

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

MARCH 12 1997

Mr. Rick J. Melchiori
Progressive Technologies, Inc.
4050 Westmark Drive
Dubuque, IA 52002

Dear Mr. Melchiori:

Thank you for your letter of November 11, 1996, requesting an interpretation of how the RCRA regulations apply to waste generated from the removal of paint from painted surfaces using a surface preparation product developed by Progressive Technologies. You described your product to members of my staff in a meeting held in November, 1996.

Based on information provided to my staff, your product, PreTox 2000, is applied to the painted surface and allowed to cure. During the curing process the paint adheres to the PreTox 2000. The coating consisting of a combination of paint and PreTox 2000 is removed using standard coating removal methods. As you may know, the Agency does not endorse or support specific processes. It can, however, respond to your request for an interpretation on the general paint removal process, and the waste generated from your removal process.

In general, hazardous waste regulations apply to materials which first have been determined to be a solid waste. A solid waste is a hazardous waste if it is listed as a hazardous waste in Subpart D of 40 CFR, Part 261, or if it exhibits a characteristic of hazardous waste as identified in Subpart C of 40 CFR, part 261. A generator may also use knowledge of the process to determine whether the waste generated is hazardous. In the case of lead abatement debris, the waste determination required under 40 CFR 262.11 would be made once the paint has been removed from the surface of the structure. The paint removal process itself is not subject to regulation in this circumstance. Assuming that no other characteristic hazardous constituents are present in the waste, and that the waste does not exhibit the characteristics of ignitability, reactivity, or corrosivity, the TCLP waste analysis for lead would be sufficient to determine if the waste exhibits the toxicity characteristic.

You indicated that the debris generated from the paint removal process using PreTox 2000 have passed TCLP tests and therefore do not meet the definition of a hazardous waste. EPA, however, cannot determine whether a waste stream, such as paint removal debris containing PreTox 2000, is generally exempt from the toxicity characteristic. Each user of the PreTox 2000 product will be responsible for determining whether his or her paint removal debris exhibits the toxicity characteristic, although test data you collect could be of assistance to the users.

Furthermore, please note that wastes must continue to "pass" the TCLP test until the time of disposal to escape hazardous waste regulation. In other words, if a batch of paint removal debris

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"passes" the test at the time it is initially tested, but is later retested and found to exhibit the characteristic, it becomes regulated hazardous waste. Also, please be aware that generators may be held liable under CERCLA for any environmental damages caused by the release of a hazardous material into the environment. CERCLA liability is independent of any hazardous waste determination that may be made.

Also note that for purposes of hazardous waste generation, the term "generator" may refer to both the paint abatement contractor and to the owner of a building or a superstructure and they are considered "co-generators" of the waste. Additionally, state requirements may be more stringent than the federal requirements for hazardous wastes and you should contact the state or states in which you intend to conduct lead paint abatement activities to determine whether additional requirements apply.

I hope this information is helpful. Should you have additional questions, please contact Ann Codrington or Rajani Joglekar of my staff at (703) 308-8825 or (703) 308-8806, respectively.

Sincerely,

Elizabeth Cotsworth, Acting Director
Office of Solid Waste