

9432.1994(03)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460  
Office of Solid Waste and Emergency Response

OCTOBER 7, 1994

Mr. Thomas R. Trafton, President  
Recovery Express, Inc.  
197 Portland Street  
Boston, MA 02114

Dear Mr. Trafton:

Thank you for your letter of February 18, 1994, in which you requested a regulatory interpretation. You contend that processing of lead abatement debris at generator's site to meet the hazardous waste recycler's specification, is not "treatment" as defined in 40 CFR 260.10. As discussed below, we believe that processing of lead-based paint (LBP) waste could be construed as "treatment" as defined in 40 CFR 260.10, but might not be subject to Subtitle C regulations.

Typically, recycling of hazardous wastes meets the definition of treatment under 40 CFR 260.10. In general, legitimate recycling processes, however, are not subject to RCRA Subtitle C regulations under 40 CFR 261.6(c) except as noted in 40 CFR 261.6(d). If processing (e.g., cutting, chopping, shredding, or grinding) of the LBP waste exhibiting the toxicity characteristic for lead, is a necessary part of a legitimate recycling process (i.e., necessary to meet the vendor's specification, as in this case), it would not be subject to RCRA Subtitle C requirements except as specified in 40 CFR 261.6(d). The processing activities may occur at the generator's site, or at the recycler's facility. In either case, such processing is considered a first step in the recycling process and remains exempt under 401 CFR 261.6(d).

Assuming LBP waste processing is done as part of legitimate recycling, a RCRA hazardous waste treatment permit is not necessary. Under 40 CFR 261.6(c), any storage of LBP hazardous waste before or after processing is subject to RCRA Subtitle C regulation (e.g., 40 CFR 262.34 for generator accumulation or 40 CFR Part 264 for other storage) under 40 CFR 261.6(c). In addition,

RO 11880

EPA advises that generators/processors should take care to protect workers from paint dust, and any dust generated during the processing should be minimized and contained. Also, please note that any materials that exhibit hazardous waste characteristics and that are disposed of are subject to full Subtitle C regulation, including treatment under the Land Disposal Restrictions at 40 CFR Part 268. EPA believes that processing shredding or grinding of LBP debris whether hazardous or not, prior to disposal, should not be practiced, since such action may make lead in waste more amenable to leaching.

Under RCRA, most States are authorized to administer and enforce the hazardous waste program in lieu of the Federal program. If you have any questions about how recycling and storage requirements apply to your specific activities, you should consult the appropriate State agencies (or EPA Regional office in an unauthorized state) for a site-specific determination.

The Agency is currently evaluating various LBP waste disposal alternatives to address concerns of HUD and local housing authorities, lead abators, advocacy groups, and States. For example, the RCRA hazardous waste rules may impede and discourage lead paint abatement. EPA may amend the existing RCRA regulations and propose different rules under TSCA governing LBP waste disposal.

EPA Region III forwarded your letter to us for interpretation, and we are concurrently sending a similar letter as our response to EPA Region III. If you have any specific questions, please contact Mr. David Friedman, EPA Region III at (215) 597-2863.

Sincerely,

Michael Shapiro, Director  
Office of Solid Waste

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Attachment  
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Recovery  
express

February 18, 1994

Michael Shapiro  
Director, Office of Solid Waste  
US Environmental Protection Agency  
401 M Street Southwest  
Washington, DC 20460

RE: Proposal for site preparation of hazardous lead paint  
waste debris

Dear Mr. Shapiro:

Recovery Express Inc. proposes to use a Shred Pax AZ40 machine to grind lead painted wood debris into pieces approximately three inches across. (See diagram and photos Attachment A.) The purpose of this process is two fold. First, our preferred TSD Facility requires wastes to be presented in this fashion. This facility, Exide Battery, Reading, PA, is a lead smelter and recycles the lead content and will take debris in no other form. Landban of this type of waste makes this kind of disposal the most environmentally sound alternative available. Second, reduction of large pieces will make them easier to package into our thirty cubic yard transportation containers and thus more cost-effective to transport.

This machine will be used only on the generator site. No transportation will take place until after processing is completed. Precautions have been taken to eliminate air emissions. Crushed material falls directly into a specially prepared, covered transport container because the machine is positioned on eight-foot legs over the container and intervening spaces are covered with polyethylene. A HEPA vacuum device is available if necessary to add to these precautions. Our air testing shows negligible emissions from this process. (Results available on request.) After processing the container is covered as per US DOT regulations. (See our Operations Manual, Attachment B.)

Our workers are OSHA trained, and our manager is a forty-hour OSHA Hazardous Waste supervisor. Transportation is provided by our sister company, Jeffrey Chemical Co., Inc., which is a Licensed Hazardous Waste Transporter in eighteen states.

Before Recovery Express Inc. undertakes to use this machine in any state, we ask that each State Environmental Agency settle two questions regarding its use. Firstly, is this process treatment of hazardous waste as defined by state regulations. Secondly, would this process require obtaining any permit for its use. Because the answers we have received so far have varied from state to state, we ask your department to respond to these same questions. Interpretations from Region One and various states which agree with our own are attached. States which consider this process treatment by definition, such as Maine and New York have presented us with other options, all different. We hope that a definitive response to us from your department will provide these states and others which we have not yet contacted with guidance on their future actions.

#### Request for Interpretation

We consider this process to be site preparation of hazardous waste. The volume of hazardous waste remains unchanged and the hazardous element of the waste is unaffected. The enclosed approval for its use by the Massachusetts Department of Environmental Protection presents our case for this belief in the most succinct terms. We ask that you read and consider their opinions carefully. ( Attachment C )

The definition of treatment consists of two parts, according to the letter of John Skinner of EPA, 11-6-84, (Attachment D): 1. the change in character, and, 2. the purpose of the change. While it may be argued that our process makes the waste more amenable to transport or recover, under the listed purposes of the definition in 40 CFR 260.10, we do not believe that we will change the physical characteristics of the waste. What is changed is the physical shape of the debris. There is no change in any of the physical characteristics of the wood substrate nor of the hazardous lead paint constituent of the waste. All that is changed in the end process is the amount and conformation of the air spaces which surround the waste when it is containerized for transport.

Presently on all sites where lead paint waste is generated, some preparation of waste for transport and disposal is now taking

place. The physical shape of all wood debris, and other debris as well, is being altered to conform to disposal requirements of landfills in the United States. We have enclosed a chart which gives the size requirements of these hazardous waste landfills. (See Attachment E) As can be seen here, the reality of hazardous debris disposal is such that some form of preparation of the waste is necessary. Material is now routinely broken up, sawn, sorted, and shredded for transport to the disposal sites on our list. (See the enclosed article from Deleading Magazine, Vol. 2 No. 10, which discusses the handling of lead wastes on-site by an abatement company which operates in the New York/New England area. Attachment F) Other activities, such as planing, sanding, or sand-blasting are also common.

We believe that these activities are not considered treatment as per 40 CFR 260.10. Environmental agencies are aware of the requirements of lead debris disposal and do not regulate this site activity. Leave is given to prepare material to become an acceptable "waste," even though it is hazardous, and this preparation is not considered treatment so as not to overburden the procedures for transport and disposal. In a manner of speaking, material still on-site is not discarded, therefore not "waste", until it has been packaged and prepared for disposal. Of course, not all such activities in all industries would fit this analysis, but the small danger posed by our process justifies considering it as site preparation. We believe that our process is only a more efficient form of the type of activities described above.

## Overview

Over the past two to three years changes have occurred in the way disposal of lead based paint waste was envisioned. At first, regulators and public officials believed that most lead paint would be stripped from the wood substrate and disposed of in drums. Disposal itself was viewed as a simple process of landfilling these small particles. Predictions of the amount of lead paint that would be found to be hazardous in any case were quite low, usually estimated at about 30% or below.

The reality of today is very different. Our experience, which is not unusual, is that more material is hazardous than was predicted, as much as 75 to 90%. Work practice by abaters has shown that laborious stripping of old wood is very time-consuming and expensive, as well as not being as efficient as originally hoped.

The disposal field has also changed. As of May, 1994 no hazardous lead debris will be accepted for landfilling unless it is treated, as per 40 CFR 268.30, the 'Third third' landfill ban. Treatment, i.e., stabilization, requires that the debris be reduced in size to very small pieces. Even now most hazardous waste landfills require some processing of the debris before they will accept it. Preferred state of any wood debris is in pieces less than 3 feet long or even, in some cases, less than three inches long. And this says nothing of the expense of landfilling the large amounts of material generated by even a modest sized project (as much as \$200-300 per cubic yard).

None of the above difficulties takes into consideration likely future possibilities such as refusal of landfills to take in the huge amounts of material generated by large projects which the Federal government and states may mandate; or the possibility that these wastes may not be acceptable for landfilling under any circumstances should the current regulations change.

## Conclusion

We do not feel that this process needs a permit. However the guidance of your department in this matter will help settle that question. We ask that you keep in mind certain points. Transportation is by state-licensed Hazardous Waste Transporter. All preparation workers are adequately trained. No air or ground contamination can result from proper use of the equipment. All reduction is strictly on-site.

Our company feels that, with all the safeguards described, this process is an important and necessary step in the safe and cost-effective disposal of large amounts of Hazardous Lead Paint Waste Debris. The TSDf described above is the only one of its kind at the moment and provides the safest, most permanent solution to this important and growing disposal problem. Our ability to offer this solution to the large number of Housing Authorities and large housing projects which need it, depends on our use of site preparation equipment.

We hope that all the information we have provided here will adequately address any concerns your department may have. We request that your department send us your written opinion on regulatory concerns raised by our proposed process. If further information is necessary, please do not hesitate to contact this

office.

Very truly yours,  
Thomas R. Trafton  
President

Enclosures