

an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 6, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.507 is amended by adding alphabetically commodities to the table in paragraph (a)(1) to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

(a) * * *

| Commodity | Parts per million |
|--|-------------------|
| * * * | * |
| Artichoke, globe | 4.0 |
| Asparagus | 0.04 |
| * * * | * |
| Brassica, head and stem, subgroup 5A | 3.0 |
| * * * | * |
| Herb subgroup 19A, dried, except chive | 260 |
| Herb subgroup 19A, fresh, except chive | 50 |
| * * * | * |

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL-7514-7]

RIN 2050-AE86

Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: To help accelerate the pace of lead-based paint removal from residences, and thereby reduce exposure to children and adults from the health risks associated with lead, EPA is promulgating a change to its definition of “municipal solid waste landfill unit” in both the Criteria for Classification of Solid Waste Disposal Facilities and Practices and the Criteria for Municipal Solid Waste Landfills. In addition, EPA is promulgating two new definitions for “construction and demolition (C&D) landfill” and “residential lead-based paint waste.” This final rule will expressly allow residential lead-based paint waste that is exempted from the hazardous waste management requirements as household waste to be disposed of in construction and

demolition landfills by stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today’s action would not prevent a municipal solid waste landfill unit from continuing to receive residential lead-based paint waste.

DATES: This final rule will become effective on June 18, 2003. The Agency finds good cause to make this rule effective immediately because today’s final rule provides an additional disposal option for residential lead-based paint waste.

ADDRESSES: Copies of the documents relevant to this action (Docket No. RCRA-2001-0017) are available for public inspection during normal business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays, at the RCRA Information Center (RIC), located at EPA West, Room B-102, 1301 Constitution Ave., NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323.

For information on specific aspects of this rule, contact Paul Cassidy, Municipal and Industrial Solid Waste Division, Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; (703) 308-7281, cassidy.paul@epa.gov. The index and some supporting materials are available on the Internet. You can find these materials at <http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/pb-paint.htm>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Entities potentially covered by this regulation are public or private individuals or groups that generate residential lead-based paint (LBP) waste as a result of abatement, rehabilitation, renovation and remodeling in homes, residences, and other households. By “households,” we mean single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. Affected categories and entities include:

| Category | Examples of affected entities |
|--|---|
| Individuals and firms who generate residential LBP wastes. | Contractors and do-it-yourselfers who generate and dispose of residential LBP waste as a result of abatement, rehabilitation, renovation and remodeling in homes, residences, and other households. |
| Construction and demolition waste disposal firms. | Owners or operators of construction and demolition landfills that accept residential LBP waste for disposal. |

The table above is not intended to be exhaustive but, rather, is intended to provide examples of entities likely to be regulated by this action. To determine whether your facility would be impacted by this action, you should carefully examine the applicability criteria in this rule. If you have questions regarding the applicability of this action to a particular facility, please contact Paul Cassidy, U.S. EPA, Office of Solid Waste (5306W), 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone 703-308-7281; e-mail: cassidy.paul@epa.gov.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. RCRA-2001-0017. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the RCRA Information Center (RIC), located at EPA West, Room B-102, 1301 Constitution Ave. NW., Washington DC. The Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. In the Washington, DC, metropolitan area, call 202-566-0270 or TDD 703-412-3323 (hearing impaired). To review the docket materials in person, we recommend that the public make an appointment by calling 202-566-0270. The public can copy a maximum of 100 pages from the docket at no charge. Additional copies cost \$0.15/page. If you access the information electronically, you can download or print copies free of charge.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to access the index listing of the

contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above in Unit I.B.

C. Acronyms

| Acronym | Definition |
|-------------|---|
| CDC | Centers of Disease Control and Prevention. |
| C&D | Construction and Demolition. |
| CFR | Code of Federal Regulations. |
| EA | Economic Analysis. |
| EPA | Environmental Protection Agency. |
| FR | Federal Register. |
| HUD | U.S. Department of Housing and Urban Development. |
| IQ | Intelligence Quotient. |
| LBP | Lead-Based Paint. |
| MSWLF | Municipal Solid Waste Landfill. |
| OMB | Office of Management and Budget. |
| OPPTS | Office of Prevention, Pesticides, and Toxic Substances. |
| OSWER | Office of Solid Waste and Emergency Response. |
| RCRA | Resource Conservation and Recovery Act. |
| RIC | RCRA Docket Information Center. |
| TC | Toxicity Characteristic. |
| TCLP | Toxicity Characteristic Leaching Procedure. |
| TSCA | Toxic Substances Control Act. |
| USEPA | United States Environmental Protection Agency. |

Outline

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 - C. Proposed Definition of "Residential Lead-Based Paint Waste"
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V. How Will States and Tribes Implement this Rule?

VI. How Does this Rule Comply with Applicable Statutes and Executive Orders? Statutory and Executive Order Reviews

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- C. Regulatory Flexibility Act
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- F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act of 1995
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

I. Legal Authority

EPA is promulgating this rule pursuant to section 1008(a)(3), 2002(a), 4004(a) and 4010(c) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Secs. 6907(a), 6912(a), 6944(a), 6949a(c). We are also correcting a typographical error in the existing statement of authority in part 257 by amending the citation to 42 U.S.C. 6949(c) to read "6949a(c)."

II. Summary of Proposed Lead-Based Paint Rule

A. Proposed Change to the Definition of "Municipal Solid Waste Landfill (MSWLF) Unit"

In its October 23, 2001, proposal (see 66 FR 53566-53573) regarding the disposal of residential lead-based paint waste, the Agency proposed to expressly allow construction and demolition landfills to receive residential lead-based paint (LBP) waste.¹ This was to be accomplished in part by adding a sentence to the definition of municipal solid waste landfill (MSWLF) unit in 40 CFR 257.2 and 258.2, as follows: "A

¹ EPA published a direct final rule at 66 FR 53535 (Oct. 23, 2001) together with the proposed rule. EPA withdrew the direct final rule after receiving adverse comments. 66 FR 67108 (Dec. 28, 2001). Today's rule is final action on the proposed rule.

construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit." The Agency explained in the preamble to the proposal that the existing definition of a MSWLF unit includes language which states that a disposal unit "that receives household waste" is a municipal solid waste landfill unit. This language can be construed to prohibit the disposal of any household waste into a facility that is not designed and operated in conformance with 40 CFR part 258 regulations. As a result the Agency proposed to amend the definition of MSWLF unit, to distinguish residential lead-based paint waste, which has been determined to be a household waste, from other types of household waste, for purposes of disposal.

The definition as proposed is as follows: "Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may continue to receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately-owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit."

The proposed change was designed to simply distinguish residential LBP waste from other household wastes. The proposal would not alter what a MSWLF could or could not receive. MSWLFs would be allowed to continue to receive residential LBP waste as household waste. The proposed rule expressly provided an additional land-based waste disposal option for residential LBP waste.

B. Proposed Definition of "Construction and Demolition Landfill"

The October 23, 2001 notice also proposed to add a definition of a construction and demolition (C&D) waste landfill, which would expressly allow only C&D landfills, and no other types of land disposal units that meet the criteria of 40 CFR part 257, to receive residential LBP waste. The Agency proposed to define a C&D landfill as follows: "Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the

requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in Sec. 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in Sec. 261.5 of this chapter), or industrial solid waste (defined in Sec. 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste." The proposed rule would add this definition to 40 CFR parts 257 and 258.

C. Proposed Definition of "Residential Lead-Based Paint Waste"

Finally, EPA proposed to define "residential lead-based paint waste" to clarify the scope of the waste stream addressed by the proposed rule. The proposed definition of residential lead-based paint waste is as follows: "Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges." Not included in the proposed definition of residential LBP waste were residential LBP demolition and deconstruction waste, and LBP waste from nonresidential structures such as public and commercial buildings, warehouses, bridges, water towers, and transmission towers.

In proposing the definition of residential lead-based paint waste, the Agency included these particular LBP activities because they were limited to residences and would pose lead hazards to occupants, especially to children. We included the particular waste types (*i.e.*, debris, chips, dust, and sludges) because they are typically generated during the named LBP activities.

D. Rationale for Proposed Rule

In the preamble to the proposal, EPA explained the Agency's rationale and justification of the proposed changes, as well as the analytical basis for the proposal. The proposal provided a specific discussion of: (1) The reasons that residential lead-based paint is a concern to children; (2) the Congressional enactment of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (hereinafter referred to as Title X of the Housing and Community Development Act of 1992, or Title X); (3) the concerns of

stakeholders who have seen the application of RCRA's hazardous waste regulations as a barrier to the cost-effective abatement of lead hazards; (4) the 1988 proposed rule under the Toxic Substances Control Act (TSCA) which proposed new TSCA management and disposal standards for LBP debris generated by contractors from pre-1978 homes and public and commercial buildings; (5) the 1988 temporary suspension of the toxicity characteristic for specified lead-based paint debris under RCRA; and (6) the July 31, 2000 memorandum clarifying the regulatory status under RCRA Subtitle C of wastes generated as a result of LBP activities, including abatements, renovation and remodeling, and rehabilitations in homes and other residences. In the July 31, 2000 memorandum, the Agency interpreted residential LBP waste as a household waste excluded from the hazardous waste management requirements pursuant to the household waste exclusion in 40 CFR 261.4(b)(1), thus giving rise to the proposed amendments to parts 257 and 258 to expand disposal options for residential LBP waste to include C&D landfills, as well as MSWLF units.

III. Summary of Public Comments and the Agency's Response to Those Comments

The Agency received a total of eight comments on the proposed residential LBP waste rule: four from construction and/or demolition trade associations, and one each from a state, an association of state agencies, an environmental organization, and an individual. In general, commenters supported the proposal to allow residential LBP waste to be disposed of in C&D landfills. However, some commenters requested clarifications of the rule or preamble language or suggested additions to the rule language.

Definition of Residential Lead-Based Paint Waste

The state commenter argued that the proposed rule contained a significant flaw by including chips, dust and sludges in the definition of "residential lead-based paint waste," because EPA failed to take into account the potential for sleet, surface-water or wind-borne movement of lead paint chips, dust, and sludges off-site from a C&D landfill. The commenter stated that the placement of LBP dust, chips and sludges in an open environment (*i.e.*, a landfill that does not provide for daily cover) over an extended period of time, *e.g.*, 30 days, may allow a significant rain or wind event to transport lead-containing materials off-site. The commenter

further stated that sudden intense rain events or winds above 20 to 25 miles per hour can transport lead-containing wastes off-site by surface water or air currents. The commenter suggested that requiring daily cover or special packaging at C&D landfills for the above-mentioned wastes would mitigate the potential for adverse impact from surface water or air transport.

Because other features of C&D landfills and LBP waste handling practices serve to mitigate potential impacts from surface water or air transport, the Agency does not believe that requirements for daily cover or special packaging are needed on the federal level. Surface water transport off-site by sudden intense rain events would constitute "non-point source" pollution under the Clean Water Act. To mitigate potential surface water impacts, C&D landfills must comply with 40 CFR 257.3–3(c), which requires that a facility or practice shall not cause non-point source pollution that violates legal requirements implementing an areawide or statewide water quality management plan approved by EPA under the Clean Water Act.

To further mitigate potential water or air transport, both EPA and the U.S. Department of Housing and Urban Development (HUD) have issued guidance for LBP waste management calling for the containment of LBP wastes in plastic with sealed seams. EPA's "Reducing Lead Hazards When Remodeling Your Home" EPA 747–K–97–001 (<http://www.epa.gov/lead/rrpamph.pdf>) and EPA's Model Renovation Training Course EPA 747–B–00–005/6 (<http://www.epa.gov/opptintr/lead/rrmodel.htm>) both call for safe and secure disposal. Safe and secure disposal involves placing the LBP wastes in plastic (4–6 mil poly) bags that are sealed closed. HUD modified the EPA training course and developed their own training program to serve the specific needs of HUD's constituents. The HUD training course entitled "Addressing Lead-Based Paint Hazards During Renovation, Remodeling and Rehabilitation in Federally Owned and Assisted Housing" (also referred to as "The 3R Course") (http://www.hud.gov/offices/lead/training/3r/3r_course.cfm) was first delivered to remodeling and rehabilitation workers during HUD's nationwide training initiative in 2001–2002. HUD's training recommends that safe disposal of LBP wastes be accomplished by means of plastic bags. Other HUD brochures and documents also recommend that LBP wastes be placed in plastic bags for safe disposal. These brochures include:

"Lead Paint Can Poison: Is Your Family at Risk?" (<http://www.hud.gov/offices/lead/outreach/parents.pdf>).

"Lead Paint Safety—A Field Guide for Painting, Home Maintenance, and Renovation Work" (<http://www.hud.gov/offices/lead/training/LBPguide.pdf>).

"Caution: Lead Paint Handle With Care" (<http://www.hud.gov/offices/lead/outreach/tradesOKAYTOPRINT.pdf>).

"Lead Paint Can Poison: Protect Your Family When You Repaint or Remodel". (<http://www.hud.gov/offices/lead/outreach/remodel.pdf>)

HUD also operates the Lead-Based Paint Hazard Control Grant Program that has as its primary purpose to reduce the exposure of young children to lead-based paint hazards in their homes. The program provides grants to State and local governments for control of lead-based paint hazards in privately owned, low income owner-occupied and rental housing. These grants are designed to stimulate the development of a trained and certified hazard evaluation and control industry. Evaluation and hazard control work under the program must be conducted by either contractors who are certified and workers who are trained through a State-accredited program or by contractors trained in lead-safe work practices in the case of interim controls.

Moreover, as of March 1, 2000, lead service providers within the United States must be certified (or licensed) under an EPA authorized lead program. Most of the States have developed and are administering such a program and EPA certifies lead service providers in states that do not have their own programs. As of January 2003, 38 States had EPA-approved state lead programs that actively certify (license) lead service providers.

EPA has also discussed this issue with the National Association of Demolition Contractors (NADC). NADC re-confirmed EPA's understanding that paint chips and dust are managed in plastic bags. NADC stated that lead-based dust is removed with vacuums with HEPA filters and that the vacuum bags are removed and then tied closed prior to disposal. Paint chips that may fall on a plastic sheet are collected in the plastic sheet which is then placed in a tied plastic bag.

As stated above, the EPA believes that sufficient guidance, literature, training programs, EPA-approved state lead programs, and current practices exist so that whether the LBP waste is in the form of chips, dust, or sludge it will be managed appropriately (*i.e.*, containment in plastic bags on site prior to transport to disposal). At the disposal

facility, the containment plastic serves to mitigate against potential impacts of water or wind transport.

Additionally, where water or wind transport are problematic, States have demonstrated their ability, even in the absence of a federal requirement, to impose additional requirements for weekly, monthly, or daily cover as necessary to control particulate releases. According to the 1995 report, "Construction and Demolition Waste Landfills," 14 States require on-site C&D units to provide daily cover, while 19 States require daily cover at off-site C&D units. Based on these C&D landfill features and LBP waste handling practices, the Agency does not believe it is necessary to impose on the federal level a requirement for daily cover at C&D landfills receiving LBP waste.

Two industry association commenters stated that lead-based paint architectural debris generated from all structures, commercial and industrial, as well as, residential, can safely be disposed of in C&D landfills (*i.e.*, Subtitle D facilities). The commenters disagreed with the Agency's statement in the preamble that demolition and deconstruction waste was not similar to household waste. The commenters believe that LBP material handled by the demolition industry in commercial and industrial structures is no more dangerous to public health and the environment than when LBP appears in a residential structure.

The Agency wishes to clarify that today's rule is an outgrowth of the July 31, 2000 Memorandum stating that waste generated as a result of LBP activities in homes and other residences falls within the exclusion for "household waste" in 40 CFR 261.4(b)(1). (See 66 FR 53569.) The scope of this rulemaking concerns only residential lead-based paint wastes and not lead-based paint wastes from commercial and industrial structures because lead-based paint waste from commercial and industrial structures does not fall within the exclusion for "household waste" in 40 CFR 261.4(b)(1) or the definition of "household waste" in 40 CFR 258.2. Thus, *residential* LBP waste that would otherwise be hazardous waste subject to the hazardous waste management requirements of Subtitle C of RCRA can be managed under Subtitle D of RCRA. The purpose of this rulemaking is to expand Subtitle D disposal options for this particular household waste, which, without today's rule could only be disposed of in municipal solid waste landfills pursuant to 40 CFR part 258.

The July 31, 2000 Memorandum did not affect the regulatory status of

nonresidential LBP waste, such as that generated during the abatement or renovation and remodeling of a commercial building. "Household waste" is defined as "any material (including garbage, trash and sanitary waste 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)." (Emphasis added.)

The Agency recognizes that not all lead-based paint waste, whether from residential, commercial, or industrial sources, is "hazardous waste" which must be managed under RCRA Subtitle C. Any LBP waste that is not hazardous waste can be safely disposed of in a Subtitle D landfill, including a C&D waste landfill.

Several commenters stated that the proposed rule was not sufficiently clear as to the distinctions between those LBP activities that generate waste that would qualify as "residential LBP waste" (e.g., abatement, rehabilitation, renovation, and remodeling) and those that would not fall within the scope of the rule (e.g., "demolition and deconstruction"). One of these commenters stated that the regulated community might believe that there is some deconstruction or demolition occurring whenever you perform rehabilitation, renovation, remodeling, and perhaps to some extent abatement. The commenter suggested that the focus of the final rule be on waste type and not on waste activity.

The Agency distinguishes demolition and deconstruction activities from abatement, rehabilitation, renovation, and remodeling on the basis that demolition and deconstruction result in the elimination of the residential structure, while the residential structure remains where the other listed activities are conducted. The proposed definition of residential lead based paint waste does not include residential demolition and deconstruction activities. The proposed definition was limited to LBP waste that would be subject to Subtitle C of RCRA, except that it is included within the household waste exclusion in 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 the case of LBP wastes, we have determined that demolition and deconstruction, which result in the elimination of the household structure, are outside the

scope of the household waste exclusion and therefore are not included in the definition of "residential LBP waste." Although demolition activities and renovation activities may produce some of the same types of waste, the waste type is not a factor for consideration under 40 CFR 261.4(b)(1), and therefore, today's final rule continues to read as proposed. The Agency wants to make it clear that deconstruction and demolition wastes can continue to be placed in construction and demolition waste landfills provided that these types of wastes do not exhibit the toxicity or any other characteristic (*i.e.*, are not a hazardous waste).

One commenter was specifically concerned that the proposed definition of residential lead-based paint waste could create confusion about the scope of activities that are considered "lead-based paint activities" under the Toxic Substances Control Act (TSCA). The proposed residential LBP definition states that LBP activities include abatement, rehabilitation, renovation, and remodeling. Regulations promulgated under TSCA define "lead-based paint activities" to mean lead inspection, risk assessment, and abatement in the case of target (most pre-1978) housing (see 40 CFR 745.223). Renovation, remodeling, and rehabilitation are not considered lead-based paint activities under Title X. The commenter was concerned that the Agency was trying to change the scope of the TSCA regulation under the proposed RCRA regulation. The commenter suggested that the term lead-based paint activities be deleted and replaced with the phrase "activities that disturb lead-based paint."

The Agency did not intend or propose to change the scope of the TSCA regulation in the October 2001 proposal. However, to eliminate any potential confusion, the Agency has decided to change the definition of residential LBP wastes to eliminate the words "lead-based paint activities." The definition of residential LBP wastes included in today's final rule does not use the term "lead-based paint activities." This definition is as follows: "Residential lead-based paint waste means waste containing lead-based paint, which is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges."

Definition of Construction and Demolition Waste Landfill

A trade association commenter objected to the proposed definition of "construction and demolition waste landfill" because the proposed rule would define a C&D waste landfill as one that does not receive "industrial wastes," as defined in section 258.2. The commenter objected because the definition as proposed would preclude a C&D landfill that receives industrial waste in the form of manufacturer's "off-spec," rejected, or damaged construction materials from accepting residential lead-based paint waste. Thus C&D landfills in that state would have to choose between residential LBP waste or off spec., damaged, or rejected construction materials, but not both.

In the proposed definition of construction and demolition waste landfill, the Agency stated that C&D waste landfills were not eligible to receive "industrial solid wastes as defined in 40 CFR 258.2." The definition of "industrial solid waste" in section 258.2 covers "wastes resulting from" particular manufacturing or industrial processes. In defining C&D landfills, the Agency was concerned about C&D waste landfills receiving wastes generated by manufacturing or industrial processes and, as such, wrote the definition to exclude such wastes. In practice, industrial process wastes are typically managed on-site, or in limited cases, sent off-site to private/commercial industrial waste facilities. Industrial process wastes should not be received for disposal at a C&D waste landfill. The commenter was concerned that off-spec construction products (e.g., toilets or shingles) would not be allowed in a C&D waste landfill because of the proposed definition. However, the Agency views "off-spec," rejected, or damaged construction materials as virtually identical in nature to the type of waste that is appropriately received at a C&D waste landfill and are not "industrial solid waste" as defined at 40 CFR 258.2. Because the definition of industrial solid waste does not explicitly include materials that do not meet manufacturers' specifications, are damaged or rejected for use, EPA believes that industrial waste in the form of manufacturer's "off-spec," rejected, or damaged construction materials can be appropriately placed in a C&D landfill. In addition, the Agency expects that States would exercise judgment in what is considered industrial wastes. Thus, EPA believes that the definition in today's final rule accommodates disposal of unused construction materials that do not meet

manufacturers' specifications, are damaged or rejected for use.

Another commenter stated that the definition of C&D landfill as proposed could be interpreted to mean that conditionally exempt small quantity generator waste could be accepted in a 40 CFR part 257 Subpart A facility. The commenter suggested a wording change to eliminate this possible misinterpretation.

EPA does not intend that a C&D landfill be allowed to receive conditionally exempt small quantity generator wastes if the C&D landfill meets the requirements of 40 CFR part 257 Subpart A, but does not meet the requirements of part 257, subpart B. Therefore, the Agency has changed the definition of C&D waste landfill to eliminate any potential confusion. The definition has been changed to clarify that conditionally exempt small quantity generator wastes can only be disposed of in a C&D landfill that meets the requirements of 40 CFR part 257, Subpart B.

Effect on State Programs

The state association commenter indicated that it is important that EPA be explicit that states are not required to amend their programs to incorporate today's rule; however the commenter also suggested language to assure States that their prior approved programs will not be reopened regardless of whether they adopt today's rule or not. EPA agrees with the comment and has revised the language in Section V. of today's preamble to make this clear.

Lead-Contaminated Soils

Lastly, a commenter stated that EPA had missed a golden opportunity to allow lead-contaminated soils to be managed similarly and requested that EPA move expeditiously to craft a rule to allow lead-contaminated soils to be disposed of in C&D and municipal solid waste landfills. The commenter claimed that the disposal of lead-contaminated soils in C&D landfills and municipal solid waste landfills is environmentally safer than is the disposal of lead-based paint debris. The commenter also argued that the cost of managing those soils that fail the TCLP under the RCRA hazardous waste requirements discourages soil lead abatement from residences. As discussed previously, today's rulemaking is limited to providing the C&D landfill disposal option for residential lead-based paint waste addressed in the July 31, 2000 Memorandum. Lead-contaminated soils were not included in the July 31, 2000 Memorandum, thus EPA is not

addressing disposal of lead-contaminated soils at this time.

Summary of Final Rule Changes

This final rule will expressly allow residential lead-based paint waste to be disposed of in construction and demolition waste landfills by clearly stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today's action does not prevent a municipal solid waste landfill from continuing to receive residential lead-based paint waste. Two minor changes were made to the final regulatory language based on comments received on the proposal. Today's final rule was modified to remove "LBP activities" to one that includes "activities that disturb LBP." The definition of construction and demolition waste landfill was changed to eliminate any confusion so that small quantity generator waste can only be disposed of in a facility that meets the requirements of 40 CFR part 257, subpart B.

IV. Other Applicable Federal, State, Tribal, and Local Requirements

Today's final rule would not alter the authority of State, local and Tribal governments to regulate LBP waste more stringently than does EPA. Generators of residential LBP waste should contact the appropriate State environmental agencies to determine if there are additional or more stringent disposal requirements for residential LBP waste. Also, generators are subject to applicable HUD and/or TSCA regulations when addressing residential LBP hazards.

V. How Will States and Tribes Implement This Final Rule?

Because today's final rule is less stringent than existing federal criteria, States are not required to amend their permit programs which have been determined to be adequate under 40 CFR part 239. States have the option of amending statutory or regulatory definitions pursuant to today's final rule. If a state chooses to amend its permit program pursuant to today's action, the State would be required to notify the Regional Administrator of the modification as provided by 40 CFR 239.12. Whether a State chooses to incorporate today's rule into its solid waste program has Statutory and Executive Order Reviews no effect on its existing status with respect to EPA approval, *i.e.*, State revisions will not open previously approved solid waste programs for Federal review.

Today's amendments are directly applicable to landfills in States without an approved permit program under part 239 and in Indian Country. We encourage Tribes to adopt today's rule into their programs to promote lead-based paint abatement activities in homes and other residences in Indian Country.

VI. How Does This Final Rule Comply With Applicable Statutes and Executive Orders?

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. The Order defines a significant regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

EPA has performed a full economic analysis, "Economic Analysis of EPA's Final Rule Amending 40 CFR parts 257 and 258," which is available in the docket for today's rule. The Economic Analysis concludes that this rule will impose no additional costs to parties, but may result in cost savings and incremental public health benefits. The rule authorizes the disposal of residential LBP waste in C&D landfills, where previously, as "household waste" under the July 31, 2000 policy memorandum, disposal was authorized only in MSWLFs. Therefore, EPA believes that, in those parts of the country where costs associated with transport to and disposal in C&D landfills is less expensive than costs associated with MSWLF disposal, some

residential LBP waste will be diverted from MSWLFs to C&D landfills. Where this occurs, generators will benefit from lower waste management and disposal costs.

EPA believes that only residential LBP waste generators in the Midwest, Northeast, and South regions will shift disposal from MSWLFs to C&D landfills, based on an analysis of the relative costs of MSWLF and C&D landfill disposal by region. EPA further believes that the percentage of residential LBP waste that is affected is proportional to the share of these three regions in the number of housing units with LBP, which is 84.4 percent. Under these assumptions, an estimated 0.87 million tons of residential LBP waste may be diverted from MSWLFs to C&D landfills annually. This represents 0.73 percent of the total volume of all waste disposed of in MSWLFs annually. This shift in disposal would save residential LBP waste generators in the Midwest, Northeast, and South regions up to an estimated \$16.76 million annually. The savings accruing to generators of residential LBP abatement waste is estimated at \$0.79 million per year, while the savings accruing to generators of residential renovation and remodeling waste is \$15.98 million per year.

EPA estimates that of the \$0.79 million in savings that could accrue to generators of residential LBP abatement waste, an estimated 39.7 percent, or \$0.31 million, will be generated annually in the public housing sector. EPA assumes that in the public sector, any savings in residential LBP waste management and disposal costs will be used to conduct additional LBP abatements. Given an average cost for LBP abatement in public housing units of \$3,650, the \$0.31 million in annual savings would fund an additional 86 abatements each year. This ensuing increase in LBP abatement projects would result in a more rapid reduction in the potential for exposure to the hazards of LBP, especially for children. These hazards include decreased intelligence (*i.e.*, lower IQ), behavioral problems, reduced physical stature and growth, and impaired hearing.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0154. Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information,

Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at auby.susan@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

Today's action does not impose any new information collection burden. The previously approved information collection requirements are contained in the existing regulations at 40 CFR 257.30. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business that is primarily engaged in lead paint removal as described in the North American Industry Classification System (see <http://www.sba.gov/size/SIC2NAICSmain.html>); (2) a small governmental jurisdiction that is a government of a city, county, town,

school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any new requirements on small entities. In fact, the rule will provide an additional non-mandatory option for the disposal of residential LBP waste, which could result in less cost in managing residential LBP waste.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This final rule does not impose any enforceable duty on any State, local or tribal governments or the private sector. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Policies that have federalism implications' is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained in Section V. of this preamble, none of today's proposed revisions are more stringent or broaden the scope of the existing Federal requirements. Therefore, States are not required to adopt the revision to the definition of MSWLF unit nor the additional definitions of construction and demolition (C&D) landfill and residential lead-based paint waste in today's rule. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the

Federal government and Indian tribes, as specified in Executive Order 13175. Today's final rule would expressly provide an additional option for disposal of certain waste applicable in Indian Country, but would not create any mandate on Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. However, this rule will affect decisions involving the environmental health or safety risks to children. In fact, it will benefit children by allowing environmentally protective disposal of residential lead-based paint waste in C&D landfills, which is less costly than disposal in MSWLFs in certain areas of the U.S., therefore reducing the cost of lead abatements. Reducing the cost of LBP abatements will also reduce the amount of time needed to complete abatements in public housing. Lower abatement costs may increase the amount of private homes undergoing abatements. By reducing costs associated with the disposal of LBP waste, the Agency believes that the number of abatements may marginally increase, thus resulting in a reduction of the number of children exposed to LBP.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it will not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. 104-113, Sec. 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. Today's final rule does not involve technical standards, voluntary or otherwise. Therefore, the NTTAA does not apply to today's final rule.

J. Executive Order 12898: Federal Action To Address Justice in Minority Populations and Low-Income Populations

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and the National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

Today's final rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities. On the contrary, since the rule will reduce the cost of performing LBP abatements in certain regions of the U.S., EPA believes that the savings will afford public housing authorities, in particular, the opportunity to conduct additional abatements of LBP hazards in affected

housing units. Tenants of public housing units are possibly more likely to be minority and lower-income households, and the rule should have the effect of providing a differential benefit to such populations.

K. Congressional Review Act

The Congressional review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C., 804(2). This rule will be effective on June 18, 2003.

List of Subjects

40 CFR Part 257

Environmental protection, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: June 12, 2003.

Christine Todd Whitman,
Administrator.

■ For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 257—[AMENDED]

■ 1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), and 6949a(c); 33 U.S.C. 1345(d) and (e).

■ 2. Section 257.2 is amended:

■ a. By adding in alphabetical order the definitions for "Construction and demolition (C&D) landfill" and "Residential lead-based paint waste," and

■ b. By revising the definition of "Municipal solid waste landfill (MSWLF) unit."

The revision and additions read as follows:

§ 257.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) or industrial solid waste (defined in § 258.2 of this chapter). Only a C&D landfill that meets the requirements of subpart B of this part may receive conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

* * * * *

Residential lead-based paint waste means waste containing lead-based paint, which is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

* * * * *

PART 258—[AMENDED]

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

■ 2. Section 258.2 is amended:

■ a. By adding in alphabetical order the definitions for "Construction and demolition (C&D) landfill" and "Residential lead-based paint waste," and

■ b. By revising the definition of "Municipal solid waste landfill (MSWLF) unit."

The revision and additions read as follows:

§ 258.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements in part 257, subparts A or B of this chapter that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) or industrial solid waste (defined in § 258.2 of this chapter). Only a C&D landfill that meets the requirements of 40 CFR part 257, subpart B may receive conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2 of this chapter. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

* * * * *

Residential lead-based paint waste means waste containing lead-based paint, which is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

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