

MEMORANDUM

From: Elizabeth A. Cotsworth, Director
Office of Solid Waste

To: RCRA Senior Policy Advisors
EPA Regions 1 - 10

Subject: Regulatory Status of Waste Generated by
Contractors and Residents from Lead-Based Paint
Activities Conducted in Households

What is the purpose of this interpretation?

This memorandum clarifies the regulatory status of waste generated as a result of lead-based paint (LBP) activities (including abatement, renovation and remodeling) in homes and other residences. Since 1980, EPA has excluded A household waste from the universe of RCRA hazardous wastes under 40 CFR 261.4(b)(1). In the 1998 temporary toxicity characteristic (TC) suspension proposal, we clarified that the household waste exclusion applies to all LBP waste generated as a result of actions by residents of households (hereinafter referred to as "residents") to renovate, remodel or abate their homes on their own. 63 FR 70233, 70241 (Dec. 18, 1998). In this memorandum, EPA is explaining that we believe lead paint debris generated by contractors in households is also "household waste" and thus excluded from the RCRA Subtitle C hazardous waste regulations. Thus, the household exclusion applies to waste generated by either residents or contractors conducting LBP activities in residences.

What is the practical significance of classifying LBP waste as a household waste?

As a result of this clarification, contractors may dispose of hazardous-LBP wastes from residential lead paint abatements as household garbage subject to applicable State regulations. This practice will simplify many lead abatement activities and reduce their costs. In this way,

the clarification in today's memorandum will facilitate additional residential abatement, renovation and remodeling, and rehabilitation activities, thus protecting children from continued exposure to lead paint in homes and making residential dwellings lead safe for children and adults.

LBP debris (such as architectural building components -- doors, window frames, painted wood work) that do not exhibit the TC for lead need not be managed as hazardous waste. However, LBP waste such as debris, paint chips, dust, and sludges generated from abatement and deleading activities that exhibit the TC for lead (that is, exceed the TC regulatory limit of 5 mg/L lead in the waste leachate), are hazardous wastes and must be managed and disposed of in accordance with the applicable RCRA subtitle C requirements (including land disposal restrictions) except when it is "household waste." Under 40 CFR 261.4(b)(1), household wastes are excluded from the hazardous waste management requirements. Today, EPA is clarifying that waste generated as part of LBP activities conducted at residences (which include single family homes, apartment buildings, public housing, and military barracks) is also household waste, that such wastes are no longer hazardous wastes and that such wastes thus are excluded from RCRA's hazardous waste management and disposal regulations. Generators of residential LBP waste do not have to make a RCRA hazardous waste determination. This interpretation holds regardless of whether the waste exhibits the toxicity characteristic or whether the LBP activities were performed by the residents themselves or by a contractor.

Where can I dispose of my household LBP waste?

LBP waste from residences can be discarded in a municipal solid waste landfill (MSWLF) or a municipal solid waste combustor. Dumping and open burning of residential LBP waste is not allowed. Certain LBP waste (such as large quantities of concentrated lead paint waste -- paint chips, dust, or sludges) from residential deleading activities may be subject to more stringent requirements of State, local, and/or tribal authorities.

What is the basis for this interpretation?

The household waste exclusion implements Congress's intent that the hazardous waste regulations are "not to be used either to control the disposal of substances used in households or to extend control over general municipal wastes based on the presence of such substances." S. Rep. No. 94-988, 94th Cong., 2nd Sess., at 16. EPA regulations define "household waste" to include "any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas)." 40 CFR 261.4(b)(1). The Agency has applied two criteria to define the scope of the exclusion: (1) the waste must be generated by individuals on the premises of a household, and (2) the waste must be composed primarily of materials found in the wastes generated by consumers in their homes (49 FR 44978 and 63 FR 70241).

In 1998, EPA concluded that LBP waste resulting from renovation and remodeling efforts by residents of households met these criteria. (63 FR 70241-42, Dec. 18, 1998). In short, the Agency found that more and more residents are engaged in these activities and thus the waste can be considered to be generated by individuals in a household and of the type that consumers generate routinely in their homes. Wastes from LBP abatements performed by residents were also considered household wastes.

EPA clarifies that this interpretation also applies to contractor-generated LBP waste from renovations, remodeling and abatements in residences. Both the definition of household waste in section 261.4(b)(1) and the Agency's criteria for determining the scope of the exclusion focus on the type of waste generated and the place of generation rather than who generated the waste (e.g., a resident or a contractor). This approach is consistent with prior Agency policy. [1] Since contractor-generated LBP waste from residential renovations, remodeling, rehabilitation, and abatements are of the type generated by consumers in their homes, it is appropriate to conclude that such waste, whether generated by a resident or contractor, falls within

the household waste exclusion. This clarification will facilitate lead abatements and deleading activities in target housing by reducing the costs of managing and disposing of LBP waste from residences.

What is the relationship of this interpretation to the on-going LBP debris rulemaking?

On December 18, 1998, EPA proposed new TSCA standards for management and disposal of LBP debris (63 FR 70190) and simultaneously proposed to suspend temporarily the applicability of the RCRA hazardous waste regulations that currently apply to LBP debris (63 FR 70233). This memorandum responds to stakeholders requests that EPA clarify whether the existing household waste exclusion applies to both homeowners and contractors conducting LBP activities in residences. While the Agency still intends to finalize aspects of the two proposals, we are making this clarification in advance of the final rule to facilitate LBP abatement in residences without unnecessary delay.

How does this interpretation affect EPA's enforcement authorities?

Under this clarification, LBP wastes generated by residents or contractors from the renovation, remodeling, rehabilitation, and/or abatement of residences are household wastes that are excluded from EPA's hazardous waste requirements in 40 CFR Parts 124, and 262 through 271. The household waste provision of 40 CFR 261.4(b)(1) only excludes such wastes from the RCRA regulatory requirements. However, it does not affect EPA's ability to reach those wastes under its statutory authorities, such as RCRA Section 3007 (inspection) and Section 7003 (imminent hazard). See 40 CFR 261.1(b).

What are the "best management practices" for handling residential LBP waste?

Although excluded from the hazardous waste regulations, EPA encourages residents and contractors managing LBP waste from households to take common sense measures to minimize the generation of lead dust, limit access to stored LBP wastes

including debris, and maintain the integrity of waste packaging material during transfer of LBP waste. In particular, we continue to endorse the basic steps outlined in the 1998 proposals for the proper handling and disposal of LBP waste (63 FR 70242) as the best management practices (BMPs) including:

- Collect paint chips and dust, and dirt and rubble in plastic trash bags for disposal.
- Store larger LBP architectural debris pieces in containers until ready for disposal.
- Consider using a covered mobile dumpster (such as a roll-off container) for storage of LBP debris until the job is done.
- Contact local municipalities or county solid waste offices to determine where and how LBP debris can be disposed.

In addition, contractors working in residential dwellings are subject to either one or both of the following:

- The HUD Guidance for contractors doing publically-funded rehabilitation/renovation projects in public housing. (See Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. U.S. Department of Housing and Urban Development, June 1995) The HUD guidelines can be accessed via the Internet at:
<http://www.hud.gov/lea/learules.html>
- TSCA 402/404 training and certification requirements. (See 40 CFR Part 745; 61 FR 45778, August 29, 1996) and the proposed TSCA onsite management standards (See 40 CFR Part 745, Subpart P; 63 FR 70227 - 70230, Dec. 18, 1998). [EPA expects to issue the final rule next year.]

The above-mentioned BMPs for households are similar to those included in the HUD Guidelines for individuals controlling LBP hazards in housing. HUD requires that contractors using HUD funding adhere to LBP hazard control guidelines. Non-adherence to these guidelines can potentially result in the loss of funding.

Does this interpretation apply in my State and/or locality?

We encourage contractors and residents to contact their state, local and/or tribal government to determine whether any restrictions apply to the disposal of residential LBP waste. This verification is necessary since, under RCRA, States, local and tribal governments can enforce regulations that are more stringent or broader in scope than the federal requirements. Thus, under such circumstances, LBP waste from households may still be regulated as a hazardous waste as a matter of State regulations.

We are distributing this memorandum to all 56 States and Territories, and Tribal Programs and various trade associations. We encourage States to arrange for implementation of the interpretation discussed in this memo in their States to facilitate residential LBP abatements making residential dwellings lead-safe. We encourage trade associations to inform their memberships about this memo and instruct them about ways to manage residential LBP waste.

Whom should I contact for more information?

If you have additional questions concerning the regulatory status of waste generated from lead-based paint activities in residences, please contact Ms. Rajani D. Joglekar of my staff at 703/308-8806 or Mr. Malcolm Woolf of the EPA General Counsel's Office at 202/564-5526.

cc: Key RCRA Contacts, Regions 1 - 10
RCRA Regional Council Contacts, Regions 1 - 10
RCRA Enforcement Council Contacts, Regions 1 - 10
Association of State and Territorial Solid Waste
Management Officials (ASTSWMO)

[1] In the final rule establishing standards for the tracking and management of medical waste, EPA concluded that waste generated by health care providers (e.g., contractors) in private homes would be covered by the household waste exclusion. 54 FR 12326, 12339 (March 24, 1989). In the specific context of LBP, the Agency stated in a March 1990 "EPA Hotline Report" (RCRA Question 6) that lead paint chips

and dust resulting from stripping and re-painting of residential walls by homeowner or contractors (as part of routine household maintenance) would be part of the household waste stream and not subject to RCRA Subtitle C regulations. Similarly, in a March 1995 memorandum on the "Applicability of the Household Waste Exclusion to Lead-Contaminated Soils," we found that if the source of the lead contamination was as a result of either routine residential maintenance or the weathering or chalking of lead-based paint from the residence, the hazardous waste regulations do not apply so long as the lead-contaminated soil is managed onsite or disposed offsite according to applicable solid waste regulations and/or State law mandated by RCRA.