

US EPA ARCHIVE DOCUMENT



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 1

JOHN F. KENNEDY FEDERAL BUILDING  
BOSTON, MASSACHUSETTS 02203-0001

June 23, 1999

Peggy Hegarty-Steck  
Lead-Safe Cambridge  
Cambridge Community Development Department  
57 Inman Street  
Cambridge, MA 02139

Re: XL Proposal Involving Residential Soil Contaminated With Lead

Dear Ms. Hegarty-Steck:

Thank you for submitting your January 20, 1999, XL proposal to the United States Environmental Protection Agency (EPA) involving the cleanup of soil contaminated with lead at residential properties in Cambridge. EPA recognizes the significant public health problem posed by this material and the pressing need to eradicate this blight from low income urban areas. I applaud your efforts to prevent lead poisoning in children. The transfer of this material from a location of high health risk (children's play areas) to a much lower risk environment (landfills) should be encouraged.

EPA's interpretations of the Resource Conservation and Recovery Act (RCRA) regulations state that soils contaminated with lead-based paint arising from routine residential maintenance and/or natural weathering or chalking of lead-based paint from a residence are not regulated as hazardous waste. The following discussions elaborate EPA's position regarding soil contaminated with lead at residential properties.

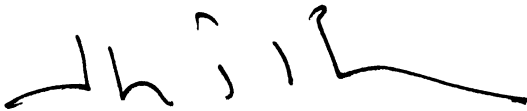
- 1) Lead contamination detected in soils in residential yards, the source of which is the result of routine residential maintenance (e.g., routine intentional paint removal) and/or the natural weathering or chalking of lead-based paint is exempt from regulation as a hazardous waste under the household waste exclusion found in EPA's regulations governing hazardous waste, known as RCRA, Subtitle C regulations. This means that this material may be disposed of off-site in accordance with the regulations regarding solid waste (i.e., non-hazardous waste), known as RCRA, Subtitle D regulations and applicable state and local requirements. However, RCRA, Subtitle D regulations may not apply if soil is managed or disposed of at a residence.
- 2) The household waste exclusion applies to contractors, homeowners, and landfill operators who manage lead-contaminated soil from the residential properties described above.

- 3) For lead contaminated soil at residential properties falling under the household waste exclusion, the Toxicity Characteristic Leaching Procedure or TCLP test does not need to be performed. Even if tested samples fail the federal criteria as set out under the TCLP test, these soils would still be exempt from RCRA, Subtitle C regulations. However, please be aware that state or local authorities may require this or other testing.
- 4) EPA supports the decision reached by the Commonwealth of Massachusetts, Department of Environmental Protection (MA DEP) to allow soil contaminated with lead from residential properties, that is subject to the household waste exclusion, to be disposed of as non-hazardous waste at either the Fitchburg Landfill or the BFI Landfill.

The above discussion outlines the general contours of the household waste exclusion as it applies to soil contaminated with lead in residential yards under federal law. For further, more specific, guidance, please see the attached memorandum, dated March 7, 1995, from Lisa Friedman to Pamela Hill. Please be aware, however, that it is important to consult Massachusetts law concerning application of the exclusion since Massachusetts is authorized by EPA to implement much of the federal hazardous waste program. Thus, Massachusetts law governs in lieu of federal law for much of this program.

I'm glad that EPA-New England was able to assist you through our XL program by facilitating discussions with MA DEP and several landfill operators to achieve protective, but cheaper, alternative disposal options that will allow LSC's HUD funds to go further in addressing soil at residential properties contaminated with lead. Since the issues set out in your XL proposal have been addressed, EPA considers that the goals of the XL program have been met and that it will not be necessary to continue through the XL process. Therefore, EPA's XL program considers the matter closed. If you have any further questions, please call Michael Hill of my staff at (617) 918-1398.

Sincerely,



John P. DeVillars  
Regional Administrator  
EPA-New England

Encl.

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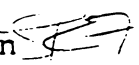
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 7 1995

OFFICE OF  
GENERAL COUNSEL

MEMORANDUM

**SUBJECT:** Applicability of the Household Waste Exclusion  
to Lead-Contaminated Soil

**FROM:** Lisa K. Friedman   
Associate General Counsel  
Solid Waste and Emergency Response Division (2366)

**TO:** Pamela A. Hill  
Deputy Regional Counsel  
Region I

Background

Your staff has asked us whether the household waste exclusion in 40 CFR § 261.4(b)(1) applies to lead-contaminated soil in residential yards that exhibits the hazardous characteristic of toxicity. (See Margery Adams, Senior Assistant Regional Counsel, Memorandum to Larry Starfield, Assistant General Counsel for RCRA (April 7, 1993)). In the Region's memorandum, your staff indicated that lead-contaminated soils in residential yards in New England are a significant exposure pathway for children. *Id.* at 2. ORC also suggests that efforts to clean-up such lead-contaminated soils may not be occurring because of uncertainties relating to the applicability of RCRA Subtitle C hazardous waste regulations to the soils. *Id.* During a telephone conference call, we agreed to provide you with some guidance as to whether the residential lead-contaminated soils that exhibit the toxicity characteristic fall within the household waste exclusion.

Issue

Do lead-contaminated soils in residential yards that exhibit the toxicity characteristic fall within the household waste exclusion in 40 CFR 261.4(b)(1) such that the soil would not be subject to RCRA Subtitle C regulatory requirements?

## Conclusion

If the source of the lead contamination was a result of either routine residential maintenance or the weathering or chalking of lead-based paint from the residence, then the lead-contaminated soil in residential yards would be part of the household waste stream as defined in the household waste exclusion of 40 CFR § 261.4(b)(1), even if the soil exhibits the characteristic of toxicity under 40 CFR § 261.24. Under these circumstances, the soil would not be subject to the hazardous waste regulations under RCRA Subtitle C and may be managed on-site or disposed of off-site in accordance with applicable RCRA Subtitle D regulations and/or state law.

If the site-specific facts indicate, however, that lead contamination in the residential soil was also due to significant lead sources other than the household, the exclusion for household waste may not be available, and the homeowner should consult with the appropriate state or federal authorities to determine how to manage the soil under RCRA and state law.

## Discussion

EPA promulgated the household waste exclusion as part of the Agency's initial phase of implementing RCRA section 3001, which required the Agency to establish criteria for identifying hazardous waste characteristics and listing specific hazardous wastes. 42 U.S.C. § 6921; 45 Fed. Reg. 33084, 33098-99, 33120 (May 19, 1980). In that 1980 regulation, EPA excluded "household waste" from being identified as hazardous waste to implement Congressional intent as expressed in the legislative history of RCRA as enacted in 1976. See S. Rep. No. 94-988, 94th Cong., 2d Sess., at 16 ("hazardous waste program not 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").

In promulgating the exclusion in 1980, EPA defined "household waste" to include "any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single family residences, hotels and motels)." 45 Fed. Reg. 33084, 33120 (May 19, 1980). In 1984 the Agency expanded the scope of the household waste definition to include wastes from bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. 49 Fed. Reg. 44978 (Nov. 13, 1984); 40 CFR § 261.4(b)(1).

Although the definition of household waste does not indicate whether a waste is household waste as a result of the place of generation, e.g., a residence, or as a result of who generated it, e.g., a resident of a household, EPA limited the exclusion's application to those wastes which meet two criteria: (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 Fed. Reg. 44978 (Nov. 13, 1984).<sup>1</sup> If a waste satisfies both criteria, then it would fall within the household waste exclusion and not be subject to RCRA Subtitle C regulation. Id. If a household waste is mixed with a regulated hazardous waste, however, then the household waste exclusion no longer applies. 45 Fed. Reg. 33084, 33099 (May 19, 1980).

In applying these criteria to circumstances analogous to those discussed in your April 7, 1993 memorandum, this office has previously taken the position that lead-contaminated paint chips resulting from stripping and re-painting of residential walls by a homeowner or a contractor<sup>2</sup> (as part of routine household maintenance) would be part of the household waste stream and not subject to RCRA Subtitle C regulation.<sup>3</sup> Moreover, once it is determined that waste, such as the lead-contaminated paint chips, is a household waste under 40 CFR § 261.4(b)(1), the exclusion from RCRA Subtitle C coverage would continue to apply indefinitely (as long as the household waste was not subsequently mixed with regulated hazardous waste). See 54 Fed. Reg. 12326, 12339 (March 24, 1989) (waste generated by health care providers in private homes not subject to medical waste tracking or management standards even when waste is removed from the home and transported to the physician's place of business).

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<sup>1</sup> EPA has taken the position that the household waste exclusion should not be extended to debris resulting from building construction, renovations, or demolition in houses, or other residences, because EPA did not consider the debris from such operations to be of a type similar to that generated by a consumer in a home. 49 Fed. Reg. 44978 (Nov. 13, 1984).

<sup>2</sup> In the final rule establishing standards for the tracking and management of medical waste, EPA concluded that waste generated by health care providers, i.e., contractors, in private homes where they provide medical services to individuals would be covered by the household waste exclusion. 54 Fed. Reg. 12326, 12339 (March 24, 1989). Although the rationale for this position was not fully discussed, it is clear that such waste met the two criteria outlined above, i.e., the waste is generated by individuals in households and it is similar to the materials found in wastes generated by consumers in their homes.

<sup>3</sup> This office's oral advice pertaining to the applicability of the household waste exclusion to paint chips resulting from the stripping and painting of residential walls is correctly reflected in an EPA Hotline Report. EPA, Monthly Hotline Report - March 1990, RCRA Question 6. (Attached.)

This position is consistent with a determination EPA reached in a proposed rule that would exempt from certain hazardous waste regulations media and debris contaminated with petroleum from home heating oil tanks. 58 Fed. Reg. 8504 (Feb. 12, 1993). In the preamble to the proposed rule, EPA stated that:

...contaminated media and debris generated from residential heating oil tanks are "household wastes" under 40 CFR 261.4(b)(1). Under EPA's subtitle C regulations, household wastes are solid waste but are excluded from consideration as hazardous wastes. Thus, contaminated media and debris from residential heating oil tanks are not hazardous wastes under subtitle C of RCRA.

Id. at 8505 (emphasis added).

Given these existing EPA positions on the reach of the household waste exclusion, we believe that if the lead contamination in residential soil is the result of routine stripping and painting project(s) or the natural weathering of lead-contaminated paint, then the household waste exclusion would apply, and the soil (or other environmental media which has become contaminated) would not be subject to RCRA Subtitle C regulation, even if it exhibits a hazardous waste characteristic. Such soils may be stabilized with lime, rototilled, or otherwise managed on-site or disposed of off-site without the need for a RCRA Subtitle C permit. Of course, RCRA Subtitle D regulations, may apply if, for example, the soil is moved off-site.<sup>4</sup> State and local standards may also be applicable to the management of the soil.

If, however, lead contamination in the residential soils is also due to significant lead sources other than the household, e.g., a lead smelter or mining waste, then further analysis would be needed to determine if the household waste exclusion from RCRA Subtitle C regulation would still be available. In such cases, it would be advisable for the homeowner to contact the appropriate state or federal authorities regarding proper management of the lead-contaminated soil under RCRA and state law. See 49 Fed. Reg. 44978 (Nov. 13, 1984) (to be covered by the household exclusion, the waste stream "must be composed primarily of wastes generated by consumers in their homes").

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<sup>4</sup> RCRA Subtitle D regulations, however, may not be applicable if the soil is managed or disposed of at the residence. The revised criteria in 40 CFR Part 258 apply to disposal of household waste, including hazardous household waste, at municipal solid waste landfills. The original "open dumping" criteria (40 CFR Part 257) promulgated under RCRA sections 1008(a)(3) and 4004(a) are not applicable to "backyard" disposal practices. 44 Fed. Reg. 53438, 53441 (Sept. 13, 1979).



If the residential soils are found not to be exempt from the definition of hazardous waste pursuant to the household waste exclusion, and they exhibit the toxicity characteristic, then RCRA Subtitle C regulations would apply to the generation, transportation, treatment, storage, or disposal of a hazardous waste (absent another exemption). However, there are options for reducing risks from non-exempt soil which would not trigger RCRA regulatory obligations. For example, covering soils with sod, mulch, or gravel would not constitute the generation, transportation, treatment, storage, or disposal of a hazardous waste, and thus such limited onsite-risk reduction measures would not trigger RCRA Subtitle C obligations.

If you have any additional questions concerning the household waste exclusion, please contact Andy Gordon at (202) 260-3596.

Attachment

cc: Mike Shapiro, OSW  
David Bussard, OSW  
Regional Counsel RCRA Branch Chiefs, Regions I - X  
RCRA Branch Chiefs, Regions I - X  
David Nielsen, OECA  
Joe Carra, OPPT

6. Applicability of the Household Hazardous Waste Exclusion to Waste Generated by Contractors

A homeowner hires a contractor to scrape old paint from his walls and repaint them. Paint chips from the walls are EP toxic for lead and are disposed of in the household's waste stream. How are the chips regulated under RCRA?

The regulations at 40 CFR Section 261.4(b)(1) state that waste generated at a household is excluded from regulation as a hazardous waste. According to the November 13, 1984 Federal Register, waste from building construction, renovation and demolition, even if generated at a household, is not covered under the household waste exclusion. Household waste, to be excluded pursuant to 40 CFR Section 261.4 (b) (1), must fulfill two criteria. Household waste has to be generated "by individuals in their homes" and "the waste stream must be composed primarily of materials found in the wastes generated by consumers in their homes." (49 FR 44978; November 13, 1984)

EPA does not distinguish between waste generated at a household by a homeowner and waste generated at a household by a person other than the homeowner. (See the March 24, 1989 Federal Register; 54 FR 12339 applying the household waste exclusion to medical waste generated by home health care providers.) EPA determines the applicability of the exclusion based upon the type of waste generated and the place of generation. Therefore, solid waste generated at a home as part of routine residential maintenance (as opposed to renovation, construction or demolition) would be part of the household waste stream and thus would not be subject to the hazardous waste determination requirements of 40 CFR Section 262.11.

Source: Carrie Wehling, OGC (202) 382-7706  
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