

construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit." The Agency explained in the preamble to the proposal that the existing definition of a MSWLF unit includes language which states that a disposal unit "that receives household waste" is a municipal solid waste landfill unit. This language can be construed to prohibit the disposal of any household waste into a facility that is not designed and operated in conformance with 40 CFR part 258 regulations. As a result the Agency proposed to amend the definition of MSWLF unit, to distinguish residential lead-based paint waste, which has been determined to be a household waste, from other types of household waste, for purposes of disposal.

The definition as proposed is as follows: "Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may continue to receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately-owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit."

The proposed change was designed to simply distinguish residential LBP waste from other household wastes. The proposal would not alter what a MSWLF could or could not receive. MSWLFs would be allowed to continue to receive residential LBP waste as household waste. The proposed rule expressly provided an additional land-based waste disposal option for residential LBP waste.

B. Proposed Definition of "Construction and Demolition Landfill"

The October 23, 2001 notice also proposed to add a definition of a construction and demolition (C&D) waste landfill, which would expressly allow only C&D landfills, and no other types of land disposal units that meet the criteria of 40 CFR part 257, to receive residential LBP waste. The Agency proposed to define a C&D landfill as follows: "Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the

requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in Sec. 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in Sec. 261.5 of this chapter), or industrial solid waste (defined in Sec. 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste." The proposed rule would add this definition to 40 CFR parts 257 and 258.

C. Proposed Definition of "Residential Lead-Based Paint Waste"

Finally, EPA proposed to define "residential lead-based paint waste" to clarify the scope of the waste stream addressed by the proposed rule. The proposed definition of residential lead-based paint waste is as follows: "Residential lead-based paint waste means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges." Not included in the proposed definition of residential LBP waste were residential LBP demolition and deconstruction waste, and LBP waste from nonresidential structures such as public and commercial buildings, warehouses, bridges, water towers, and transmission towers.

In proposing the definition of residential lead-based paint waste, the Agency included these particular LBP activities because they were limited to residences and would pose lead hazards to occupants, especially to children. We included the particular waste types (*i.e.*, debris, chips, dust, and sludges) because they are typically generated during the named LBP activities.

D. Rationale for Proposed Rule

In the preamble to the proposal, EPA explained the Agency's rationale and justification of the proposed changes, as well as the analytical basis for the proposal. The proposal provided a specific discussion of: (1) The reasons that residential lead-based paint is a concern to children; (2) the Congressional enactment of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (hereinafter referred to as Title X of the Housing and Community Development Act of 1992, or Title X); (3) the concerns of

stakeholders who have seen the application of RCRA's hazardous waste regulations as a barrier to the cost-effective abatement of lead hazards; (4) the 1988 proposed rule under the Toxic Substances Control Act (TSCA) which proposed new TSCA management and disposal standards for LBP debris generated by contractors from pre-1978 homes and public and commercial buildings; (5) the 1988 temporary suspension of the toxicity characteristic for specified lead-based paint debris under RCRA; and (6) the July 31, 2000 memorandum clarifying the regulatory status under RCRA Subtitle C of wastes generated as a result of LBP activities, including abatements, renovation and remodeling, and rehabilitations in homes and other residences. In the July 31, 2000 memorandum, the Agency interpreted residential LBP waste as a household waste excluded from the hazardous waste management requirements pursuant to the household waste exclusion in 40 CFR 261.4(b)(1), thus giving rise to the proposed amendments to parts 257 and 258 to expand disposal options for residential LBP waste to include C&D landfills, as well as MSWLF units.

III. Summary of Public Comments and the Agency's Response to Those Comments

The Agency received a total of eight comments on the proposed residential LBP waste rule: four from construction and/or demolition trade associations, and one each from a state, an association of state agencies, an environmental organization, and an individual. In general, commenters supported the proposal to allow residential LBP waste to be disposed of in C&D landfills. However, some commenters requested clarifications of the rule or preamble language or suggested additions to the rule language.

Definition of Residential Lead-Based Paint Waste

The state commenter argued that the proposed rule contained a significant flaw by including chips, dust and sludges in the definition of "residential lead-based paint waste," because EPA failed to take into account the potential for sleet, surface-water or wind-borne movement of lead paint chips, dust, and sludges off-site from a C&D landfill. The commenter stated that the placement of LBP dust, chips and sludges in an open environment (*i.e.*, a landfill that does not provide for daily cover) over an extended period of time, *e.g.*, 30 days, may allow a significant rain or wind event to transport lead-containing materials off-site. The commenter