

further stated that sudden intense rain events or winds above 20 to 25 miles per hour can transport lead-containing wastes off-site by surface water or air currents. The commenter suggested that requiring daily cover or special packaging at C&D landfills for the above-mentioned wastes would mitigate the potential for adverse impact from surface water or air transport.

Because other features of C&D landfills and LBP waste handling practices serve to mitigate potential impacts from surface water or air transport, the Agency does not believe that requirements for daily cover or special packaging are needed on the federal level. Surface water transport off-site by sudden intense rain events would constitute "non-point source" pollution under the Clean Water Act. To mitigate potential surface water impacts, C&D landfills must comply with 40 CFR 257.3–3(c), which requires that a facility or practice shall not cause non-point source pollution that violates legal requirements implementing an areawide or statewide water quality management plan approved by EPA under the Clean Water Act.

To further mitigate potential water or air transport, both EPA and the U.S. Department of Housing and Urban Development (HUD) have issued guidance for LBP waste management calling for the containment of LBP wastes in plastic with sealed seams. EPA's "Reducing Lead Hazards When Remodeling Your Home" EPA 747–K–97–001 (<http://www.epa.gov/lead/rrpamph.pdf>) and EPA's Model Renovation Training Course EPA 747–B–00–005/6 (<http://www.epa.gov/opptintr/lead/rrmodel.htm>) both call for safe and secure disposal. Safe and secure disposal involves placing the LBP wastes in plastic (4–6 mil poly) bags that are sealed closed. HUD modified the EPA training course and developed their own training program to serve the specific needs of HUD's constituents. The HUD training course entitled "Addressing Lead-Based Paint Hazards During Renovation, Remodeling and Rehabilitation in Federally Owned and Assisted Housing" (also referred to as "The 3R Course") ([http://www.hud.gov/offices/lead/training/3r/3r\\_course.cfm](http://www.hud.gov/offices/lead/training/3r/3r_course.cfm)) was first delivered to remodeling and rehabilitation workers during HUD's nationwide training initiative in 2001–2002. HUD's training recommends that safe disposal of LBP wastes be accomplished by means of plastic bags. Other HUD brochures and documents also recommend that LBP wastes be placed in plastic bags for safe disposal. These brochures include:

"Lead Paint Can Poison: Is Your Family at Risk?" (<http://www.hud.gov/offices/lead/outreach/parents.pdf>).

"Lead Paint Safety—A Field Guide for Painting, Home Maintenance, and Renovation Work" (<http://www.hud.gov/offices/lead/training/LBPguide.pdf>).

"Caution: Lead Paint Handle With Care" (<http://www.hud.gov/offices/lead/outreach/tradesOKAYTOPRINT.pdf>).

"Lead Paint Can Poison: Protect Your Family When You Repaint or Remodel". (<http://www.hud.gov/offices/lead/outreach/remodel.pdf>)

HUD also operates the Lead-Based Paint Hazard Control Grant Program that has as its primary purpose to reduce the exposure of young children to lead-based paint hazards in their homes. The program provides grants to State and local governments for control of lead-based paint hazards in privately owned, low income owner-occupied and rental housing. These grants are designed to stimulate the development of a trained and certified hazard evaluation and control industry. Evaluation and hazard control work under the program must be conducted by either contractors who are certified and workers who are trained through a State-accredited program or by contractors trained in lead-safe work practices in the case of interim controls.

Moreover, as of March 1, 2000, lead service providers within the United States must be certified (or licensed) under an EPA authorized lead program. Most of the States have developed and are administering such a program and EPA certifies lead service providers in states that do not have their own programs. As of January 2003, 38 States had EPA-approved state lead programs that actively certify (license) lead service providers.

EPA has also discussed this issue with the National Association of Demolition Contractors (NADC). NADC re-confirmed EPA's understanding that paint chips and dust are managed in plastic bags. NADC stated that lead-based dust is removed with vacuums with HEPA filters and that the vacuum bags are removed and then tied closed prior to disposal. Paint chips that may fall on a plastic sheet are collected in the plastic sheet which is then placed in a tied plastic bag.

As stated above, the EPA believes that sufficient guidance, literature, training programs, EPA-approved state lead programs, and current practices exist so that whether the LBP waste is in the form of chips, dust, or sludge it will be managed appropriately (*i.e.*, containment in plastic bags on site prior to transport to disposal). At the disposal

facility, the containment plastic serves to mitigate against potential impacts of water or wind transport.

Additionally, where water or wind transport are problematic, States have demonstrated their ability, even in the absence of a federal requirement, to impose additional requirements for weekly, monthly, or daily cover as necessary to control particulate releases. According to the 1995 report, "Construction and Demolition Waste Landfills," 14 States require on-site C&D units to provide daily cover, while 19 States require daily cover at off-site C&D units. Based on these C&D landfill features and LBP waste handling practices, the Agency does not believe it is necessary to impose on the federal level a requirement for daily cover at C&D landfills receiving LBP waste.

Two industry association commenters stated that lead-based paint architectural debris generated from all structures, commercial and industrial, as well as, residential, can safely be disposed of in C&D landfills (*i.e.*, Subtitle D facilities). The commenters disagreed with the Agency's statement in the preamble that demolition and deconstruction waste was not similar to household waste. The commenters believe that LBP material handled by the demolition industry in commercial and industrial structures is no more dangerous to public health and the environment than when LBP appears in a residential structure.

The Agency wishes to clarify that today's rule is an outgrowth of the July 31, 2000 Memorandum stating that waste generated as a result of LBP activities in homes and other residences falls within the exclusion for "household waste" in 40 CFR 261.4(b)(1). (See 66 FR 53569.) The scope of this rulemaking concerns only residential lead-based paint wastes and not lead-based paint wastes from commercial and industrial structures because lead-based paint waste from commercial and industrial structures does not fall within the exclusion for "household waste" in 40 CFR 261.4(b)(1) or the definition of "household waste" in 40 CFR 258.2. Thus, *residential* LBP waste that would otherwise be hazardous waste subject to the hazardous waste management requirements of Subtitle C of RCRA can be managed under Subtitle D of RCRA. The purpose of this rulemaking is to expand Subtitle D disposal options for this particular household waste, which, without today's rule could only be disposed of in municipal solid waste landfills pursuant to 40 CFR part 258.

The July 31, 2000 Memorandum did not affect the regulatory status of