

PPC 9574.1991(01)

HOUSEHOLD WASTE EXCLUSION SCOPE

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAY 30 1991

Lynn L. Bergeson
Weinberg, Bergeson, and Neuman
1300 Eye Street, N.W.
Suite 600 East
Washington, D.C. 20005

Dear Ms. Bergeson:

This letter responds to your April 12, 1991 letter on behalf of the Battery Products Alliance (BPA) requesting clarification of the scope of the 40 CFR 261.4(b)(1) household waste exclusion under the Resource Conservation and Recovery Act (RCRA).

Specifically, you have raised the issue of the applicability of the exclusion to nickel-cadmium batteries (NiCds) removed from household products by service centers where the household products are taken to the service center by a consumer. Further, you express concern that the Agency's interpretation of the scope of the household waste exclusion is contrary to both the legislative and regulatory histories of the exclusion.

First, thank you for your interest in developing recycling programs for NiCd batteries and in the applicability of RCRA regulations to these programs. We are considering the points that you and BPA member companies have raised in your letters concerning the difficulties involved in implementing NiCd recycling programs if the batteries exhibit the Toxicity Characteristic.

Turning to the Agency's interpretation of the household waste exclusion, you are correct in understanding our interpretation to be that batteries removed by consumers in their homes are within the exclusion and are exempt from the hazardous waste regulations, and batteries removed by service centers from appliances taken to the service centers by consumers are not within the exemption.

This means, of course, that if spent NiCds generated by service centers exhibit any of the hazardous waste characteristics, they are subject to the RCRA hazardous waste regulations. Service centers must determine the total

quantity of hazardous waste generated per month to determine whether they must manage the NiCds in compliance with the conditionally exempt small quantity generator regulations of 40 CFR 261.5, or the generator regulations of 40 CFR Part 262. Also, individual states may have more stringent or additional regulations governing the management of these wastes.

Although others may have a different interpretation of the legislative history of the household waste exclusion, the Agency's interpretation of the legislative history and of the scope of the exclusion have been consistent since promulgation of the exclusion in 1980. Note that the May 19, 1980 Federal Register (45 FR 33099) states that EPA interpreted Congressional intent "... to exclude waste streams generated by consumers at the household level" (i.e., by homeowners at home). Additionally, a November 13, 1984 Federal Register notice (49 FR 44978) which amended the household waste exclusion also included a discussion of the scope of the exclusion in the preamble. The 1984 notice explained that based on legislative history, it is appropriate to apply two criteria to define the scope of the exclusion. First, the waste must be generated by individuals on the premises of a temporary or permanent residence for individuals (i.e., a household) and second, the waste stream must be composed primarily of materials found in the wastes generated by consumers in their homes. If a waste satisfies both criteria, it is considered a household waste. Thus, spent NiCd batteries generated by homeowners would fall under the household waste exclusion, while those generated by service centers and other businesses would not.

We recognize that the NiCd battery situation (i.e., many states considering take-back programs and many products manufactured such that spent batteries must be removed by service centers) may present some unique opportunities for safe and effective recycling. We are also aware of your concerns about implementation of recycling programs in states considering legislation designed to increase the rate of NiCd recycling. We are therefore currently examining the available options to determine how to facilitate such programs. We expect it will take us several more weeks to assess options and reach a tentative decision on how to best address your concerns. At that time, we will notify you of the results of our analysis and of our plans to implement the decision.

To ensure that you are fully informed about our current thinking on an approach to this issue, there are several options that we are exploring. First, we are investigating what could be accomplished in the short term to alleviate the problems you have identified. One possibility is to extend the current regulations governing lead-acid battery reclamation to spent NiCd battery reclamation. As part of this effort, we must evaluate issues such as the size of the problem, hazards posed by waste disposal and recycling, and

the feasibility of possible solutions. Any information that you could provide concerning the following items would be extremely helpful: 1) the types and quantities of cadmium and nickel used in batteries in the United States, 2) current management practices for spent NiCds, #0 collection and storage systems currently in place and planned, 4) recycling processes currently in use and planned, and 5) quantities of batteries reclaimed within the U.S. and overseas.

Second, as you are aware, we are currently conducting a comprehensive analysis of the RCRA regulations to determine how they could best be modified to encourage environmentally sound recycling of hazardous wastes. In particular, one of the issues being studied is how to address reverse distribution systems that involve the return of hazardous wastes to product manufacturers.

Thank you for your continued interest in increasing the environmentally sound recycling of NiCd batteries and how RCRA questions regarding the household waste exclusion, please contact Mike Petruska at (202) 475-8551.

Sincerely,

Original Document signed

David Bussard
Director
Characterization and Assessment
Division