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STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



August 4, 2010

The Honorable Louis P. Esposito  
Representative, 116<sup>th</sup> District  
Legislative Office Building,  
Room 4112  
Hartford, CT 06106-1591

RE: Disposal of lead-based paint waste in Connecticut

Dear Representative Esposito:

As promised in my letter of April 23, 2010 (copy attached), I am writing you to provide clarification in response to the concerns raised by your constituent, Ken Carney, President of Baybrook Remodelers, Inc. about the inconsistency in requirements for disposal of lead-based paint (LBP) waste by the United States Environmental Protection Agency (EPA) and State of Connecticut, Department of Environmental Protection (DEP).

The discrepancy at issue involves the classification of residential LBP waste, which determines who can dispose of this waste and the method of disposal. In the 2000 EPA memorandum provided by Mr. Carney,<sup>1</sup> EPA interpreted federal hazardous waste regulations such that LBP waste generated from the renovation, remodeling, rehabilitation, and/or abatement of residences *by either by residents or contractors* is considered to be a *non-hazardous, solid waste*. In other words, EPA does not distinguish between homeowner- and contractor-generated LBP waste. To quote from the 2000 EPA letter, "Both the definition of household waste in section 261.4(b)(1) and the Agency's criteria for determining the scope of the exclusion focus on the type of waste generated and the place of generation rather than who generated the waste (e.g. a resident or a contractor)." EPA based this interpretation on an exemption from hazardous waste requirements for "household waste" (i.e., 40 CFR 261.4(b)(1)), which is commonly referred to as the "household hazardous waste exemption" (or "HHW exemption").

DEP, on the other hand, makes certain distinctions between LBP waste generated by a contractor from a residence and those generated by an individual from their own residence.<sup>2</sup> In particular, DEP applies the HHW exemption only to individual homeowners that generate LBP waste from "do-it-yourself" household renovation projects; provided that the amount of LBP waste is less than ten cubic yards. DEP also acknowledges in its guidance on the subject that homeowners with less than ten cubic yards of *contractor*-generated LBP waste are eligible for the HHW exemption if: (1) the homeowner has agreed in writing to accept the material; (2) the homeowner is informed of the amount and nature of the material being left behind; and, (3) the homeowner has the means to legally and safely store the waste, and a viable outlet to dispose of

<sup>1</sup> EPA Memorandum, *Regulatory Status of Waste generated by contractors or residents from lead-based paint activities conducted in households*, July 31, 2000.

<sup>2</sup> *Guidance for the Management and Disposal of Lead-Contaminated Materials Generated in the Lead Abatement, Renovation and Demolition Industries*, November 4, 1994, Revised November 21, 2005 and Updated May 18, 2007.

it in the near future (such as a local household hazardous waste collection center or one-day collection event, or a local transfer station). The policy rationale for this difference between EPA's HHW exemption and the state DEP's interpretation of HHW exemption with respect to LBP waste is as follows.

When DEP first wrote its guidance on the management of LBP waste in 1994,<sup>2</sup> the section on LBP wastes from households was based on an EPA interpretation of the HHW exemption as outlined in a 1987 EPA policy document.<sup>3</sup> This document stated:

...there is no basis for extending the household waste exclusion to waste such as debris produced during building construction, renovation, or demolition in houses or other residences, as EPA does not consider wastes from these sources to be similar to those generated by a consumer in a home in the course of daily living.

DEP also based its 1994 guidance on another excerpt from the 1984 Federal Register Notice cited in the above policy document, which indicated that wastes generated at residences must meet two criteria in order to be eligible for the HHW exemption. Namely: (1) the waste must be generated "by individuals in their homes" and, (2) "the waste stream must be composed primarily of materials found in the wastes generated by consumers in their homes." (49 FR 44978, November 13, 1984).

While EPA modified its interpretation of the HHW exemption with respect to LBP wastes generated at residents by contractors in 2000, DEP continues to believe that waste generated in large renovation or demolition projects (i.e., those generating over ten cubic yards of LBP waste) were not similar to those routinely generated by residents in their homes. In addition, DEP felt that in situations where contractors performed work on a residence and managed that waste for the resident, that it could not reasonably be said that the waste was "generated by individuals in their homes."

Furthermore, in 2001, the federal hazardous waste regulations were codified into state regulations. Section 22a-449(c)-101(a)(1) incorporated by reference a number of federal hazardous waste regulations including section 40 CFR 261 in its entirety (most notably, section 261.4(b)(1) – the HHW exemption).

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.**

EPA's new Renovation, Remodeling and Painting ("RRP") Rule has raised many questions about the management of LBP wastes from residences, and, in turn, about DEP's regulations on such wastes. DEP has been working on updating its hazardous waste regulations in light of the RRP Rule and anticipates proposing a change to its hazardous waste

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<sup>3</sup> *Lead-Based Paint Residues and Lead Contaminated Residential Soils and Private/Public Housing Units*, EPA Memo, November 20, 1987

regulations. DEP remains concerned about LBP wastes going to resources recovery facilities ("RRFs") for burning, since this could result in lead air emissions, and could contaminate the ash residue from these facilities with lead. Since Connecticut relies heavily on RRFs for the management of solid waste, this is a particularly unique concern in our state. In addition, DEP is engaged in efforts to encourage and facilitate the recycling of construction and demolition ("C&D") waste, and keeping LBP waste out of C&D recycling facilities is important to ensuring that recycled products are not contaminated with lead.

Regulatory changes to the HHW exemption are contemplated as part of a larger hazardous waste regulation update which we are currently working on. Of course, the adoption of such changes is contingent upon the procedural reviews and approvals that are required by state law before such regulations may be made final.

Thank you for your patience and understanding during this process and if you or Mr. Carney should have any further questions on this issue, please feel free to contact me at (860) 424-3021 or at [Yvonne.Bolton@ct.gov](mailto:Yvonne.Bolton@ct.gov).

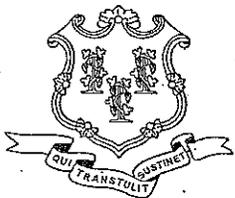
Sincerely,



Yvonne Bolton, Chief  
Bureau of Materials Management  
and Compliance Assurance

YB:RQB  
Attachment

cc: Ken Carney, President  
Baybrook Remodelers  
824 Boston Post Rd  
West Haven, CT 06516



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



April 23, 2010

SITE NAME: Baybrooke Remodelers  
TOWN: West Haven  
FILE TYPE: CPD

The Honorable Louis P. Esposito  
State Representative  
Legislative Office Building, Room 4112  
Hartford, CT 06106-1591

**RE:** Regulation of lead-contaminated materials from renovation and remodeling in Connecticut.

Dear Representative Esposito:

I am writing in response to a note that you forwarded to DEP's Legislative Liaison, Rob LaFrance from your constituent, Ken Carney, President of Baybrook Remodelers, Inc. (copy attached) regarding the disposal of lead waste generated from the renovation and remodeling of older homes and which Rob brought to my attention.

Mr. Carney has raised an interesting issue of disposal related to the recent implementation of an EPA rule and what Connecticut requires. Under EPA's rule, beginning in April 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. As a result of Mr. Carney's question, we have been doing a bit of research into any differences and will be providing a letter soon with a detailed response. In the meantime, if you or Mr. Carney should have any specific questions on this issue, please feel free to contact Ross Bunnell of my staff at (860) 424-3274, or by email at [ross.bunnell@ct.gov](mailto:ross.bunnell@ct.gov).

Sincerely,

Yvonne Bolton, Chief  
Bureau of Materials Management and Compliance Assurance

VP: D O D

Attachment

cc: Ken Carney, President  
Baybrook Remodelers  
824 Boston Post Rd  
West Haven, CT 06516

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**April 7, 2010**

**To: Lou Esposito**

**From: Ken Carney, President, Baybrook Remodelers Inc.**

**RE: Household Waste Guidance**

The federal government issued guidance that lead waste generated in the remodeling and renovating of homes by either the homeowner or the contractor falls under the "household waste" exclusion and does not have to be treated as hazardous waste.

In CT, lead waste generated in the remodeling and renovating of homes by the homeowner falls under the "household waste" exclusion. However, if that same waste is generated and disposed of by the contractor, it must be treated as hazardous waste.

I have attached the guidance documents for CT and the letter detailing the federal position.

If you could please look into this for me and let me know what you think it would be much appreciated. Thank you.