



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

December 20, 1999

David B. Mercier
Associate Counsel
Department of the Navy
Naval Undersea Warfare Center Division
1176 Howell Street
Newport, RI 02841-1708

Dear Mr. Mercier:

This is in response to your letter of December 8, 1999 regarding your battery recycling program. You utilize as energy sources for some of your laboratory systems, silver-zinc batteries which are rechargeable. When these batteries can no longer hold charges sufficient to allow further use, you plan to ship them from your facility in Rhode Island to a facility in another State for recovery of their silver content. You have indicated that your batteries would flunk the TCLP test. Thus they would be classified as a hazardous waste when they are "discarded" (e.g., when sent for silver reclamation). 40 CFR § 273.2(c)(1).

Your first question is whether the streamlined hazardous waste management requirements of the Universal Waste Rule currently apply to the collection, storage and transportation of your batteries. The answer is yes. As you know, the Mercury-Containing and Rechargeable Battery Management Act specifies that the EPA's Universal Waste Rule shall apply to the collection, storage and transportation of used "rechargeable batteries," (assuming they are hazardous) unless and until the EPA approves a State universal waste program for such batteries. 42 U.S.C. 14323. As you note, silver-zinc batteries meet the definition of "rechargeable battery" found at 42 U.S.C. § 14302. Since Rhode Island has not yet been approved to administer the Universal Waste Rule, applicable provisions of the EPA's Universal Waste Rule (40 CFR Part 273) currently apply to the management of your batteries in Rhode Island. If shipped to another State, your batteries will either remain subject to the EPA's Universal Waste Rule, or become subject to the State's universal waste rule if such a rule has been approved.

While other provisions of the Mercury-Containing and Rechargeable Battery Management Act refer only to more limited categories of batteries such as nickel-cadmium and small sealed lead-acid batteries, the Congressional directive applying the Universal Waste Rule applies more broadly to all "rechargeable batteries" that are hazardous, including your batteries.

Your second question is whether the provisions of the Universal Waste Rule take precedence over the provisions of 40 CFR § 266.70, regarding recycling of materials utilized for precious metals recovery (e.g., silver). For the collection, storage and transportation of your batteries, you may follow the provisions of the Universal Waste Rule and do not need to also follow the requirements of 40 CFR § 266.70. The Congress has specified that the streamlined requirements of the Universal Waste Rule shall apply to “rechargeable batteries” that are hazardous wastes. This is so even if another (less extensive) exemption from full hazardous waste requirements might also apply. Thus, you do not need to utilize the hazardous waste manifest for shipments of your batteries, pursuant to 40 CFR § 266.70, but rather may follow the more streamlined collection, storage and transportation requirements set out in 40 CFR Part 273.

The EPA encourages recycling programs like the one you are planning. Please feel free to contact us again should you have any further questions.

Sincerely,



Edward K. McSweeney
Associate Director for Waste Policy
Office of Ecosystem Protection

cc: Jeffrey Fowley, EPA, ORC
Ken Rota, EPA, OES
Gary Gosbee, EPA, OEP
Anne Fenn, EPA, Fed. Fac.
Leo Hellested, RI DEM



DEPARTMENT OF THE NAVY
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IN REPLY REFER TO:

5090
Ser 9000C/303
8 Dec 99

Mr. Kevin McSweeney
RCRA Program Manager
U.S. EPA, Region 1
1 Congress Street
Boston, MA 02114-2023

Dear Mr. McSweeney:

I am writing at the recommendation of Mr. Jeff Fowley in your Office of Regional Counsel to request a determination on the appropriate management of certain expended rechargeable batteries.

This Command is a research, development, test, and evaluation laboratory for U.S. Navy undersea vehicle and weapons technology. One of the energy sources available for some of our systems is a silver-zinc battery. This battery is rechargeable, but after a number of evolutions it can no longer hold a charge sufficient to allow further use. Expended batteries would be transferred to another facility for recovery of their silver content.

As you are aware, Rhode Island has not yet adopted the Universal Waste Rule. Nonetheless, we would be able to utilize the battery provisions of the Universal Waste Rule if our silver-zinc batteries are covered by Chapter 137 of Title 42 of the U.S. Code, the Mercury Containing and Rechargeable Battery Act (42 U.S.C. §§ 14301 *et seq.*). Silver-zinc batteries meet the definition of "rechargeable battery" found at 42 U.S.C. § 14302. Other language in Chapter 137, however, could be read to suggest that these provisions are currently only applicable to nickel-cadmium and small sealed lead-acid batteries.

The questions we would like you to address are:

- (1) Do the provisions of the Mercury Containing and Rechargeable Battery Act apply to silver-zinc batteries?
- (2) If the answer to question (1) is yes, does the Mercury Containing and Rechargeable Battery Act take precedence over the provisions of 40 CFR § 266.70, Recyclable Materials Utilized for Precious Metals Recovery?

Should you have questions, or require additional information, please call me at (401) 832-3653.

Thank you for your assistance in this matter.

Sincerely,

David B. Mercier

David B. Mercier
Associate Counsel

Copy to:

Mr. Jeff Fowley

Office of Regional Counsel

U.S. EPA, Region 1

Ms. Anne Fenn

Federal Facility Program Manager

U.S. EPA, Region 1