

nonresidential LBP waste, such as that generated during the abatement or renovation and remodeling of a commercial building. "Household waste" is defined as "any material (including garbage, trash and sanitary waste 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)." (Emphasis added.)

The Agency recognizes that not all lead-based paint waste, whether from residential, commercial, or industrial sources, is "hazardous waste" which must be managed under RCRA Subtitle C. Any LBP waste that is not hazardous waste can be safely disposed of in a Subtitle D landfill, including a C&D waste landfill.

Several commenters stated that the proposed rule was not sufficiently clear as to the distinctions between those LBP activities that generate waste that would qualify as "residential LBP waste" (e.g., abatement, rehabilitation, renovation, and remodeling) and those that would not fall within the scope of the rule (e.g., "demolition and deconstruction"). One of these commenters stated that the regulated community might believe that there is some deconstruction or demolition occurring whenever you perform rehabilitation, renovation, remodeling, and perhaps to some extent abatement. The commenter suggested that the focus of the final rule be on waste type and not on waste activity.

The Agency distinguishes demolition and deconstruction activities from abatement, rehabilitation, renovation, and remodeling on the basis that demolition and deconstruction result in the elimination of the residential structure, while the residential structure remains where the other listed activities are conducted. The proposed definition of residential lead based paint waste does not include residential demolition and deconstruction activities. The proposed definition was limited to LBP waste that would be subject to Subtitle C of RCRA, except that it is included within the household waste exclusion in 40 CFR 261.4(b)(1). The Agency has applied two criteria to define the scope of the exclusion: (1) The waste must be generated by individuals on the premises of a household, and (2) the waste must be composed primarily of materials found in the wastes generated by consumers in their homes (49 FR 44978 and 63 FR 70241). In the case of LBP wastes, we have determined that demolition and deconstruction, which result in the elimination of the household structure, are outside the

scope of the household waste exclusion and therefore are not included in the definition of "residential LBP waste." Although demolition activities and renovation activities may produce some of the same types of waste, the waste type is not a factor for consideration under 40 CFR 261.4(b)(1), and therefore, today's final rule continues to read as proposed. The Agency wants to make it clear that deconstruction and demolition wastes can continue to be placed in construction and demolition waste landfills provided that these types of wastes do not exhibit the toxicity or any other characteristic (*i.e.*, are not a hazardous waste).

One commenter was specifically concerned that the proposed definition of residential lead-based paint waste could create confusion about the scope of activities that are considered "lead-based paint activities" under the Toxic Substances Control Act (TSCA). The proposed residential LBP definition states that LBP activities include abatement, rehabilitation, renovation, and remodeling. Regulations promulgated under TSCA define "lead-based paint activities" to mean lead inspection, risk assessment, and abatement in the case of target (most pre-1978) housing (see 40 CFR 745.223). Renovation, remodeling, and rehabilitation are not considered lead-based paint activities under Title X. The commenter was concerned that the Agency was trying to change the scope of the TSCA regulation under the proposed RCRA regulation. The commenter suggested that the term lead-based paint activities be deleted and replaced with the phrase "activities that disturb lead-based paint."

The Agency did not intend or propose to change the scope of the TSCA regulation in the October 2001 proposal. However, to eliminate any potential confusion, the Agency has decided to change the definition of residential LBP wastes to eliminate the words "lead-based paint activities." The definition of residential LBP wastes included in today's final rule does not use the term "lead-based paint activities." This definition is as follows: "Residential lead-based paint waste means waste containing lead-based paint, which is generated as a result of activities such as 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."

Definition of Construction and Demolition Waste Landfill

A trade association commenter objected to the proposed definition of "construction and demolition waste landfill" because the proposed rule would define a C&D waste landfill as one that does not receive "industrial wastes," as defined in section 258.2. The commenter objected because the definition as proposed would preclude a C&D landfill that receives industrial waste in the form of manufacturer's "off-spec," rejected, or damaged construction materials from accepting residential lead-based paint waste. Thus C&D landfills in that state would have to choose between residential LBP waste or off spec., damaged, or rejected construction materials, but not both.

In the proposed definition of construction and demolition waste landfill, the Agency stated that C&D waste landfills were not eligible to receive "industrial solid wastes as defined in 40 CFR 258.2." The definition of "industrial solid waste" in section 258.2 covers "wastes resulting from" particular manufacturing or industrial processes. In defining C&D landfills, the Agency was concerned about C&D waste landfills receiving wastes generated by manufacturing or industrial processes and, as such, wrote the definition to exclude such wastes. In practice, industrial process wastes are typically managed on-site, or in limited cases, sent off-site to private/commercial industrial waste facilities. Industrial process wastes should not be received for disposal at a C&D waste landfill. The commenter was concerned that off-spec construction products (e.g., toilets or shingles) would not be allowed in a C&D waste landfill because of the proposed definition. However, the Agency views "off-spec," rejected, or damaged construction materials as virtually identical in nature to the type of waste that is appropriately received at a C&D waste landfill and are not "industrial solid waste" as defined at 40 CFR 258.2. Because the definition of industrial solid waste does not explicitly include materials that do not meet manufacturers' specifications, are damaged or rejected for use, EPA believes that industrial waste in the form of manufacturer's "off-spec," rejected, or damaged construction materials can be appropriately placed in a C&D landfill. In addition, the Agency expects that States would exercise judgment in what is considered industrial wastes. Thus, EPA believes that the definition in today's final rule accommodates disposal of unused construction materials that do not meet