



1572

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

October 8, 1993

Honorable Wayne D. King  
New Hampshire State Senator  
State House  
Concord, New Hampshire 03301-4951

Dear Senator King:

Administrator Carol Browner has asked me to respond to your letter of August 4, 1993. Your letter asked why batteries offered by New England Power to Ms. Melanie Hamilton and Mr. Walter Myers would have to be returned to New England Power for disposal as specified by EPA regulations. You did not provide the specific authority that New England Power referenced when dealing with Mr. Myers. I assume that the Resource Conservation and Recovery Act (RCRA) was the authority referenced and my response will be from this perspective.

Based on the facts presented, we believe that New England Power may have acted prematurely. The batteries had not been discarded, and hence had not yet become a solid waste under 40 C.F.R. § 261.2.

Had the batteries been discarded, they would have become a solid waste and very likely also a hazardous waste. In general a solid waste is any material that is discarded by being disposed of, burned, treated or accumulated before or in lieu of these activities. The definition of a solid waste is given in 40 C.F.R. § 261.2(a)(1), "A solid waste is any discarded material that is not excluded by § 261.4(a) or that is not excluded by variance granted under § 260.30 and 260.31". A discarded material is any material which is abandoned as explained in paragraph (b) of § 261.2, recycled as explained in paragraph (c) of § 261.2 or considered inherently waste-like as explained in paragraph (d) of § 261.2.

A solid waste is a hazardous waste if it exhibits a characteristic of a hazardous waste identified in subpart C of part 261 or it is listed in subpart D of part 261. RCRA establishes a comprehensive management program to regulate hazardous waste from generation through proper disposal or destruction. The regulations first identify those wastes that are hazardous and then establishes various administrative requirements for the three categories of hazardous waste handlers, which are generators, transporters, and owners or operators of treatment, storage and disposal facilities.

In accordance with § 261.2(e)(1)(ii) materials that are not solid waste when recycled are those materials that can be shown to be



"used or reused as an effective substitute for commercial products." If the recycling process involved reclamation, such as the recovering of lead from spent lead batteries, the material would be deemed a solid waste. In the case of spent lead batteries they would be subject to part 266 subpart G of the regulations.

Under the RCRA subtitle C regulations, batteries reused for the purpose of substituting for a commercial product would not be deemed as a solid waste and therefore not subject to the applicable hazardous waste management criteria.

You should be aware that the above conclusion pertains only to federal EPA requirements under RCRA. Many aspects of the RCRA program are delegated to and reflected in the New Hampshire regulations. EPA's conclusions and guidance on interpretive issues do not necessarily supersede those of New Hampshire.

If you have any questions on this matter, please contact Mel Cheeks of my staff at (617) 223-5590.

Sincerely,



for Paul G. Keough  
Acting Regional Administrator