

US EPA ARCHIVE DOCUMENT

**LEAD-SAFE BOSTON
XL PROJECT**

DRAFT FINAL PROJECT AGREEMENT
Draft August 25, 2000

**Draft Final Project Agreement
Lead-Safe Boston**

Table of Contents

<u>Subject</u>	<u>Page</u>
I. Introduction to the Agreement	1
A. Project Signatories	1
B. Purpose of the XL Program	1
C. Purpose of this FPA	1
II. Description of the Project	2
A. Background	2
B. Project	3
III. Relief Requested	5
A. RCRA Subtitle C’s Household Waste Exclusion	5
B. Policy Interpretation of Household Waste Exemption	5
IV. Project XL Acceptance Criteria	6
A. Anticipated Superior Environmental Performance	6
B. Cost Savings, Paperwork Reduction and Operational Flexibility	6
C. Stakeholder Involvement and Support	6
D. Innovative Approach and Multi-Media Pollution Prevention	7
E. Transferability of the Approach to Other Entities or Sectors	7
F. Feasibility of the Project	8
G. Reporting	8
H. Shifting the Risk Burden	8
V. Intentions and Commitments of Project Signatories	8
VI. Legal Basis for the Project	9
A. Authority to Enter Into Agreement	9
B. Legal Effect of Agreement	10
C. Other Laws and Regulations That May Apply	10
D. Retention of Rights to Other Legal Remedies	10
VII. Effective Date	11

Appendices:

Appendix A: United States Environmental Protection Agency, Office of Solid Waste Policy
Memorandum: Regulatory Status of Waste Generated by Contractors and

Residents from Lead-Based Paint Activities Conducted in Households

Appendix B: Executive Summary: United States Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing

Appendix C: Letters of Support Submitted for this Project

I. Introduction to the Agreement

A. Project Signatories

The Project Signatories to this draft Final Project Agreement (FPA or Agreement) are Lead-Safe Boston (LSB) located in Boston, Massachusetts, the U.S. Environmental Protection Agency (EPA), United States Department of Housing and Urban Development (HUD) and the Massachusetts Department of Environmental Protection (MA DEP). All of those listed above are referred to collectively as “Project Signatories,” the three regulatory agencies mentioned above are referred to collectively as “the Agencies.”

B. Purpose of the XL Program

This draft FPA states the intentions of the Project Signatories to carry out a project as part of EPA’s “Project XL” which tests innovative approaches to environmental protection. Project XL is an EPA initiative to test the extent to which regulatory flexibility, and other innovative environmental approaches including changes in environmental polices, guidance, procedures, and processes, can be implemented to achieve both superior environmental performance and reduced economic and administrative burdens. (60 FR 27282). Thus, the XL Program can “[t]est a different way of doing something, even if EPA already has the authority to do so under the current system, but is not doing it” to achieve superior environmental benefits (FR, Vol. 63, No. 120, Pg. 34163).

C. Purpose of this FPA

This FPA is a joint statement of the Project Signatories’ plans and intentions with respect to LSB’s XL Project. This FPA outlines the details of how this project will be implemented and sets forth the mechanism, specifically a policy memorandum (“Policy Memorandum”), that is being utilized to meet the goals of the Project Signatories.

This FPA is not intended to create legal rights or obligations and is not a contract, a final agency action or a regulatory action such as a permit or rule. This FPA does not give anyone a right to sue the Project Signatories for any alleged failure to implement its terms, either to compel implementation or to recover damages.

This FPA and materials relating to this project are available on the Project XL Web Site at www.epa.gov/projectxl.

II. Description of the Project

A. Background

LSB is a program operated by the City of Boston's Department of Neighborhood Development that collaborates with state agencies and private organizations to prevent lead poisoning of young children by working to control lead hazards in Boston's highest risk areas.

Over the past five years, the LSB program has used a combination of federal, state and local resources to abate lead-based paint (LBP) hazards in 707 privately-owned housing units, while undertaking an aggressive community outreach and education campaign to make residents aware of the severe risks of lead in the living environment. For the next 36-months, LSB is targeting the Boston neighborhoods of Roxbury and Dorchester, which include 45 census tracts, and have a concentration of older housing, the vast majority of which is likely to evidence lead contamination. It is recognized from a variety of data sources and anecdotal reports that the greater Boston area faces among the most severe LBP hazard challenges in the Northeast.

The effect of exposure to lead on the health of young children is well documented. These effects include neurological effects like encephalopathy which is characterized by irritability, poor attention span, headache, muscular tremor, loss of memory and hallucinations and in severe cases, delirium, convulsions, paralysis, coma and death. The correlation between high blood-level levels and decrease in IQ and impairment in learning and behavior development has been extensively studied and some studies indicate that lead exposure can cause poor hand-eye coordination and hearing loss. Other effects of lead exposure in the literature include hematological symptoms like anemia and an inability to metabolize Vitamin D or calcium, hypertension, gastrointestinal effects like colic and renal effects including permanent damage to the kidneys. For a complete review of this subject see Risk Analysis to Support Standards for Lead in Paint, Dust and Soil, National Program Chemicals Division, Office of Pollution Prevention, U.S.E.P.A. at Vol. I, pp. 2-10 - 2-16 (June 1998, EPA 747-R-97-006).

A recent study by the National Health and Nutrition Examination Survey (NHANES) indicates that children of urban, minority (e.g., African American, Asian Pacific American, Hispanic American, American Indian), or low-income families, or who live in older housing, continue to be most vulnerable to lead poisoning and elevated blood-lead levels. The February 21, 1997 Center for Disease Control's Morbidity and Mortality Weekly Report states that: "Despite the recent and large declines in BLLs [blood lead levels], the risk for lead exposure remains disproportional high for some groups, including children who are poor, non-Hispanic black, Mexican American, living in large metropolitan areas, or living in older housing."

The Massachusetts Department of Public Health (MA DPH) estimates that 21,620 children in Massachusetts have unsafe levels of lead in their blood greater than 10 mcg/dl. The vast majority of these children are children of color living in poverty in urban areas where older housing is

prevalent, such as the target neighborhoods in Boston of Roxbury and Dorchester. 18.7% of Boston families live below the poverty level and 67% of housing in Boston was built before 1950. Although only 8% of Massachusetts children live in Boston, 23% of Massachusetts lead poisoned children live in Boston.

In Boston, screening for lead in children is the responsibility of the Boston Public Health Commission (BPHC). When BPHC detects a blood lead level of between 10 mcg/dl to 14 mcg/dl, an information packet is sent to the family. A blood level of between 15 mcg/dl to 19 mcg/dl is a "seriously elevated blood lead level" and when discovered an outreach worker and sometimes an inspector are sent to the home to provide education to the family. When a blood lead level of 20 mcg/dl and above is detected, an outreach worker and inspector are sent to the family. If a child has a blood lead level of 25 mcg/dl and above the family may not refuse assistance.

In the last two years BPHC reported the following:

July 1, 1997 - June 30, 1998

- Childhood blood lead level screening rate of 69% of all children.
- 1,556 or 6.1% of Boston children were found to have a blood lead level of 10 mcg/dl or greater.
- 179 Boston children were found to be blood lead poisoned with a blood lead level of 20 mcg/dl or above.

July 1, 1996 - June 30, 1997

- 379 lead poisoned children identified in the City of Boston.
- A startling 366, or almost 100%, lived in the two targeted Boston neighborhoods of Roxbury and Dorchester.

B. Project

LSB removes lead in privately-owned housing, occupied by low and moderate income families with children aged 0-6, with funding from HUD. During the next 36-month phase of the LSB program, using HUD funding, LSB will complete lead hazard control activities in a minimum of 180 housing units in 1-4 unit buildings, occupied by low or moderate income families with children aged 0-6.

Through this project, LSB seeks to increase the number of housing units that have LBP hazards abated by following EPA's new Policy Memorandum in the form adopted by MA DEP that calls for LBP debris from residential housing units to be disposed of as household waste (see discussion below and Appendix A). By not having to dispose of LBP material as a hazardous

waste, disposal costs will decrease – allowing more lead abatement projects to take place with the funds saved in disposal costs, thus sparing more children from exposure to lead. Worker safety will continue to be protected by ensuring that appropriate safety measures are taken at the time of removal. LSB's procedures and contract requirements ensure that all contractors undertaking lead based paint remediation under LSB's auspices must follow all federal, state and local health and safety precautions that apply to this type of activity. In addition, LSB will follow the HUD guidelines for remediating lead-paint debris in residential housing (see Appendix B).

The ability to dispose of LBP debris from residential housing units as household waste significantly reduces the disposal costs incurred by LSB. Lead abatement projects, for example, are competitively bid and monitored by LSB staff. At an average cost of \$9,500 per unit, LSB expects to spend \$1,710,000 abating 180 housing units. Bids include estimates for hazardous and non-hazardous disposal costs. Typically, estimates for disposal costs average \$805 for hazardous waste and \$176 for non-hazardous waste per project. Further, the LSB program currently requires Toxicity Characteristic Leaching Procedure (TCLP) lead testing and waste manifests for all projects in accordance with Massachusetts and EPA regulations. Once a project is underway, the lead abatement contractor submits a representative sample of the architectural waste being generated (such as door casings or window components) to a laboratory for lead testing. TCLP testing is \$75-\$100 per composite sample and the analysis time is 3-10 working days. The results of this analysis determine if the waste is a hazardous waste and if so, managed according to the hazardous waste regulations including land disposal restrictions. Finally, an additional charge is incurred and incorporated into each project since the contractor must wait for the result of the TCLP test regardless if the material is deemed hazardous or not. This waiting causes certain production inefficiencies and the contractor passes this indirect expense on to the project.

Actual disposal costs vary by project. Based on an analysis of 17 of LSB's most recently completed projects, disposal costs averaged \$768 (\$250-\$1,800 range) for hazardous waste and \$212 (\$0-\$950 range) for non-hazardous waste per project. The combined (hazardous and non-hazardous) average disposal cost for the 17 projects was \$649. Comparisons of these costs indicate that it is 360% more costly to dispose of construction debris as hazardous waste than as non-hazardous waste.

Utilizing EPA's new Policy Memorandum, the disposal cost average will now be \$286 per project (resulting from disposal of LBP debris as a household waste) which is 270% lower than the average cost (\$768) of hazardous disposal. This represents significant cost savings to the LSB program as LSB prepares to complete lead hazard control activities in a minimum of 180 housing units. LSB will save approximately \$100,260 in disposal costs and TCLP testing fees, enabling LSB to abate lead hazards in approximately a dozen additional residential units where approximately 25 to 30 children under the age of six reside. Additional residential abatements will be pursued according to HUD procedures.

As part of this project, EPA has circulated the Policy Memorandum, dated July 31, 2000, to all

EPA Regions, states, tribes and trade groups attempting to make states, tribes and the public aware of EPA's clarification concerning the regulatory status of residential LBP waste generated by contractors and residents. EPA is encouraging states and tribes to adopt the policy clarification to facilitate residential LBP abatement activities. States and tribes retain the ability to be more stringent or broader in scope in implementing their solid and hazardous waste programs. In addition, EPA strongly encourages individuals and contractors to use the best management practices (BMPs) as set out by HUD's guidelines for on-site management of LBP debris from residential dwellings which are required by HUD when evaluating and controlling LBP hazards in housing (see Appendix B and specifically Chapter 10. This document is available at HUD's internet site at the following address: www.hud.gov/lea/learules.html).

III. Relief Requested

A. RCRA Subtitle C Household Waste Exclusion

In this XL project, LSB sought to dispose of LBP debris in municipal solid waste landfills through a policy clarification by EPA. Specifically, under a provision in the Resource Conservation and Recovery Act (RCRA) known as the Household Waste Exclusion (HWE) rule found at 40 CFR §261.4(b)(1) waste derived from residential properties is not a regulated hazardous waste. Including LBP debris derived from residential abatement under the HWE would allow LSB and contractors and individuals across the country to:

1. forego costly TCLP testing and
2. dispose of LBP debris in municipal solid waste landfills and other approved solid waste disposal facilities.

This project will not only reduce exposure risks for an estimated 30 children in 12 homes in Boston, but has the potential to encourage more lead remediation throughout the nation, potentially resulting in thousands of children being spared from lead poisoning. EPA expects this project to increase national awareness of EPA's policy clarification related to the regulatory status of residential LBP waste, dated July 31, 2000. Also, this project will stress the importance of partnership with the states and tribes and urges the use of best management, handling, storage and disposal practices that could increase the efficiency and safety of similar projects throughout the country.

B. EPA's Clarification Concerning The Regulatory Status of Residential LBP Waste

Partially as a result of LSB's request for a clarification of the HWE in its XL application, EPA, on July 31, 2000, issued a Policy Memorandum that clarifies the regulatory status of waste generated as a result of LBP activities (including abatement, renovation and remodeling) in homes and other residences (see Appendix A and EPA's internet site at: www.epa.gov/lead/fslbp.htm). EPA still retains its jurisdiction over these wastes by virtue of its statutory provisions such as those

governing inspections and imminent hazards. Specifically, EPA's Policy Memorandum explains that LBP waste including debris from residential dwellings such as single family homes, apartment buildings, row houses and military barracks falls within the HWE and thus is not a regulated hazardous waste under 40 CFR §261.4(b)(1). As such, it can be disposed of in state and tribe-approved solid waste facilities such as municipal solid waste landfills. Allowing residential LBP waste disposal as regular household garbage in municipal solid waste landfills according to state, tribal and local requirements will reduce disposal costs and can potentially facilitate additional residential abatements around the country.

IV. Project XL Acceptance Criteria

A. Anticipated Superior Environmental Performance

This project will result in superior environmental performance by reducing the risk of childhood lead poisoning by allowing more lead abatements to occur in residential housing units. Specifically, it is anticipated that 12 additional lead abatement projects will be performed by LSB with the current funding available from HUD. This would spare approximately 25 to 30 additional children from lead poisoning. Moreover, on a national level, this Policy Memorandum may ultimately spare thousands of children from lead poisoning.

B. Cost Savings, Paperwork Reduction and Operational Flexibility

Most significantly this project allows LSB to make more efficient use of its HUD grant dollars by disposing of lead contaminated residential waste in approved non-hazardous waste disposal facilities. Further, this will lessen the capacity burden on hazardous waste landfills. Savings in disposal costs translate into more lead remediation projects for low and moderate income families.

C. Stakeholder Involvement and Support

The City of Boston is fully committed to the broadest possible involvement of government entities, non-governmental community and neighborhood organizations, as well as the private sector, in all of its community and economic development activities. LSB is fortunate to have a strong network of community agencies and organizations dedicated to improving the quality of life of the residents.

Lead-Safe Boston participated in the national stakeholders process which led to the research establishing the safety and benefits of disposing of architectural debris containing lead from LBP in C & D landfills and to the publication of the proposed rule on the subject (see 63 FR 70190 and 63 FR 70233, dated December 18, 1998). Other stakeholders involved in this effort include similar programs in cities throughout the United States and national and regional coalitions including the National Campaign to End Childhood Lead Poisoning. A wide variety of community-based providers (non-profit community groups) will be involved in the education and

outreach component of the LSB program by providing venues for the distribution of information to engage potential participants as well as referrals for participating in the program.

On August 22, 2000, the Project Sponsors held an informational meeting in Boston to discuss and answer questions about this project and EPA's new Policy Memorandum regarding the removal of lead from residential housing. A wide variety of national, regional and local stakeholders involved with lead remediation were invited to attend this meeting.

Letters of support for this project are attached in Appendix C.

D. Innovative Approach and Multi-media Pollution Prevention

By reducing the cost of lead abatements, more abatements can be conducted with the same amount of funds. The decrease in the cost of abatements in inner-city 1-4 family housing stock will lead to an increase in the abatement activity in this type of housing. The occupants of these units are disproportionately lower income and minority populations. As the price of lead abatements is lowered as a result of this FPA and Policy Memorandum, more low-income families will have LBP hazards removed from their homes.

Worker safety will be protected by ensuring that appropriate safety measures are taken at the time of removal. LSB's procedures and contract requirements ensure that all contractors undertaking lead based paint remediation under LSB's auspices must follow all Federal, State and local health and safety precautions that apply to this type of activity. In addition, LSB will follow the HUD guidelines for remediating LBP debris in residential housing (See Appendix B).

E. Transferability of the Approach to Other Entities or Sectors

This FPA will establish a highly transferable model in two different and important ways. First, the Policy Memorandum is nationally applicable. EPA encourages the states to take steps necessary to implement the policy at the state level. States retain the discretion to implement this federal policy in a more stringent manner or to be broader in scope than the federal program as they see fit. Second, this project will serve as a model project by encouraging the use of BMPs for handling LBP debris from residential housing as set out by HUD (see Appendix B).

Ultimately, this FPA will create a pathway towards the remediation of thousands of housing units throughout the Commonwealth of Massachusetts and ultimately the nation. This FPA will allow the cost of such remediation to drop considerably as described above. This reduction in cost will benefit private and public owners of residential property throughout Massachusetts and the rest of the country, and most importantly, the children who live in the housing units that are remediated under this program.

F. Feasibility of the Project

This program is feasible. As discussed above, LSB is prepared to move forward with 12 additional remediations because of the issuance of the Policy Memorandum. LSB has the resources and technical expertise to carry out the project. Implementation of the project as proposed would actually be easier, cheaper and therefore more feasible than the alternative – disposing of the debris as hazardous waste.

G. Reporting

LSB will present a data summary, no more than 15 months from the Effective Date of this FPA, showing the number of homes remediated and the approximate number of children protected due to this project and its use of the Policy Memorandum. The summary will include the amount of debris disposed under the proposal, the amount of money saved to allow for additional lead abatements to be performed, and the number of additional units remediated as a result of the decreased disposal costs.

H. Shifting of Risk Burden

The removal of LBP debris from an area of high lead exposure where children live and play to approved disposal facilities will reduce the occurrence of lead poisoning in more children.

V. Intentions and Commitments of Project Signatories

LSB agrees to:

1. utilize cost savings resulting from this project to complete approximately 12 additional lead abatement projects in Boston's Dorchester and Roxbury neighborhoods within one year from the Effective Date of this FPA. These additional lead abatements will be done in consultation with HUD and according to HUD's grant procedures;
2. provide, no more than 15 months from the Effective Date of this FPA, a summary report on the number of additional homes where lead abatements were conducted detailing the cost savings and the number of children spared from lead poisoning;
3. follow existing HUD guidelines regarding the on-site management and storage of lead debris from residential housing units (See Appendix B);
4. follow EPA's Policy Memorandum and solid and hazardous waste management strategies developed by MA DEP to implement EPA's Policy Memorandum; and

5. dispose of residential LBP debris in only approved commercial or municipal solid waste landfills. In addition, until MA DEP develops further solid and hazardous waste management strategies concerning the disposal of residential LBP debris, LSB agrees not to dispose of residential LBP debris at combustion facilities and unlined landfills and LBP removed with a solvent carrier must be handled and disposed of in accordance with all applicable hazardous waste regulations.

EPA agrees to:

1. clarify in a Policy Memorandum that LBP debris from residential housing can be disposed of as household waste (see Appendix A);
2. increase awareness about the Policy Memorandum by mailing it directly to all states, tribes and trade groups and posting it on the following EPA web sites: www.epa.gov/projectxl and www.epa.gov/lead/fslbp.htm; and
3. encourage the use of HUD Guidelines for the handling and on-site management of LBP debris resulting from residential abatement activities performed by LSB (see Appendix B).

EPA and HUD agree to:

1. develop a joint strategy to disseminate and explain the merits of the Policy Memorandum on a national level.

MA DEP agrees to:

1. develop further solid and hazardous waste management strategies consistent with the federal Policy Memorandum to address the disposal of LBP debris from residential housing. However, MA DEP retains the authority to adopt policies and regulations that are more stringent or broader in scope than federal requirements.

VI. Legal Basis for the Project

A. Authority to Enter Into the Agreement

By signing this Agreement, LSB, EPA, HUD and MA DEP acknowledge and agree that they have the respective authorities, discretion and resources to enter into this Agreement and to implement all applicable provisions of this Project, as described in this Agreement.

B. Legal Effect of the Agreement

This Agreement states the intentions of the Project Signatories with respect to LSB's XL Project. The Project Signatories state their intentions seriously and in good faith, and expect to carry out their stated intentions.

This Agreement in itself does not create or modify legal rights and obligations, is not a contract or a regulatory action such as a permit or rule, and is not legally binding or enforceable against any Project Signatory. Rather, it expresses the plans and intentions of the Project Signatories without making those plans and intentions binding requirements. This applies to the provisions of this Agreement that concern procedural as well as substantive matters. However, while the Project Signatories fully intend to adhere to these procedures, they are not legally obligated to do so.

This Agreement is not a "final agency action" by EPA, HUD or MA DEP, because it does not create or modify legal rights or obligations and is not legally enforceable. This Agreement itself is not subject to judicial review or enforcement. Nothing any Project Signatory does or does not do that deviates from a provision of this Agreement, or that is alleged to deviate from a provision of this Agreement, can serve as the sole basis for any claim for damages, compensation or other relief against any Project Signatory.

C. Other Laws or Regulations That May Apply

Except as provided in the legal implementing mechanisms for the XL Project, the Project Signatories do not intend that this Final Project Agreement will modify any other existing or future laws or regulations.

D. Retention of Rights to Other Legal Remedies

Except as expressly provided in the legal implementing mechanisms described in Section III, nothing in this Agreement affects or limits EPA's, HUD's, LSB's, or MA DEP's legal rights. These rights include legal, equitable, civil, criminal or administrative claims or other relief regarding the enforcement of present or future applicable federal and state laws, rules, regulations or permits with respect to the facility.

Although LSB does not intend to challenge agency actions implementing the Project that are consistent with the Agreement, LSB reserves any right it may have to appeal or otherwise challenge any EPA, HUD or MA DEP action to implement the project. With regard to the implementing mechanisms, nothing in the Agreement is intended to limit LSB's right of administrative or judicial appeal or review of those legal mechanisms, in accordance with the applicable procedures for such review.

VII. Effective Date

This FPA is effective on the date it is dated and signed by EPA’s Regional Administrator for EPA New England.

LSB PROJECT SIGNATORIES:

Mindy Lubber, Regional Administrator,
EPA New England

_____ Date Signed

Ira Leighton
Acting Deputy Regional Administrator
EPA New England

_____ Date Signed

Kenneth Griffin
Lead-Safe Boston

_____ Date Signed

Lauren A. Liss
Commissioner, Massachusetts DEP

_____ Date Signed

David C. Jacobs
Deputy Director, Office of Healthy Homes and Lead Hazard Controls, HUD

_____ Date Signed

Appendix A

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 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 §3007 (inspection) and §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

¹In 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.

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)

Appendix B

Appendix C