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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Ted Sears, Senior Consultant
The Technical Group, Inc.
1300 I Street, N.W., Suite 1000 West
Washington, D.C. 20005

Dear Mr. Sears:

Thank you for your letter of May 9, 1997 for clarification of several federal hazardous waste regulations that affect the transportation of lead-acid battery components that are shipped off-site for reclamation. The federal regulations at issue were promulgated by the Environmental Protection Agency (EPA) under the authority of Subtitle C of the Resource Conservation and Recovery Act (RCRA).

In particular, your letter requests clarification of how the federal hazardous waste regulations apply to the facts described by the following scenario. Under the scenario described in your letter, a facility (Facility A) generates spent lead-acid batteries, which are characteristic hazardous wastes for both their corrosive and lead contents. Facility A sends the spent batteries to an unpermitted facility (Facility B) that breaks the lead-acid batteries, thereby generating lead-acid battery plates. Under this scenario, Facility B then sells the spent battery plates (characteristic for lead under the RCRA Toxicity Characteristic because they are coated with a lead sulfate paste), to a permitted facility (Facility C) for reclamation. Facility B regularly transports the battery plate wastes to Facility C without a hazardous waste manifest. It is then the practice of Facility C to file an unmanifested waste report with EPA or the authorized State upon receipt of an unmanifested battery plate shipment from Facility B. Your letter questions whether this is an appropriate use of a RCRA unmanifested waste report, and if not, whether one or more of the parties may incur liability for engaging in this practice.

Under our reading of the text and history of the regulation

that allowed for unmanifested waste reports, the scenario described in your letter would appear to constitute a violation of the RCRA manifest regulations.

First, I wish to clarify that our answer assumes that the arrangement is not subject to any of the existing regulatory provisions which exempt specific classes of generators from the requirement to prepare a manifest. In other words, this response assumes that Facility B in your scenario is neither a conditionally exempt small quantity generator exempted from manifesting under the conditions of 40 C.F.R. 261.5, nor a small quantity generator subject to the "tolling agreement" reclamation exemption allowed under the conditions of 40 C.F.R. 262.20(e).

Second, it appears from the facts described in your letter that the RCRA regulatory exemption for management of spent lead-acid batteries (40 C.F.R. Part 266, Subpart G) would not be available to Facility B. Specifically, the §266.80(a) exemption would not exempt a shipper of spent lead-acid battery plates (Facility B) from the requirement to prepare a hazardous waste manifest to track the. off-site shipment to Facility C, a permitted RCRA treatment, storage, or disposal facility. The current Federal regulation is intended to exempt those who generate, transport, or collect intact spent lead-acid batteries from RCRA hazardous waste management requirements, including the requirement to manifest off-site shipments of the spent batteries. See 40 C.F.R. §266.80. This exemption also extends to those facilities which store, but do not reclaim, the spent batteries. However, this exemption would not be available to Facility B under the facts described in your letter, since Facility B is not shipping the intact spent batteries which this provision exempts from regulation. Indeed, only the management of intact spent batteries <u>prior to their reclamation</u> is exempted from RCRA regulatory controls by this provision. Since the battery plates from the breaking of the spent batteries arise from reclamation activities, they would not qualify for the §266.80 exemption.

Third, the use of an unmanifested waste report is not a means to relieve a facility such as Facility B of its obligation to comply with the Subtitle C manifest requirements. Nothing in 40 C.F.R. §264.76; the regulation requiring an unmanifested waste report, suggests that compliance with this requirement by the receiving facility in any way affects the obligation of the generator to ship its regulated wastes under a hazardous waste manifest. The unmanifested waste report was included in a final regulation published by EPA in the May 19, 1980 <u>Federal Register</u> (45 FR 33153). In promulgating the May, 1980 final rule with the

requirement for unmanifested waste reports, the Agency responded to commentors who argued that the reports would be excessively burdensome. In the preamble to this regulation, EPA emphasized that prompt submission (i.e., within 15 days) of the reports would help EPA ensure that the facility manages the waste properly, as well as help EPA enforcement personnel "to detect any suspicious patterns of unusually high incidences of

unmanifested wastes in particular areas." 45 FR at 33190. On the issue of reporting frequency, the Agency noted specifically that a 15-day turn-around time for unmanifested waste reports would not be too burdensome, because the need for these reports would arise only in those infrequent incidences where waste had been illegally transported without a manifest. See 45 FR at 33191.

This regulatory history corroborates the position that unmanifested waste reports are not intended to be routinely submitted as an alternative to compliance with the manifest system, and it supports the view that the filing of this report does not relieve any party of duties otherwise arising under the RCRA regulations. In fact, a pattern of filing unmanifested waste reports would suggest that there has been a pattern of RCRA violations, a fact which would have significance for enforcement purposes.

Therefore, under the Federal RCRA statute and regulations, it would appear that, in the scenario described in your letter for shipping spent battery plates, Facility B is in violation of the requirement that a generator of hazardous waste prepare a manifest to accompany its off-site shipments. If these facts were established as true in an enforcement proceeding, and it were further demonstrated that the battery plates were knowingly transported without the manifest, the case could rise to the level of a criminal violation. See RCRA §3008(d)(5).

Additionally, I must note that the RCRA hazardous waste requirements are generally implemented and enforced by State agencies that have been approved by EPA as authorized State programs. See RCRA §3006 and 40 C.F.R. Part 271. Depending on the jurisdiction involved, this conduct could also give rise to civil or criminal violations under applicable State law.

Thank you for bringing this issue to our attention. I hope

that this response provides the clarification that you need. I must emphasize, however, that this interpretation is based solely on the facts as related to us in the hypothetical scenario described in your letter. To the extent that the facts in a specific case were to differ from this scenario, our interpretation of the regulatory implications could differ as well. If you have any other questions, please contact Michele Anders, Chief of the Generator and Recycling Branch, on (703) 308-8850.

Sincerely,

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste