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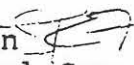
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 7 1995

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

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

FROM: Lisa K. Friedman 
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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).¹ 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 contractor² (as part of routine household maintenance) would be part of the household waste stream and not subject to RCRA Subtitle C regulation.³ 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).

¹ 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).

² 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.

³ 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.⁴ 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").

⁴ 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
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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.

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