

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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Note

Subject: Options for Disposing of Lead Contaminated Soil Removed from
Residential and Public Building Property

From: Michael Shapiro

To: Bill Sanders

This note responds to your July 3, 1996 note requesting clarification of RCRA Subtitle C regulation of lead-contaminated soil managed under your office's lead program. We recognize the importance of the residential lead abatement program for the protection of human health, and we share your interest in preserving cost-effective disposal options for lead-contaminated soil. Provided below are our opinions on some options for lead contaminated soils from lead abatement projects.

The first option you discussed is the RCRA household waste exclusion (40 CFR 261.4(b)(1)). As we have discussed, the household waste exclusion has some limitations when applied to residential lead contaminated soils from lead abatement projects. You have particularly expressed concern about the requirement for landfills which accept household waste to meet the municipal landfill requirements in 40 CFR Part 258. If lead-contaminated soils were considered to be household waste, then they would be exempt from RCRA Subtitle C, but subject to RCRA Subtitle D disposal requirements if disposed of off-site. By definition, a landfill which accepts household waste is a municipal solid waste landfill subject to 40 CFR Part 258 criteria.¹

You also mentioned that if the contamination resulted from the abatement project, we may have difficulty defining the soil as household waste. However, you stated that properly performed abatements under your program should not contribute to soil contamination. If that IS the case, the household waste exclusion could apply to lead contaminated soil, and, as discussed in the OGC memo to Region 1, such soil could be managed on site or off-site without being subject to Subtitle C2. We would be happy to continue to discuss ways to overcome these concerns, or alternative options, with you.

¹ See 40 CFR Part 258.2 definition of municipal solid waste landfill unit, and 40 CFR Part 258.1 applicability of criteria

The second option you discussed is the HWIR-media proposed rule. Under the option we proposed, lead-contaminated soil would be treated as hazardous waste when the concentration of lead is greater than or equal to a predetermined "Bright Line," and could be determined not to contain hazardous waste, (and therefore not need to be managed as hazardous), if concentrations of constituents were below the Bright Line. We agree with your note that the proposed option for HWIR-media may not fully address your concerns about RCRA's potential effect on lead abatement programs. We did, however, also solicit comments on a range of alternatives in the HWIR-media proposal that might be better suited to these programs. For example, we solicited comment on a "unitary" approach that would eliminate the Bright Line, which I understand may be a concern for you, and we also sought comment on reduced site-specific public participation and information requirements for more routine types of cleanups. More broadly, we are certainly interested in developing a final rule that will accommodate routine cleanup activities under alternative programs (such as lead abatement programs or petroleum spill responses), and we will work with your staff to this end. You should also be aware that as part of the Administration's effort to reinvent environmental regulations, the applicability of certain RCRA requirements to remediation wastes was identified as an area for statutory reform. Congress is considering several approaches which -- although they have not received formal Administration support at this point -- show considerable promise.

I am committed to working with you on these important issues. Please have your staff continue to meet with us to discuss and develop other options.

See Memorandum from Lisa K. Friedman to Pamela A. Hill, March 7, 1995 (attached)