

Regulations and Liability Regarding Third-Party Wastewater Transport

RCRA Compliance With Third-Party Wastewater Treatment Providers

When battery-wash providers leave a facility, they can take sole responsibility for the wastewater they carry with them. While the language of the Resource Conservation and Recovery Act does not make this clear, decades of EPA precedent — and the Agency’s own clarifications in the *Federal Register* — do.

The RCRA governs the proper handling of hazardous waste from, as the Act has it, “cradle to grave.” The RCRA typically holds a single “generator” liable for disposing of hazardous waste according to EPA rules. But when multiple parties contribute to the generation of the same volume of waste, the situation becomes complicated.

The runoff from washing forklift batteries is considered hazardous waste under the RCRA, due to the presence of sulfuric acid and heavy metal particles. However, in this scenario, at least two entities are typically involved: the company that uses the forklift batteries and the service provider that washes the batteries.

In purely material terms, the visiting service provider contributes water, while the battery-user contributes pollutants. Both or either could be considered “co-generators” under the RCRA.

However, as long as both parties agree that one will assume responsibility as the sole generator, the EPA will recognize that self-designation. This understanding clears service providers to take responsibility for the movement of battery wash water to a treatment facility.

A closer look at the language of the RCRA provides further clarity.

Defining Hazardous Waste Generators Under the RCRA

Section 260.10 of the RCRA defines the hazardous-waste generator as “any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 or whose act first causes a hazardous waste to become subject to regulation.”

Three terms clarify this language.

1. “Person” should be understood in a legal sense, meaning “an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation, partnership, association, state, municipality, commission, political subdivision of state, or any interstate body.”

Essentially, any entity of any kind that participates in the production of hazardous waste is eligible to be designated a generator or co-generator.

2. The law leaves the term “site” intentionally vague. That way, the EPA maintains freedom to pursue violators in the widest possible variety of contexts. However, [EPA training modules](#) explain that the term should refer to a particular generation site issued with an individual EPA ID number.

Note that while this allows the EPA to consider both battery-owners (or users) and their third-party maintenance providers “co-generators,” the EPA has stated that they prefer to recognize self-designated generators in cases with multiple responsible parties.

3. The third key phrase in this definition applies particularly to users of forklift batteries who opt for third-party wastewater treatment. Anyone “whose act or process produces hazardous waste” or who “first causes a hazardous waste to become subject to regulation” can be designated a co-generator.

Dirt and pollutants that cling to a battery case are not considered hazardous waste. It is only when they accumulate in the run-off from a wash that the legally-defined hazardous waste comes into being. Therefore, visiting battery wash providers are certainly considered co-generators under the RCRA. This allows them to claim sole responsibility over the byproducts of the wash.

The EPA Precedent on Choosing Sole Generators from Multiple Parties

The law leaves the ultimate responsibility for hazardous waste intentionally unclear. But in the years since the implementation of the RCRA, the EPA has established precedents and issued clarifications in the *Federal Register*.

The most-relevant precedent published by the EPA dates back to 1980. That year, in the October 30 issue of the *Federal Register*, EPA representatives wrote that:

The Agency will, of course, be satisfied if one of the...parties assumes and performs the duties of the generator on behalf of all the parties. In fact, the Agency prefers and encourages such action and recommends that, where two or more parties are involved, they should mutually agree to have one party perform the generator duties. Where this is done, the Agency will look to that designated party to perform the generator responsibilities.

According to the letter of the law and the EPA's own precedent, then, forklift battery users can pass the designation of generator on to third-party service providers who wash batteries on-site.

Do You Need an EPA ID Number to Transport Forklift Battery Wash Water?

You don't need an ID number from the Environmental Protection Agency to haul away scrap batteries. Why would you need one to carry the runoff from battery washes? Both types of waste contain the exact same substances.

In fact, the runoff from a battery wash has much less sulfuric acid and lead by volume than a spent battery. That explains why battery wash providers, legally designated as sole generators, regularly transport wash water for reclamation and reuse without running afoul of the EPA.

Environmental law allows certain exemptions for transporting and reclaiming lead-acid batteries. A closer look at these exemptions explains why the EPA has never, to our knowledge, objected to a battery service provider responsibly carrying wash water away from a facility.

Extensive searches of [ECHO](#), the EPA Enforcement and Compliance History Database, failed to turn up a single instance of EPA action against battery wastewater transporters — even when searching for Case Attribute keywords like *battery wash*, *forklift battery*, *lead-acid battery*, *battery wastewater*, *transport wastewater*, and *battery maintenance*.

Under [Subpart G of Title 40, Part 266](#), concerning the reclamation of spent lead-acid batteries, companies that collect and/or transport spent batteries for eventual recycling or reuse are exempt from the following parts of the [Resource Conservation and Recovery Act](#):

- [40 CFR Part 262 - Standards Applicable to Generators of Hazardous Waste](#)
- [40 CFR Part 263 - Standards Applicable to Transporters of Hazardous Waste](#)
- [40 CFR Part 264 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities](#)
- [40 CFR Part 265 - Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal](#)
- [40 CFR Part 266 - Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities](#)
- [40 CFR Part 268 - Land Disposal Restrictions](#)
- [40 CFR Part 270 - EPA Administered Permit Programs: The Hazardous Waste Permit Program](#)
- [40 CFR Chapter 1 Part 124 - Procedures for Decisionmaking](#)
- [Notification Requirements in Section 3010 of the RCRA Subtitle C](#)

The EPA created these exceptions to encourage the recycling and reuse of lead-acid batteries (96 percent of which are, in fact, recycled). The same principles apply to battery wash water, which can also be reclaimed and reused. Three of these exemptions reveal the logic behind the law, which should apply equally to battery wash water and spent batteries themselves.

- **40 CFR Part 262** - Most notably, this section of the law requires generators of hazardous waste to apply for, and receive, an EPA identification number.

Generators of hazardous waste must also create and file a manifest under this part of the law. But thanks to the lead-acid battery exemption, generators can release spent forklift batteries to recyclers without filing a manifest.

- **40 CFR Part 263** - Under these rules, those who transport hazardous waste from one location to another must also have a federally issued EPA ID. They must also comply with the EPA manifest system.

However, again, scrap batteries destined for recycling are exempt from this part of the law. Wash water should be as well.

- **40 CFR Part 264** - This law requires waste treatment, storage, and disposal operations to apply for an EPA ID number. It also describes contingency plans, the continuing manifest system, and details on treatment and final disposal of hazardous wastes.

But operations that reclaim spent forklift batteries are exempt. It follows logically that those that recycle battery wash water should be, too.

Another Option: Standards for Universal Waste Management

Instead of taking the exemptions listed in 40 CFR Part 266, Subpart G, some battery service providers may be able to manage their EPA obligations through the RCRA's Standards for Universal Waste Management. Those rules are found in [Title 40 CFR Part 273](#).

Under this law, a "battery" consists, in part, of "one or more electrically connected electrochemical cells..." with an electrochemical cell being defined as "a system consisting of an anode, cathode, and an electrolyte..." Batteries so-defined qualify as Universal Waste under the law. It's not a stretch to assume the EPA would treat the composite parts of batteries similarly, including "electrolyte," the key pollutant in battery wash water.

Operations that don't accumulate more than 11,000 pounds (5,000 kg) of Universal Waste at a given time are considered Small Quantity Handlers of Universal Waste. Such entities don't have to report any of their activities to the EPA, even when they carry Universal Waste on public roads.

EPA Precedent is to Allow Responsible Parties to Transport Battery Wash Water

The EPA's legal precedents — and their codes of conduct — are at least as powerful as the letter of the law, which was written as broadly as possible with the understanding that EPA agents would decline to enforce draconian penalties.

The [EPA Mission Statement](#) calls on all agents to make sure the laws are "enforced fairly and effectively" before deciding whether to investigate or charge citizens. The only fair assessment is to equate battery wash water and spent batteries themselves.

Given that transporting forklift battery wash water poses a vanishingly small environmental risk; that this water typically goes to be recycled and reused, a key goal of the EPA; that wash water contains smaller concentrations of the hazardous substances found in lead-acid batteries, which are exempt under the law; and that we have yet to find an EPA case against a carrier of battery wash water, it's clear that EPA officials have considered the scope of the "problem".

References:

"Hazardous Waste Management System: Identification and Listing of Hazardous Waste, and Interim Status Standards for Owners and Operators of Treatment, Storage, and Disposal Facilities; Final, Interim, and Proposed Regulations." 45 Fed. Reg 212 (30 Oct. 1980.) Federal Register: The Daily Journal of the United States. Web. 8 Nov. 2016.

Resource Conservation and Recovery Act, 40 C.F.R. §260.10

"Solid Waste and Emergency Response Training Module: Introduction to Generators (40 CFR Part 262)." United States Environmental Protection Agency, Sept. 2005. PDF. 8 Nov. 2016.

40 C.F.R. § 124 1980

40 C.F.R. § 262 1980

40 C.F.R. § 264 1980

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40 C.F.R. § 266 1985

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"Enforcement and Compliance History Online (ECHO)." EPA. United States Environmental Protection Agency, n.d. Web. 17 Nov. 2016.

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Spent Lead-Acid Batteries Being Reclaimed, 40 C.F.R. § 266.80, Subpart G 2012.

