



Questions and Answers

PROPOSED RULE ON THE MANAGEMENT AND DISPOSAL OF LEAD-BASED PAINT DEBRIS

Q: What is this rule proposing and why is it needed?

A: To reduce the costs of disposing of lead-based paint (LBP) debris and encourage the safe removal and disposal of LBP debris, the Environmental Protection Agency (EPA) is proposing new management and disposal standards for LBP debris. These standards are developed under the Toxic Substances Control Act (TSCA) and allow LBP debris to be disposed of in construction and demolition (C&D) landfills among other options. The Agency believes that disposal in C&D landfills is less costly than disposal in either municipal solid waste landfills or hazardous waste landfills. By lowering the costs of abatements, the Agency hopes to hasten the pace with which LBP debris and LBP hazards are removed from residences as well as public and commercial buildings.

Several states, advocacy groups, and certain Federal entities requested that EPA develop a tailored management and disposal program for LBP debris. Disposing of LBP debris can be very costly. EPA estimates that LBP debris tested and managed as hazardous waste can cost up to \$316 per ton. EPA believes that the costs of LBP debris disposed as solid waste will be significantly less—approximately one-tenth the cost of disposal as hazardous waste.

Q: Who is affected by this rule?

A: This rule covers persons and firms who renovate, remodel, demolish, abate, or delead residences or public and commercial buildings or transport LBP debris. Examples include renovation or abatement contractors and construction and demolition professionals.

Q: Does the household hazardous waste exclusion apply to me?

A: If you perform work in your home, you can treat and dispose of LBP debris as solid waste under the household hazardous waste exclusion. In other words, you are not subject to current Resource Conservation and Reservation Act (RCRA) toxicity characteristic determinations and disposal standards nor will you be subject to the proposed TSCA standards.

Q: What is LBP debris?

A: LBP debris is any component, fixture, or portion of a residence or other building coated wholly or partly with LBP. LBP debris can also be any solid material coated wholly or partly with LBP resulting from a demolition. Examples include ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim, including sashes, window heads, jambs, sills, stools and troughs, built-in cabinets, columns, beams, bathroom vanities and counter tops, painted roofing, chimneys, flashing, gutters and down spouts, soffits, facias, rake boards, corner boards, joists, lattice work, railings and railing caps, siding, and hand rails.

Q: When would I generate LBP debris?

A: LBP debris is generated when solid material or an architectural component coated wholly or in part with or adhered to by lead-based paint is displaced and separated from a building during renovation, remodeling, abatement, or demolition activities.

Q: Does LBP debris include paint chips and dust, leftover paint or paint thinners, and other materials?

A: No. Paint chips and dust, leftover paint or paint thinners, sludges, solvents, vacuum filter materials, wash water, sandblasting material, contaminated and decontaminated protective clothing and equipment, and other wastes such as lead-contaminated soil are **not** considered LBP debris. They remain subject to RCRA requirements.

When properly decontaminated, some of these wastes such as protective clothing and equipment do not exhibit toxicity characteristics for lead. Some of these wastes are generated in smaller amounts and are homogenous. A hazardous waste determination may easily be made through the use of the Toxicity Characteristic Leachate Procedure (TCLP) or your knowledge of that waste. However, you may be able to manage these materials as a solid waste, if:

\$ The quantities of hazardous waste (including non-LBP debris waste from LBP activities) you generate are less than 100 kg (i.e., approximately one 55-gallon drum/container) per month.

\$ You qualify as a conditionally exempt small quantity generator (CESQG) of hazardous waste (including non-LBP debris waste from LBP activities).

Lead-contaminated soil is not considered LBP debris nor is it eligible to be disposed of under these proposed rules. RCRA requirements must be followed when disposing of lead-contaminated soil.

Q: How is my business affected?

A: Two years after EPA finalizes these rules, LBP debris from abatement, deleading, renovation and remodeling, and demolition of residences and public and commercial buildings would not be subject to Federal RCRA hazardous waste management requirements. As a LBP abatement contractor or renovation/remodeling or demolition professional, any LBP debris that you generate would be subject to the Federal TSCA LBP debris management and disposal standards (unless your state is approved to run their own LBP debris disposal program).

The TSCA standards allow generators of LBP debris to dispose of LBP debris in a C&D landfill among other options. Persons generating LBP debris would no longer need to test the LBP debris for lead. Once a generator has determined that LBP is present they must follow the management requirements discussed below and can dispose of it in a C&D landfill. Disposing of LBP debris in a C&D landfill is less costly than other options and may reduce the cost of LBP activities, including elimination of LBP hazards.

Q: Will I have to test my LBP debris prior to disposal?

A: No testing of LBP debris is necessary, but you must comply with the TSCA LBP debris management and disposal standards discussed below.

Q: Where can I dispose of LBP debris once the proposed standards become law?

A: Under the proposed TSCA standards LBP debris may be disposed of in:

- \$ A C&D landfill;
- \$ A landfill receiving hazardous waste from conditionally exempt small quantity generators (CESQG);
- \$ A hazardous waste disposal facility;
- \$ A hazardous waste disposal facility authorized to manage hazardous waste by a State that has an EPA-approved hazardous management program;
- \$ A hazardous waste treatment, storage, and disposal facility that has qualified for interim status to manage hazardous waste; or
- \$ A RCRA hazardous waste incinerator.

The proposal does not allow LBP debris to be disposed of in a Municipal Solid Waste Landfill Facility (MSWLF). EPA believes that more lead will leach from the LBP debris when disposed of with organic materials such as common garbage. EPA is allowing disposal in a C&D landfill as EPA has found that lead doesn't leach as much when exposed to inorganic materials such as those found in a C&D landfill.

Q: How do I need to manage LBP debris once I have removed it from a structure?

A: To prevent the spread of LBP hazards from one place to another, the proposed TSCA standards require certain storage and access limitations. They include:

\$ Access Limitations

After generating LBP debris, you have 72 hours before the LBP debris must be stored. There are several options available for storing LBP debris in compliance with the requirements of this rule.

1. A closed or covered receptacle (e.g., containers, drums, mobile trailers, covered dumpsters or covered transport vehicles);
2. A dumpster or container at least 6 feet tall;
3. A fenced area that is locked when work activities are not being performed on the site;
4. An unoccupied structure that is locked when work activities are not being performed on the site; or
5. An unoccupied level of a multi-story structure and keeping the level locked when work activities are not being performed on the site.

\$ Storage Time Limitation

You may not store LBP debris for more than 180 days. In addition, LBP debris must be disposed of within 180 days of generation.

\$ Transportation Requirements

LBP debris that is transported off-site must be contained in a covered receptacle or a covered vehicle.

Q: Does a contractor have to be certified to dispose of LBP debris?

A: Although contractors who perform abatements and/or remove LBP hazards from residences must be certified, contractors who dispose of LBP debris in compliance with the guidelines of this rule are "certified by rule" only to manage and dispose of LBP debris. Anyone who

generates or disposes of LBP debris not in compliance with this rule will no longer be certified to manage and dispose of LBP debris.

Q: Can I salvage or reuse LBP architectural components?

A: It depends. LBP components, which have deteriorated LBP on them, must be stripped completely of LBP before being reused. EPA believes that by preventing the reuse of components with deteriorated LBP the Agency is preventing the spread of LBP hazards from one place to another. Components, which show no deteriorating paint, may be reused without further requirements.

The reuse of LBP debris as mulch, ground cover, or topsoil or for site leveling, fill or roadbed material may cause health risks through ingestion of LBP, dust, or contaminated soil. Such an application is prohibited and considered an improper method of disposal under today's proposal. Shredding, compacting, burying, or chopping LBP debris may also make it difficult to identify the presence of LBP, leading to unwitting handling of a potentially hazardous material. Therefore, today's proposal permits these applications only if LBP is removed from LBP debris prior to such applications. In cases where LBP is removed, **all** LBP must be removed (i.e., the level of lead on the substrate must be below 1 milligram per square centimeter) prior to applying it to the ground.

Q: What are the notification and recordkeeping requirements?

A: If you are transferring LBP debris to another party for any reason you must notify the recipient of the LBP debris in writing of the presence of LBP debris and the need to comply with LBP debris management and disposal standards. The written notification should:

- \$ Disclose the presence of LBP debris,
- \$ Indicate the date when the LBP debris was generated,
- \$ Be signed and dated by the recipient,
- \$ Be signed and dated by the transferor,
- \$ Contain the generator's name and address, and
- \$ Notify the recipient of the need to comply with LBP debris management and disposal standards.

Notification is required in order to ensure proper disposal of LBP debris and protect those transferring LBP debris from future liability in cases where the recipient improperly disposed of LBP debris. Notification also protects those who receive LBP debris by alerting them to the presence of LBP debris and notifying them of their requirements for management and disposal.

The proposed rule contains a sample form for notification, but any type of written format is acceptable as long as it contains the elements outlined above.

Once both the recipient and the transferor have completed the written notification, both parties must keep a copy of the form for at least 3 years from the date it was signed.

Q: Will I have to test other LBP waste that is not debris?

A: Maybe. A hazardous waste determination for non-LBP debris waste can be made by using the TCLP or a generator's knowledge from previous experience with similar debris or test data. Based on the your knowledge of waste generation and type of activity resulting in the waste, you may be able to support your finding that non-LBP debris waste is not a hazardous waste.

Your rationale, however, may be questioned in the event that your activities are audited by State or Federal enforcement authorities.

Q: How is LBP debris being managed and disposed of now?

A: Currently, RCRA regulates the management and disposal of solid waste, including LBP debris. RCRA requires that generators of LBP debris test the debris for toxicity characteristics using the TCLP or use their knowledge from previous testing experiences to determine whether each sample of LBP debris should be treated as hazardous waste. If the LBP debris tests higher than the regulatory limit for lead (5mg/L) in leachate than the LBP debris must be disposed of in a hazardous waste (or Subtitle C) landfill or treated to meet the RCRA land disposal restrictions. LBP debris that has been treated to meet land disposal restrictions may be disposed of as solid waste. If the LBP debris tests under the regulatory limit for lead or the generator uses his or her knowledge that the debris will not exceed the regulatory limit for lead, than the LBP debris can be disposed of as regular solid waste in a MSWLF or non-hazardous solid waste landfills (e.g. C&D landfills).

Q: Why are the LBP management and disposal standards being switched from RCRA to TSCA?

A: Due to sample collection and preparation problems, the RCRA standard for determining a hazardous waste, the TCLP test, is very difficult to reproduce on the same pile of LBP debris. The results of one test might show the pile of LBP debris exceeds the regulatory limit for lead while another test on the same pile of debris might determine the LBP debris pile to be under the regulatory limit for lead. If LBP debris is determined to be hazardous, it is very costly to manage and dispose of. If the LBP debris is **not** determined to be hazardous, then there are no clear management and disposal requirements for it leading to an increased potential for risks.

State and Tribal Programs

Q: How do the Federal TSCA LBP debris management and disposal standards affect my state's regulations?

A: States can be authorized to run their own LBP debris disposal program. State regulations governing LBP debris management and disposal may be more stringent than or differ from the provisions outlined in this document. Please check with your state representative to learn more about your state programs and requirements.

CERCLA Liability

Q: Would I remain subject to CERCLA liability?

A: Yes. The two proposed rules will not alter CERCLA liability provisions.