

September 16, 1992

MEMORANDUM

SUBJECT: RCRA Status of Lead-Based Paint Abatement Debris and  
Lead Paint-Containing Demolition Debris

FROM: Sylvia K. Lowrance Director  
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TO: Richard Guimond  
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As you know, OSW has been working on the issue of the appropriate RCRA status of lead-based paint abatement debris, as well as lead paint-containing demolition debris. Abatement debris is rapidly becoming a major issue as the pace of housing abatements increases. Non-household debris also is becoming an issue as demolition at military facilities increases. To resolve the dilemma of possible decreased abatement activity due to hazardous waste disposal costs, we have explored several options involving both rule changes and interpretations.

We believe that the best of these options is to promulgate new regulations which either change the Toxicity Characteristic level for lead or adopt special management standards for lead-based paint debris to more accurately reflect the relative immobility of lead in the subsurface environment. (In the 1990 Toxicity Characteristic rule, the concentration limits for lead and the other metals were not based upon groundwater modeling as were the organic compounds, but were simply carried over from the 1980 Extraction Procedure Toxicity Characteristic.) We have continued to investigate the mobility of metals and believe that for certain metals--especially lead--the concentration limits should be relaxed because of their low mobility. While the impacts of this on the lead TC "hazardous level" will be somewhat offset due to the recently lowered health-based limit (the Maximum Contaminant Level), the net effect would likely be a less stringent TC level.

Based upon TCLP testing of lead-based paint abatement debris, such a change is expected to cause the bulk of this debris to no longer test as hazardous under the TC rule. This change could be accomplished most efficiently in the final Hazardous Waste Identification Rule (HWIR), which is scheduled to be issued in April 1993. We are also considering the feasibility of a separate rulemaking addressing lead and mercury TC, which may provide for a more expedited schedule.

A new regulation requiring special management standards could serve as a fallback position if changes to the TC levels do not provide sufficient relief. Additional investigations into the mobility of lead and evaluation of the impacts of alternative land disposal practices would be necessary to support these standards. The new rule would then focus upon the decreased hazards that may result from management of these wastes

in construction monofills, as opposed to disposal in municipal landfills as simulated in the Toxicity Characteristic. We do not believe, however, that such a regulation could be proposed in the near future due to the workload associated with HWIR.

The second broad approach to the issue of how to facilitate abatement actions for lead-based paint is a reinterpretation of the scope of the household hazardous waste exclusion relative to abatement debris. Currently, wastes are considered to be "household waste" if they meet a two-part test: (1) the waste must be generated on the premises of a temporary or permanent residence for individuals and (2) must be composed primarily of materials found in the wastes generated by consumers in their homes. In a 1984 preamble to a final rule, EPA stated that debris produced during building construction, renovation, and demolition does not meet this definition. In our recent discussions with OGC, we believe that we can reverse this determination relative to renovation debris from households and find that it does, in fact, meet the two-part test for household waste. We are presently drafting language for OGC review to justify this reinterpretation, which we may be able to use in an interpretive rule to clarify that abatement debris from households is included in the exclusion. Exercising this option, however, would only provide relief for debris from households; debris from other types of structures would still be subject to RCRA hazardous waste identification requirements.

I believe the first option provides the broadest relief, notwithstanding the level of controversy that can arise from reassessment of the appropriate TC lead level. I believe that our data and technical arguments are strong enough to merit this more direct and more comprehensive approach. Concurrently, I would like to pursue the second option as a short-term solution to the more limited (but very important) issue of debris from households. In the meantime, however, we are receiving a number of questions regarding the current status of these wastes. I suggest that, when answering these questions, we consider the debris to be a solid waste and, if it fails the Toxicity Characteristic, a hazardous waste. This is consistent with our historical interpretations. We can, of course, simultaneously make it clear that we are also working on the first approach to change the rules.

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