9441.1993(13)

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

August 04, 1993

MEMORANDUM

Subject: Response to Request for Comment on Draft Region IV Guidance: Regulatory Status of Plastic Chips from Reclamation of Lead-Acid Batteries

From: Michael J. Petruska, Chief
Regulatory Development Branch

To: G. Alan Farmer, Chief
RCRA Branch
Waste Management Division
Region IV

In response to your memorandum of July 8, 1993 requesting comment on the regulatory status of plastic chips from reclamation of spent lead-acid batteries, I have reviewed your draft guidance and believe that overall it correctly characterizes the issue regarding the regulatory status of this materials. I have several brief comments for your consideration in this matter.

1. I agree with your interpretation that plastic chips from spent lead-acid batteries are appropriately classified as spent materials. The chips meet the definition of a spent material because they are no longer fit for their original purpose to act as a casing for a battery.

2. On page two of the draft memorandum on the last paragraph it states: "The plastic and debris generated from the battery cracking operation cannot be considered a "by-product" because the cracking operation is not a production process." I recommend deleting this language because we have included materials as by-products that are not part of a production process. Although it is true

that the regulatory definition of by-product includes the phrase "is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process" (40 CFR §261.1(c)(3)), EPA has viewed the by-product category as a catch-all category that includes most materials that are not spent materials or sludges (48 FR 14476, April 4, 1983). Thus, this category may include materials that are generated from non-production processes.

I also recommend that Section I on pages of 6 and 7 be revised to remove language in paragraphs 2 and 3 of the Section discussing by-products. This language is contrary to our idea of by-products as a catch-all category and is not necessary to state that the chips are spent materials.

3. On pages 2 and 7, under the identical sentences read "Off-site recyclers or other parties storing the characteristic plastic are subject to storage requirements under 40 CFR Parts 264 and 265", please add "Section 261.6(c) and" between "40 CFR" and "Parts 264 and 265".

4. On page 4, I recommend that the text under lead reclamation briefly describe the regulatory status of smelting (i.e., BIF exempt under metal recovery exemption), since you have described the regulatory status of cracking. Although it is true that reclamation is a form of treatment, this fact does not change the regulatory status of these operations and thus does not seem necessary here.

5. Although experience and common sense indicate that the intermediate materials generated in battery cracking generally do exhibit characteristics, the Agency has not specifically identified these wastes as hazardous (i.e., through listing). Thus, in any individual situation technically these materials are regulated as hazardous wastes only if the specific waste in question exhibits a characteristic. I recommend that the first paragraph of Section A (text and quotation) on page 3 and the discussion of lead plates/oxide on page 4 be revised to

reflect this act. You might say that you believe these materials generally exhibit characteristics and make the caveat that the regulatory discussion assumes this.

6. On pages 6 (Section C) and 8 (Section K) the derived-from rule is used to classify residues from treatment of characteristic wastes. Although the derived-from rule may technically apply to these wastes, it is generally much cleaner just to say that solid wastes that exhibit characteristics are hazardous wastes under 40 CFR 261(3)(a)(2)(i). In other words, it doesn't matter whether solid wastes are derived-from treatment or not, if they exhibit characteristics they are hazardous. Because of this and the recent difficulties with the derived-from rule, I would recommend revising the text accordingly.

7. On page 8, under "M. Battery Acid", the draft guidance reads "If the battery acid is both corrosive and toxic for lead, then treatment in a neutralization tank is regulated". I recommend changing this to read "Battery acid that is both corrosive and exhibits a toxicity characteristic for lead may be neutralized in generator accumulation tanks in accordance with 40 CFR §262.34 standards".

8. The summary of regulatory status and the guidance as a whole should include a discussion of Part 268 Land Disposal Restriction requirements as they pertain to spent lead-acid batteries and the recently promulgated containment building standards. Given the record of mismanagement of battery breakers from improper placement of battery casings in waste piles on site, this section should be emphasized.

9. I recommend that you confer with Region II where they have also been dealing with this issue. We have referred a control to them on this issue. The contact person is Abdul Jabbar (212) 264-0683.

I hope that these comments are of some assistance. If you have questions regarding any of the comments in this memorandum, please contact Paul Borst of my staff at (202) 260-6713.