. Thus, if it is not known whether batteries are to be regenerated, until such a determination is made it would be prudent to manage them under the hazardous waste regulations that would be applicable if the batteries are not regenerated.

I believe this discussion answers all of your questions. Although you did not specifically ask about the interaction of the regeneration provision and 40 CFR Subpart G for lead-acid batteries, I have enclosed question one from the November 1994 Monthly Hotline Report which addresses this issue and may be of interest. See Enclosure 2. Please also note that in the Universal Waste proposal (58 FR 8102; February 11, 1993) the Agency requested comment on possible changes to both the regeneration provision and 40 CFR Subpart G for lead-acid batteries. Thus the final Universal waste rule, which the Agency expects to promulgate this spring could include some changes to these provisions. Thank you for your interest in the hazardous waste regulations.

Sincerely,

Michael J. Petruska, Chief
Regulatory Development Branch

Enclosures (2)

Attachment

The Technical Group, Inc.
1300 I Street, N.W.
Suite 1000 West
Washington, D.C. 20005

August 2, 1994

Michael H. Shapiro, Director
Office of Solid Waste
U.S. Environmental Protection Agency
401 M Street, S.W.
Mail Stop 5301, Room 1201
Washington, D.C. 20460

Re: Request for Regulatory Clarification

Dear Mr. Shapiro:

I write to request clarification of the scope of the regulatory exclusion codified at 40 CFR Section 261.6(a)(3)(iii). This exclusion exempts from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) lead-acid batteries returned to a battery manufacturer for regeneration.

Factual Background

For purposes of responding to this request for clarification, some background on the secondary lead industry may be helpful. In general, there are two types of secondary lead smelters: integrated smelters and independent smelters. Integrated lead smelters generally are owned or operated by lead-acid battery anufacturing companies. More often than not, the smelter operations are not located at the battery manufacturing facility. Independent smelters generally are neither owned nor operated by lead-acid battery manufacturers. Lead smelters receive batteries and other lead-bearing materials from, among others, two key sources: scrap dealers or lead-acid battery manufacturers.

A portion of the lead-acid batteries received at a lead smelter generally are routinely inspected upon receipt. On

occasion, lead-acid batteries that appear to be usable are tested to determine whether they are spent, or whether they merely require new electrolyte or recharging. Recharging or the addition of new electrolyte may occur at the smelter, or may be shipped off-site at another facility for regeneration or recharging.

Given this background, I request clarification on the scope of Section 261.69 (a)(3)(iii) as it may apply in the following circumstances:

1. Would exclusion be applicable to an integrated lead smelter which regenerates or recharges batteries on-site, assuming the lead smelter is located at or adjacent to a lead battery manufacturer?

2. Would the answer to the above question change if the integrated lead smelter were not located at or adjacent to a battery manufacturer?

3. Would the responses to these questions change if the lead smelter ships the batteries off-site for regeneration?

4. Would the responses to these questions change if the batteries were delivered to the lead smelter by a scrap dealer who assumes that the batteries will be smelted?

5. Does the Section 261.6(a)(3)(iii) exclusion apply to independent lead smelters who recharge batteries or who replace battery electrolyte on-site in batteries shipped to them for smelting?

6. Would the response to the above question change if the independent smelter ships the batteries off-site for regeneration?

I look forward to your response to this request. If you or your staff have any questions, please call me at (202) 962-8534.

Sincerely,

Chris Bryant