

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUGUST 10, 1995

Mr. Nick Chirigos
Industrial Painters Coalition
P.O. Box 19300
Philadelphia, PA 19143

Dear Mr. Chirigos:

Thank you for your letter of July 14, 1995, requesting a determination as to the generator status of contractors who remove lead-based paint. In your letter, you stated that to the best of your knowledge "the owner of the structure is deemed to be the "generator" through their action in specifying the removal of lead-containing coating systems." You mentioned that you met with Brion Cook, of EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS), who suggested that you contact OSW for an official interpretation on the issue. We will try to clarify the status of contractors removing lead based-paint in this letter.

To address accountability for lead-based paint, we refer you to the definition of a generator found in 40 CFR §260.10. A generator is defined as "any person, by site, whose action or process produces hazardous waste identified or listed in [40 CFR part 261] or whose act first causes a hazardous waste to become subject to regulation." In a lead abatement scenario, a property owner and an abatement contractor are both considered generators of the waste as both parties contribute to the generation of the waste. The contractor is considered a generator because he is the person whose act first causes a hazardous waste to become subject to regulation.

The Agency has stated in preamble language at 45 FR 72026 Oct.30, 1980, which addresses generators of hazardous waste that is generated in manufacturing process units or in product or raw material storage tanks, transport vehicles, or vessels, that

The definition of generator...also fits the person removing the hazardous waste from a manufacturing process unit or a product or raw material storage tank, transport vehicle or vessel. Although often it is not his "act or process" that produces the hazardous waste, it is his act that causes the hazardous waste to become subject to regulation...

Although the above preamble discussion specifically refers to manufacturing process units, product or raw material storage tanks, transport vehicles, or vessels, we believe that this discussion also applies in many other cases where waste is generated by more than one party, including the lead abatement scenario.

FaxBack # 11913

The Agency has stated that when more than one party plays a role in the generation of a hazardous waste at a site, each party is “jointly and severally liable as generators.” Id. In this case, the Agency expects that the parties involved will mutually agree to have one party perform the generator duties. While EPA will normally look to the party who fulfills generator duties, “EPA reserves the right to enforce against any and all persons who fit the definition of “generator” in a particular case if the requirements of Part 262 are not adequately met, providing such enforcement is equitable and in the public interest.” (emphasis added) Id.

Finally, please be aware that states may impose requirements which may be more stringent than federal requirements. If you have further questions on this matter, please contact Ann Codrington of my staff at (202) 260-8551.

Sincerely,

Michael Petruska, Chief
Regulatory Development Branch

cc: Kate Donaldson