

**RE: Lead-Contaminated Materials....waste disposal**

Monday, December 6, 2010 6:14 PM

From: "Bunnell, Ross" <Ross.Bunnell@ct.gov>

To: "'CHEM SCOPE INC'" <chem.scope@snet.net>

1 File (217KB)



Final Ltr t...

Scott.

I'm not sure how I dropped the ball on your email of earlier this year, except that we had some similar questions come it at about that time, and I may have intended to reply to them all at once and somehow forgot you.

Anyway, here are my replies to your questions:

1. Is this actually a law in Connecticut that contractors need to comply with this "guidance" document?

If so can you point out where it says that. Many contractors have asked if they can just comply with EPA's RCRA Lead-Contaminated Waste disposal requirements which allows all household waste generated by the contractor or by the homeowner to be disposed of as solid waste (in other words its excluded from needing to be evaluated for Hazardous waste). I just want to be 100% sure of the answer that I have been giving which is that they must comply with CT DEP requirements which are more stringent then the federal requirements. If have told the contractors that this particular "guidance" document is passively enforced.

REPLY: There is no Connecticut statute or regulation that specifically states that contractors must test residential lead-based paint waste or dispose of it as hazardous waste if it exceeds hazardous waste limits (i.e., 5 mg/l by TCLP or equivalent method). However, Connecticut's Hazardous Waste Management Regulations (specifically Regulations of Connecticut State Agencies Sections 22a-449(c)-102(a)(1), -102(a)(2)(A) and -102(a)(2)(B)) incorporate the provision in the federal hazardous waste regulations at 40 CFR 262.11 that require any generator of a solid waste to determine if that waste is hazardous. Therefore, a contractor managing lead-based paint wastes, like any other generator of solid waste, must determine if that waste is hazardous.

As noted in the text of 40 CFR 262.11, a generator may make this determination (often referred to as a "hazardous waste determination") by testing the waste, or by using knowledge of the waste and the process that generated it. DEP's guidance document was designed to put forth several methods that DEP had determined to be technically sound that a generator of lead-based paint waste could use to meet their obligation to determine if their waste is hazardous as required by 40 CFR 262.11. The several methods listed in this document are not necessarily the only ones that could be used, but every attempt was made to anticipate the kinds of characterization approaches that generators might wish to use. In other words, contractors are not forced to use only the characterization methods presented in our guidance, but DEP expected that these methods (or some slight variation thereof) would be the ones that would typically be used to characterize lead-based paint wastes in Connecticut.

Also significant with respect to this question is the so-called "household waste" exemption of 40 CFR 261.4(b)(1). This provision exempts wastes that are generated in households from hazardous waste requirements. The DEP guidance was based a 11/20/1987 policy memo by EPA regarding its interpretation of the household exemption as it applies to lead-based paint wastes (this EPA interpretation is included in the guidance document as Appendix 3). DEP agreed with EPA's interpretation, as outlined in this 1987 EPA policy memo, that wastes generated by contractors were not eligible for the household waste exclusion. EPA later changed its position on the applicability of the household exclusion to lead-based paint wastes, as documented in the following July 31, 2000 EPA memo:

[http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/24EE8D16A1D9F611852569C900623E06/\\$file/14459.pdf](http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/24EE8D16A1D9F611852569C900623E06/$file/14459.pdf)

In this memo, EPA reversed its position on the applicability of the household waste exclusion to contractor-generated waste. That is, they stated that both homeowner-generated and contractor-generated lead-based paint wastes could be eligible for the household exclusion as long as they are generated in a residence. DEP was aware of this memo, but did not agree with the revised interpretation of the household exclusion, and has since advise generators of lead-based paint waste to continue to manage their waste as described in the guidance document that you referenced. As an EPA-authorized state under RCRA, Connecticut is within its rights to be more stringent than the federal regulations. Furthermore, the Connecticut Supreme Court has ruled that DEP is within its rights to agree or disagree with EPA policy. So, DEP is in not bound by the more recent EPA position on the household waste exclusion as it applies to residential lead-based paint waste.

Attached please see a letter to a state representative who had inquired about the status of EPA's revised 2000 policy vs. DEP's policy at the request of a constituent of his that was a contractor. In particular, see the paragraph towards the end of the letter which addressed this issue pretty clearly:

“As I'm sure you are aware, a state agency may establish interpretations of their regulations that are more stringent than federal requirements. Therefore, under state regulations, contractor-generated LBP waste from households is still regulated as hazardous waste.”

Although DEP will retain its long-standing interpretation of the applicability of hazardous waste requirements to lead-based paint wastes, as alluded to in the attached letter, DEP is considering making a change to Connecticut's Hazardous Waste Management Regulations that would allow contractor-generated lead-based paint waste to be eligible for the household waste exclusion provided that certain conditions are met. Most notably, the waste would have to be disposed of at a landfill (where research shows the lead remains stable and immobilized), and not at a combustion facility (where the lead would result in air emissions and contamination of the ash), nor at recycling facilities (where the lead would be a source of contamination of recycled products). However, until these regulatory changes are final, the long-standing interpretation of the DEP will continue to stand.

Lastly, I'm not sure what you mean by “passively enforced,” but I can say that we have performed investigations and pursued enforcement actions on several occasions with respect to the management of lead-based paint wastes generated at residences that were not managed in accordance with our guidance document. Most notably, a few years ago we pursued and obtained a criminal conviction against a sandblasting contractor that failed to contain and collect lead-contaminated sandblasting grit at a residence. In addition to paying a substantial monetary penalty (approximately \$40,000), part of the conviction included a requirement that the contractor never engage in painting or paint removal again.

2. The subject guidance document allows for homeowners to take up to 10 cubic yards (if in writing) from the contractor to be disposed of as part of [their] normal house hold waste (even if it contains lead). Many contractors have asked if it would be allowed for the "home owner" to order a 10 cubic yard dumpster just for the renovation (instead of the contractor) and the contractor could fill it during the renovation and have that disposed of as solid waste (non-hazardous).

REPLY: As above, the hazardous waste determination requirements and the household waste exclusion do not specifically address this issue, so it is a matter of interpretation. When we have been asked this question in the past, we have stated that, in order for the waste to be exempt, the homeowner must have the means to dispose of it in a manner typical for routine household wastes: that is, either via curbside pickup, or by taking it themselves to their local transfer station. If commercial third parties must become involved in the transfer of the waste (such as ordering a dumpster for pickup by a solid waste hauler), then this is not consistent with the intent in DEP's interpretation that the waste is handled in a manner consistent with the routine management of solid waste. Again if, as planned, we change our regulations to extend applicability of the household waste exclusion as described above, this will no longer be an issue.

3. Do you think that all of the recent awareness regarding Lead-based paint and EPA's law changes will change DEP's enforcement level on this topic?

Although, as noted above, we are sticking to our long-standing policy for now until we formally adopt a regulatory change, this is not to say that they existence of the July 31, 2000 EPA memo and/or the implementation of the RRP rule could not be mitigating factors in an enforcement action against a contractor or waste hauler involving the improper handling or disposal of lead-based paint waste. Admittedly, there is some clear basis for confusion, and

if we determined in an enforcement action that such misunderstanding had contributed to the mismanagement of the waste, we would take that into account in our enforcement response. However, this does not mean that we would not enforce the existing interpretation. We would still pursue enforcement that we determined appropriate to the fact pattern of the particular case at hand, which would include factors such as the degree of willfulness or negligence on the part of the generator or hauler, and whether or not they knew or should have known about DEP's position on the regulatory status of lead-based paint wastes.

Feel free to get back to me if you have any further questions.

- - Ross Bunnell, CT DEP

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Disclaimer: Any views expressed in this email represent only the sender's personal opinion based on his knowledge and experience with the DEP, and in no way should be considered a formal ruling by the Department. It is always the obligation of a generator or other handler of waste to be familiar with and to comply with all applicable state and federal requirements.

From: CHEM SCOPE INC [mailto:chem.scope@snet.net]

Sent: Friday, December 03, 2010 4:40 PM

To: Bunnell, Ross

Cc: Ron Arena

Subject: Re: Lead-Contaminated Materials....waste disposal

Hi Ross, I hope all is well. I sent this email (SEE BELOW) a while back and never received a response. I would really appreciate your input. If you wish you can call me on my cell at 203-996-3619. Thank you very much.

Scott Arena

Operations Manager

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--- On **Sat, 2/13/10, CHEM SCOPE INC <chem.scope@snet.net>** wrote:

From: CHEM SCOPE INC <chem.scope@snet.net>

Subject: Lead-Contaminated Materials....waste disposal

To: "RossBunnell" <Ross.Bunnell@ct.gov>

Date: Saturday, February 13, 2010, 2:18 PM

Hi Ross, I don't know if you remember but we spoke back in November regarding the subject topic and relationship to EPA's new Lead RRP rule (40 CFR Part 745). This rule requires many contractors to have some training for lead safe work practices and I had mentioned that most contractors that had taken the training with me were not aware of the document entitled "Guidance for the management and disposal of Lead-Contaminated Materials Generated in the Lead Abatement, Renovation, and Demolition Industries" and most do not comply. Since that discussion we have had 367 students come through the training and maybe 5 contractors even heard of the document, while none comply. So I just wanted to ask some questions to help me with my response to the contractors as I teach how to properly dispose of Lead-Contaminated

materials.

1. Is this actually a law in Connecticut that contractors need to comply with this "guidance" document?

If so can you point out where it says that. Many contractors have asked if they can just comply with EPA's RCRA Lead-Contaminated Waste disposal requirements which allows all household waste generated by the contractor or by the homeowner to be disposed of as solid waste (in other words its excluded from needing to be evaluated for Hazardous waste). I just want to be 100% sure of the answer that I have been giving which is that they must comply with CT DEP requirements which are more stringent then the federal requirements. If have told the contractors that this particular "guidance" document is passively enforced.

If the answer to question #1 is Yes. I have the following questions (if the answer is No then disregard the following questions):

2. The subject guidance document allows for homeowners to take up to 10 cubic yards (if in writing) from the contractor to be disposed of as part of there normal house hold waste (even if it contains lead). Many contractors have asked if it would be allowed for the "home owner" to order a 10 cubic yard dumpster just for the renovation (instead of the contractor) and the contractor could fill it during the renovation and have that disposed of as solid waste (non-hazardous).

3. Do you think that all of the recent awareness regarding Lead-based paint and EPA's law changes will change DEP's enforcement level on this topic?

I will be teaching these classes almost every day until at least 4/22/10 (by then I will have had over 1100 students) so I really appreciate your help. Many contractors want to comply with this guidance but when I tell them the cost difference between a 30 yard dumpster filled with solid waste vs. Lead Hazardous waste they don't react well. It goes from \$600 to \$8000.

Thank you very much Ross.

Scott Arena
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