



SWM-SWP-G-115 – Disposal of Lead-Based Paint Waste – 10/16/2023
Disposal of Lead-Based Paint Waste Guidance

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SIGNATURES:

Lisa A. Hughey
Lisa A. Hughey, CHMM, Director, Division of Solid Waste Management
Approver

Craig Almanza (Oct 13, 2023 11:45 CDT)

Craig Almanza, Deputy Director, Central Office Operations, Division of Solid Waste Management
Reviewer

Beverly Philpot
Beverly Philpot, Hazardous Waste Program Manager, Division of Solid Waste Management
Reviewer

Adrienne White (Oct 13, 2023 10:45 CDT)

Adrienne White, Toxic Substances Program Manager, Division of Solid Waste Management
Reviewer

Richard A. Whitson (Oct 13, 2023 11:49 EDT)

Richard A. Whitson, Environmental Fellow, Division of Solid Waste Management
Drafter / Preparer

** (Oct 13, 2023 10:56 CDT)

Jeremy Hooper, Environmental Consultant 3, Division of Solid Waste Management
Drafter / Preparer

A. PURPOSE

This guidance has been prepared by the Tennessee Department of Environment and Conservation (TDEC), Division of Solid Waste Management (DSWM), to provide guidance for the disposal of lead-based paint (LBP) waste as regulated under Rules of CHAPTER 0400-11-01 SOLID WASTE PROCESSING AND DISPOSAL and Rules of CHAPTER 0400-12-01 HAZARDOUS WASTE MANAGEMENT.

B. IMPORTANT NOTICE

This document does not address the requirements under the Rules of CHAPTER 1200-01-18 LEAD-BASED PAINT which is overseen by the DSWM's Toxics Program with information found at <https://www.tn.gov/environment/toxic-substances-program.html>.

C. STATUTORY AND REGULATORY AUTHORITY

Tennessee Statutory Authority

T.C.A. § 68-211-101 et seq.

T.C.A. § 68-212-101 et seq.

Tennessee Rule Authorities

Rules of CHAPTER 0400-11-01 SOLID WASTE PROCESSING AND DISPOSAL

Rule 0400-11-01-.01(2) [pages 2, 4, and 11] states in part:

Definitions - Following, in alphabetical order, is a list of terms used in this Chapter. Throughout this Chapter these terms shall have the meanings given in this paragraph.

...

“Construction/demolition wastes” means wastes, other than special wastes, resulting from construction, remodeling, repair and demolition of structures and from road building. Such wastes include but are not limited to bricks, concrete and other masonry materials, soil, rock and lumber, road spoils, rebar, paving material.

...

“Solid waste” means garbage, trash, refuse, abandoned material, spent material, byproducts, scrap, ash, sludge, and all discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities. Solid waste includes, without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal. Solid waste does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act (compiled at 33 U.S.C. Section 1342).

...

“Special Wastes” are solid wastes that are either difficult or dangerous to manage and may include sludges, bulky wastes, pesticide wastes, medical wastes, industrial wastes, hazardous wastes which are not subject to regulations under Rules 0400-12-01-.03 through 0400-12-01-.07, liquid wastes, friable asbestos wastes, and combustion wastes.

...

Rule 0400-11-01-.01(4)(c)1 [page 14] states in part:

Persons who generate and wish to process or dispose of a special waste must make application to the Commissioner for waste evaluation. . . .

Rules of CHAPTER 0400-12-01 HAZARDOUS WASTE MANAGEMENT

Rule 0400-12-01-.02(1)(d)2(i) [page 40] states:

2. *Wastes Which Are Not Hazardous Wastes*

The following wastes are not hazardous wastes:

(i) *Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes 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). A resource recovery facility managing municipal waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under Chapter 0400-12-01, if such facility:*

(I) *Receives and burns only*

I. *Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and*

II. *Waste from commercial or industrial sources that does not contain hazardous waste; and*

(II) *Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.*

Rule 0400-12-01-.03(1)(b) [pages 5 and 6] states:

Hazardous Waste Determination and recordkeeping [40 CFR 262.11]

A person who generates a solid waste, as defined in subparagraph (1)(b) of Rule 0400-12-01-.02, must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable hazardous waste management regulations. A hazardous waste determination is made using the following steps:

1. *The hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and*

at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the hazardous waste management regulatory classification of the waste may change.

2. *A person must determine whether the solid waste is excluded from regulation under subparagraph (1)(d) of Rule 0400-12-01-.02.*
3. *If the waste is not excluded under subparagraph (1)(d) of Rule 0400-12-01-.02, the person must then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under paragraph (4) of Rule 0400-12-01-.02. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the EPA Administrator that the waste from this particular site or operation is not a hazardous waste.*
4. *The person then must determine whether the waste exhibits one or more hazardous characteristics as identified in paragraph (3) of Rule 0400-12-01-.02 by following the procedures in subpart (i) or (ii) of this part, or a combination of both.*
 - (i) *The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge (e.g., information about chemical feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in paragraph (3) of Rule 0400-12-01-.02, or an equivalent test method approved by the EPA Administrator under 40 CFR 260.21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at subparagraph (2)(a) of Rule 0400-12-01-.01.*
 - (ii) *When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set forth in paragraph (3) of Rule 0400-12-01-.02 or according to an equivalent method approved by the EPA Administrator under 40 CFR 260.21 and in accordance with the following:*
 - (I) *Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at subparagraph (2)(a) of Rule 0400-12-01-.01.*

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(II) Where a test method is specified in paragraph (3) of Rule 0400-12-01-.02, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

5. *If the waste is determined to be hazardous, the generator must refer to Rules 0400-12-01-.02, 0400-12-01-.05, 0400-12-01-.06, 0400-12-01-.09, 0400-12-01-.10, and 0400-12-01-.12 for possible exclusions or restrictions pertaining to management of the specific waste.*
6. *Recordkeeping for small and large quantity generators. A small or large quantity generator must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by subparagraph (1) of Rule 0400-12-01-.02. Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described in parts 3 and 4 of this subparagraph. The records must include, but are not limited to, the following types of information: the results of any tests, sampling, waste analyses, or other determinations made in accordance with this subparagraph; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at subpart (4)(i) of this subparagraph. The periods of record retention referred to in this part are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Commissioner.*
7. *Identifying hazardous waste numbers for small and large quantity generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators must identify all applicable hazardous waste numbers (EPA hazardous waste codes) in paragraphs (3) and (4) of Rule 0400-12-01-.02. Prior to shipping the waste off site, the generator also must mark its containers with all applicable hazardous waste numbers (EPA hazardous waste codes) according to subparagraph (4)(c) of this rule.*

D. EPA MEMO

EPA's July 30, 2000, memo from Elizabeth A. Cotsworth, Director Office of Solid Waste, states in part:

...

This memorandum clarifies the regulatory status of waste generated as a result of lead-based paint (LBP) activities (including abatement, renovation and remodeling) in homes and other residences. Since 1980, EPA has excluded A household waste from the universe of RCRA hazardous wastes under 40 CFR 261.4(b)(1). In the 1998 temporary toxicity characteristic (TC) suspension proposal, we clarified that the household waste exclusion applies to all LBP waste generated as a result of actions by residents of households (hereinafter referred to as "residents") to renovate, remodel or abate their homes on their own. 63 FR 70233, 70241 (Dec. 18, 1998). In this memorandum, EPA is explaining that we believe lead paint debris generated by contractors in households is also "household waste" and thus excluded from the RCRA Subtitle C hazardous waste regulations. Thus, the household exclusion applies to waste generated by either residents or contractors conducting LBP activities in residences.

...

What is the practical significance of classifying LBP waste as a household waste?

As a result of this clarification, contractors may dispose of hazardous-LBP wastes from residential lead paint abatements as household garbage subject to applicable State regulations. This practice will simplify many lead abatement activities and reduce their costs. In this way, the clarification in today's memorandum will facilitate additional residential abatement, renovation and remodeling, and rehabilitation activities, thus protecting children from continued exposure to lead paint in homes and making residential dwellings lead safe for children and adults. LBP debris (such as architectural building components -- doors, window frames, painted woodwork) that do not exhibit the TC for lead need not be managed as hazardous waste.

...

Today, EPA is clarifying that waste generated as part of LBP activities conducted at residences (which include single family homes, apartment buildings, public housing, and military barracks) is also household waste, that such wastes are no longer hazardous wastes and that such wastes thus are excluded from RCRA's hazardous waste management and disposal regulations. Generators of residential LBP waste do not have to make a RCRA hazardous waste determination. This interpretation holds regardless of whether the waste exhibits the toxicity characteristic or whether the LBP activities were performed by the residents themselves or by a contractor.

...

EPA's July 30, 2000, memo is RCRA Online document 14459 and may be found at <https://rccrapublic.epa.gov/files/14459.pdf>.

E. Guidance Definitions

The following are definitions used in this guidance document:

Household Lead-Based Paint Waste means solid waste generated as part of Lead-Based Paint activities conducted at residences (which include single family homes, apartment buildings, public housing, and military barracks) by the residents themselves or by a contractor are household waste and are excluded from the hazardous waste management and disposal regulations under Rule 0400-12-01-.02(1)(d)2(i). Household Lead-Based Paint Waste includes debris, paint chips, dust, and sludges generated from abatement activities (including renovation and remodeling).

Non-Household Lead-Based Paint Waste means all solid waste, such as wood, metal, concrete, brick or blocks, etc., with intact lead-based paint attached that do not meet the definition of Household Lead-Paint Waste and Specific Lead-Based Paint Waste.

Specific Lead-Based Paint Waste means all paint chips, dust, and sludges containing lead-based paint that has been sanded, scraped, blasted, or otherwise removed from surfaces of solid waste that do not meet the definition of Household Lead-Based Paint Waste.

F. Guidance

1. Household Lead-Based Paint Waste, Non-Household Lead-Based Paint Waste, and Specific Lead-Paint Waste must be managed and disposed in accordance with the applicable Rules of CHAPTER 0400-11-01 SOLID WASTE PROCESSING AND DISPOSAL and of CHAPTER 0400-12-01 HAZARDOUS WASTE MANAGEMENT. Items 2, 3, 4, and 5 below list guidance on the acceptable disposal options for solid waste that is not a hazardous waste and describe when a solid waste that is a hazardous waste must be managed and disposed of in accordance with the applicable Rules of CHAPTER 0400-12-01 HAZARDOUS WASTE MANAGEMENT.
2. Household Lead-Based Paint Waste with the exception of paint chips, dust, and sludges that have been sanded, scraped, blasted, or otherwise removed may be disposed of in Tennessee Permitted Class I, III and IV disposal facilities without DSWM approval.
3. Paint chips, dust, and sludges that have been sanded, scraped, blasted, or otherwise removed that meet the definition of Household Lead-Based Paint Waste may be disposed of in Tennessee Permitted Class I disposal facility without DSWM approval.
4. The generator of a Non-Household Lead-Based Paint Waste must make an accurate determination as to whether the waste is or is not a hazardous waste as required under Rule 0400-12-01-03(2)(b) as quoted in item C (STATUTORY AND REGULATORY AUTHORITY) in this document for easy reference. Please refer to the DSWM's SWM-SWP-G-135 - Special Waste for additional guidance regarding special waste. The following are possible outcomes of an accurate hazardous waste determination on Non-Household Lead-Based Paint Waste:
 - a. If the generator makes an accurate determination in compliance with Rule 0400-12-01-03(2)(b) based on process knowledge (e.g. the amount of lead-based paint verses the total amount of waste at the point of generation is such that the concentration of lead in Toxicity Characteristic Leaching Procedure (TCLP) extract would be less than the TC regulatory limit of 5 mg/L) and not requiring representative sampling and analysis of the waste, that the waste is not a hazardous waste and documents that determination in accordance with Rule 0400-12-01-03(2)(b)6, then Non-Household Lead -Based Paint Waste may be disposed of in Class I, III and IV disposal facilities without DSWM approval.
 - b. If the generator makes an accurate determination that the waste is not a hazardous waste based on representative sampling and analysis that documents the concentration of lead in a TCLP extract is less than the TC regulatory limit of 5 mg/L lead, then the generator may dispose of the waste in a Tennessee permitted solid waste Class I disposal facility if: 1) The disposal facility agrees to accept the waste; and 2) A special waste application with the associated hazardous waste determination is submitted and approved by the DSWM. Please refer to <https://www.tn.gov/environment/permit-permits/waste-permits1/special-waste-approval.html>.
 - c. If the generator makes an accurate determination that the waste is a hazardous waste (may include representative sampling and analysis that documents the concentration of lead in TCLP extract is equal to or above the TC regulatory limit of 5 mg/L lead), then the waste must

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be managed and disposed of in accordance with the applicable Rules of CHAPTER 0400-12-01 HAZARDOUS WASTE MANAGEMENT.

5. The generator of a Specific Lead-Based Paint Waste must make an accurate determination as to whether the waste is or is not a hazardous waste as required under Rule 0400-12-01-03(2)(b) as quoted in item C (STATUTORY AND REGULATORY AUTHORITY) of this document for easy reference. An accurate hazardous waste determination should necessitate representative sampling and analysis.
 - a. If the generator makes an accurate determination that the waste is not a hazardous waste based on representative sampling and analysis that documents the concentration of lead in a TCLP extract is less than the TC regulatory limit of 5 mg/L lead, then the generator may dispose of the waste in a Tennessee permitted solid waste Class I disposal facility if: 1) The disposal facility agrees to accept the waste; and 2) A special waste application with the hazardous waste determination is submitted and approved by the DSWM. Please refer to <https://www.tn.gov/environment/permit-permits/waste-permits1/special-waste-approval.html>.
 - b. If the generator makes an accurate determination that the waste is a hazardous waste (may include representative sampling and analysis that documents the concentration of lead in TCLP extract is equal to or above the TC regulatory limit of 5 mg/L lead), then the waste must be managed and disposed of in accordance with the applicable Rules of CHAPTER 0400-12-01 HAZARDOUS WASTE MANAGEMENT.

REVISION HISTORY TABLE

Revision Number	Date	Brief Summary of Change
0	09/01/2010	Initial
1	10/16/2023	Updated to be consistent with BOE Policy and existing Rules and EPA regulatory clarifications.