



**Department of Energy**  
Washington, DC 20585  
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OPPT Document Control Officer (7407)  
Office of Pollution Prevention & Toxics  
U.S. Environmental Protection Agency  
401 M Street, SW (East Tower)  
Room G-099  
Washington, DC 20460

**RE: Docket Numbers: OPPTS-62160A and F-98-LPDP-FFFFF**

Dear Madam or Sir:

The U.S. Department of Energy (DOE) appreciates the opportunity to provide comment on the proposed rules to (1) regulate lead-based paint debris under the Toxic Substances Control Act (TSCA) and (2) temporarily suspend the applicability of the Resource Conservation and Recovery Act (RCRA) Subtitle C to lead-based paint debris.

DOE welcomes the efforts of The Environmental Protection Agency (EPA) to streamline environmental regulations. Overall, DOE believes that the proposed rules will make compliance with the requirements for managing and disposal of lead-based paint debris less burdensome and less costly. Movement of the regulation of lead-based paint debris from RCRA to TSCA will essentially make this waste fall under one statutory authority, simplifying matters.

However, DOE has some general concerns. These concerns focus on the management and disposal of lead-based paint that is also radioactively contaminated. DOE believes such waste should also fall under the proposed RCRA exclusion because of the unique difficulty in sampling and analyzing such waste and the need for maintaining as low as reasonably achievable exposures to this type of waste. DOE also believes that its solid low-level radioactive waste landfills should be allowed to accept this type of waste because they are as equally protective as the proposed disposal options.

Attached are DOE's specific comments on the two proposed rules. If you have any questions or need further clarification of our comments, please contact Beverly Whitehead of my staff at (202) 586-6073.

Sincerely,

Raymond P. Berube  
Acting Director,  
Office of Environmental Policy and Assistance

Enclosure

**U.S. Department of Energy Comments  
Proposed Rule for the Management and Disposal  
of Lead-Based Paint Debris  
(63 FR 70190, 12/18/98)**

***General Comments:***

The U.S. Department of Energy (DOE) support the U. S. Environmental Protection Agency's (EPA) proposal to regulate lead-based paint debris (LBPD) under the Toxic Substances Control Act (TSCA) and the companion proposal to exclude these wastes from regulation under the Resource Conservation and Recovery Act (RCRA). Having a single regulatory authority for these wastes would eliminate confusion, reduce waste management costs, and facilitate the conduct of abatement, renovation, and remediation efforts. However, further clarification of portions of the proposed rule, with regard to federal facilities application is needed. Specific comments are provided below.

***Specific Comments:***

Pages 70191 and 70194: Applicability and Scope

DOE facilities would not be expected to conduct "lead abatement" activities as outlined in the proposed rule. However, DOE does conduct environmental remediation efforts including decontamination and decommissioning as well as remodeling/renovations of its facilities, which are addressed in the proposed rule. Many of the DOE facilities were constructed prior to 1978 and lead-based paint has been used on the interior and/or exterior of the buildings. As such, LBPD has been and will continue to be generated and requires proper management and disposal. Based on the EPA proposed definition of "public building" (which includes government buildings), it would appear that buildings at federal facilities are included in that definition. While a definition of "public" is not given in this proposed rule (or in the companion RCRA proposed rule), DOE assumes that contractor employees, visitors, and/or lessees at DOE facilities would constitute members of the public. As such, they deserve the same protection from lead exposures from LBPD as do members of the general public entering other public or commercial buildings. At the same time, given the EPA intent to have LBPD wastes as a whole regulated under one authority (TSCA), it is reasonable to assume that the proposed rule would apply to those wastes generated at federal facilities. DOE's LBPD wastes would be essentially the same as other LBPD wastes generated at non-DOE sites with one exception. The exception being those DOE LBPD wastes that are co-contaminated with radioactivity.

Page 70194: Training/Certification

DOE supports the EPA proposal to not create additional training requirements for individuals engaged in the management and disposal of LBPD. The existing training standards e.g., Hazardous Waste Operations training) provide adequate worker training. The waste management standards proposed under TSCA are largely best management practices and do not warrant additional worker training.

Pages 70195 and 70209: Disposal/Reclamation Options

DOE supports the proposed disposal/reclamation options but would like for EPA to consider and allow additional options for DOE LBPD, in particular, those wastes contaminated with radioactivity (see discussion on wastes covered below). DOE's disposal standards for solid low-level wastes (SLLW) are designed to provide adequate containment of the radioactivity and in doing so will provide sufficient controls to protect human health and the environment for any incidental lead contamination from painted debris. DOE's design, siting, and operating standards for SLLW disposal facilities are generally more restrictive than those set for construction and demolition landfills (which under the proposed rule would be allowed to receive LBPD). Hence, DOE believes that its SLLW disposal facilities are equally protective as the proposed disposal options and that DOE SLLW disposal facilities should be added to the list of disposal options.

Page 70195: Notification and Record Keeping

DOE supports the inclusion of notification and record keeping requirements, but feels the language specified in the proposed Section 745.311 is excessive and burdensome. As proposed the level of effort exceeds that required for transfers of RCRA hazardous wastes. Hence, the notification and record keeping requirements should be reduced and commensurate with the associated hazard. See further comments offered under Notification Requirements (below).

Page 70198: TSCA Coverage of LBPD

DOE agrees that the regulation of the management and disposal of LBPD under TSCA Title IV is the more appropriate and effective authority for such regulation. Elimination of the duplicative standards under RCRA is warranted.

Page 70204: Landfill Requirements

DOE suggests that EPA should retain the proposed language for allowing disposal of LBPD in landfills regulated under 40 CFR 257 and that the language be expanded to allow the use of other disposal facilities (i.e., DOE SLLW) that meet or exceed those standards. In addition, DOE recommends that EPA not include language that would impose additional, more restrictive standards, such as having groundwater monitoring systems and/or corrective action systems.

Page 70205: Types of Materials Covered

DOE supports the proposed delineation of alternate management and disposal standards for debris-type materials under TSCA and the retention of hazardous waste management and disposal standards for the more concentrated wastes: lead paint dust, chips, sludges, etc. under RCRA. DOE agrees with EPA that small amounts of dust and chips will be generated with the movement and handling of the larger demolition debris wastes and, the inclusion/exclusion (respectively) those incidental amounts should be clearly stated in both the definition of debris in TSCA and the exclusion from RCRA. DOE recommends that EPA specifically include radioactively-contaminated LBPD in the RCRA exclusion and the inclusion of SLLW facilities as a disposal option in the TSCA final rule.

Pages 70205 and 70206: Applicability of the Exclusion to Other Toxicity Characteristic (TC) Constituents Other Than Lead

EPA needs to reconsider the proposal to limit the exclusion to only lead-contaminated debris and to require generators to test those wastes for other TC constituents. One of the reasons given for the proposed exclusion is the difficulty of sampling of these wastes and the associated lack of reliability of the toxicity characteristic leaching procedure (TCLP). Those same difficulties exist when testing for other RCRA metals that occasionally exist in paint (such as chromium or silver). Hence, if the proposed language is not changed, the waste generator will still be required to make a RCRA determination requiring the sampling and analysis of the waste. EPA should consider expanding the exclusion to at least the other TC metal wastes. Those other metals would be expected to be in the waste infrequently and their overall hazards to human health and the environment should not exceed that of the lead component. Consideration should be given to also excluding the remaining TC constituents (pesticides and organics) due to the low probability that they would ever be encountered. As an alternative, EPA could provide additional guidance on what constitutes reasonable process knowledge to reduce or eliminate the need to test LBPDP for the TC pesticides and organics.

Page 70207: Who Must Comply?

DOE requests clarification as to whether federal facilities are included as entities that would be regulated under the proposed LBPDP provisions of TSCA. The preamble language does not specifically address the inclusion of federal facilities, yet federal facilities do conduct renovation and remodeling, as well a decontamination and decommissioning; and generate, store, transport, and dispose of LBPDP. Section 745.301 of the proposed rule specifically includes “persons” which under both TSCA and RCRA define as including federal agencies.

Page 70208: Incidental Lead Chips and Dust

DOE is in agreement that incidental lead chips and dust will routinely be present with the larger debris as a result of handling, storage, and transport and those incidental amounts should be included in the RCRA exemption.

Page 70208: Buildings Covered

DOE supports the proposal to include LBPDP from public buildings and commercial buildings as well as all housing under both the RCRA exemption and the TSCA regulations. DOE facilities do generate LBPDP and those wastes warrant management under the same standards as other generators (firms and individuals). The federal government should be afforded the same cost savings as other generators. Given that the proposed definition of public buildings, includes government buildings, then LBPDP generated at buildings within federal facilities would be included in the subset of buildings covered by the rule makings.

Pages 70208: Scrap Metal Debris and LBPDP Definitions

The preamble indicates that debris consisting of scrap metal (described as steel structures and superstructures) will not be included in the TSCA rule making. The preamble also suggests that

these wastes are fundamentally different than those from “occupied structures”. DOE is in agreement that where feasible, scrap metal is recycled and that the RCRA regulations already provide an exemption for recycled scrap metal. DOE facilities occasionally consist of steel structures that are “occupied structures” and while those wastes could differ from housing wastes, they would not be so fundamentally different from other public or government buildings. At the same time, DOE scrap metal containing lead paints may require disposal as SLLW. DOE contends that the incidental lead in painted radioactive scrap metal does not warrant full regulation under RCRA as mixed waste and instead should be excluded from RCRA when managed/disposed of under DOE standards for SLLW.

Also, DOE recommends that EPA add clarifying language to the proposed definitions of LBPD and lead-based paint architectural component debris as a reminder to generators that scrap metal building components that are recycled are not covered in those definitions. At the same time, incidental scrap metal may be co-mingled as architectural components (nails, metal flashings, windows, cabinets, etc.) and the volume may be small enough to not warrant segregation. Hence, EPA should allow for small volumes of scrap metal to be covered by the exclusion for LBPD as well as architectural component debris.

#### Pages 70209 and 70227: Controls for Reuse of LBPD

In the preamble, EPA is proposing that “all” lead paint be removed from materials to be reused for land-based applications (mulching, etc.). DOE suggests clarifying language in 745.301(d) to indicate that “sufficient” lead be removed such that the level is below 1 mg/cm<sup>2</sup> or below 0.5% by weight. Hence, some residual lead paint may exist, it must be below the TSCA-regulated level 1 mg/cm<sup>2</sup> or 0.5% by weight.

#### Page 70212: Setting Volume and Time Limits

DOE requests that EPA establish alternative limits (both time and volume) under which the TSCA requirements would not apply. Allowing small volumes of LBPD to not require the storage and access standards is reasonable and parallels the different levels of management standards for small volumes of hazardous wastes managed as satellite accumulation versus management of larger volumes in 90-day areas. Smaller volume wastes (such as windows or flashing) could be sufficiently contained for the purpose of accumulation in plastic bags. It is unclear as to whether the proposed language allowing closed or covered receptacles would include plastic bags.

DOE recommends that EPA provide guidance on how to apply the suggested 3-day and 180-day time limits to LBPD that is generated and/or stored prior to the issuance of the final rule. In addition, DOE recommends that TSCA recognize that some DOE radioactively-contaminated LBPD may require interim storage exceeding the proposed 180 time limit while awaiting transfer to a disposal endpoint. Again, the TSCA final rule should recognize that the DOE standards for SLLW management and disposal under the authority of the Atomic Energy Act will meet or exceed the standards defined under TSCA for LBPD and that those SLLW standards can be met in lieu of the TSCA standards.

Page 70213 and 70215: Notification Requirements

DOE requests that EPA reconsider the proposed notification requirements for LBPB. The proposed requirements (including the sample notification form) are overly burdensome when compared to the level of effort to comply with such notifications. DOE suggests that EPA allow the use of shipping papers per the Department of Transportation (DOT) standards (49 Code of Federal Register). If the volume of LBPB constitutes the reportable quantity (RQ) for lead, then the shipping paper will define the material as either “Hazardous Substances, Solid, NOS...(Lead)” or “Environmentally Hazardous Substances, Solid ...(Lead).” If the volume is below the RQ, then the shipper should be allowed to use any terminology to describe the components as long as the lead-paint is identified. As such, DOT shipping papers will provide sufficient information on the offeror and the receiver and constitute a reasonable record of the transfer. EPA should define a minimum standard or recommend basic terminology that could be used to supplement DOT shipping information that would afford sufficient notification to the receiver (i.e., contains lead-based paint debris subject to EPA/TSCA regulations).

Large waste generators routinely evaluate the disposal and recycle facilities that receive their wastes to verify that those wastes will receive proper treatment and disposal. Hence, most will already ensure that the receiving facility is knowledgeable of the regulatory standards for a given waste before the waste is transferred. Therefore, DOE suggests that EPA should eliminate the requirement to “notify the recipient of the need to comply with LBPB management and disposal standards.”

The bulk of the LBPB should be transferred within the allowed time frame under TSCA. To require all generators to provide the date generated on the notification form is adding burden to those that comply. Any additional burden to self-report noncompliances should only be imposed on those generators that exceed the allowed time limit. Self-reporting of time exceedences to the receiving facility (or to the regulatory authority) should be limited to those entities that warrant such self-reporting.

However, requiring the offeror to include the date generated on the shipping paper may result in some LBPB being rejected by the intended receiving facility. The receiver could presume that because the generator violated the accumulation time limit that they, too, could be in violation for any subsequent handling/disposal of the waste. To avoid such problems/confusion, DOE suggests that the requirement to identify the generation date on the notification to the receiving facility be eliminated.

Page 70230: Storage

DOE requests that EPA clarify the wording in and intent of Section 745.311(b)(1). As written, it appears that none of the storage/management requirements apply to “demolition debris.” If the intent is to fully exclude large volume demolition debris containing LBPB, then that exclusion needs to be clearer.



**Department of Energy**  
Washington, DC 20585  
March 31, 1999

Docket Clerk  
U.S. Environmental Protection Agency  
Mail Code 5305W  
401 M Street, SW  
Washington, DC 20460

**RE: Docket Numbers: F-98-LPDP-FFFFF and OPPTS-62160A**

Dear Madam or Sir:

The U.S. Department of Energy (DOE) appreciates the opportunity to provide comment on the proposed rules to (1) regulate lead-based paint debris under the Toxic Substances Control Act (TSCA) and (2) temporarily suspend the applicability of the Resource Conservation and Recovery Act (RCRA) Subtitle C to lead-based paint debris.

DOE welcomes the efforts of The Environmental Protection Agency (EPA) to streamline environmental regulations. Overall, DOE believes that the proposed rules will make compliance with the requirements for managing and disposal of lead-based paint debris less burdensome and less costly. Movement of the regulation of lead-based paint debris from RCRA to TSCA will essentially make this waste fall under one statutory authority, simplifying matters.

However, DOE has some general concerns. These concerns focus on the management and disposal of lead-based paint that is also radioactively contaminated. DOE believes such waste should also fall under the proposed RCRA exclusion because of the unique difficulty in sampling and analyzing such waste and the need for maintaining as low as reasonably achievable exposures to this type of waste. DOE also believes that its solid low-level radioactive waste landfills should be allowed to accept this type of waste because they are as equally protective as the proposed disposal options.

Attached are DOE's specific comments on the two proposed rules. If you have any questions or need further clarification of our comments, please contact Beverly Whitehead of my staff at (202) 586-6073.

Sincerely,

Raymond P. Berube  
Acting Director,  
Office of Environmental Policy and Assistance

Enclosure

**U.S. Department of Energy Comments  
Proposed Rule on the Temporary Suspension of the  
Toxicity Characteristic Rule for Specified Lead-Based Paint Debris  
(63 FR 70233, 12/18/98)**

***General Comments:***

The U.S. Department of Energy (DOE) support the U.S. Environmental Protection Agency's (EPA) proposed temporary exclusion of lead-based paint debris (LBPB) as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) and the companion proposal to instead regulate these wastes under the Toxic Substances Control Act (TSCA). Having a single regulatory authority for these wastes would eliminate confusion, reduce waste management costs, and facilitate the conduct of abatement, renovation, and remediation efforts. However, further clarification of portions of the proposed rule with regard to federal facilities application is needed. Specific comments are provided below.

***Specific Comments:***

Pages 70233 and 70240: Applicability

DOE facilities would not be expected to conduct lead abatement activities as outlined in the proposed rule. However, DOE does conduct environmental remediation efforts including decontamination and decommissioning at its facilities as well as remodeling/renovations of its facilities, which are addressed in the proposed rule. Many of the DOE facilities were constructed prior to 1978 and lead-based paint has been used on the interior and/or exterior of the buildings. As such, LBPB has been and will continue to be generated and requires proper management and disposal. Based on the EPA proposed definition of "public building" (which includes government buildings), it would appear that federal facilities are included. While a definition of "public" is not given in this proposed rule (or in the companion TSCA proposed rule), DOE assumes that contractor employees, visitors, and/or lessees at DOE facilities would constitute members of the public. As such, they deserve the same protection from lead exposures from LBPB as do members of the general public entering other public or commercial buildings. At the same time, given the EPA intent to have LBPB wastes as a whole regulated under one authority (TSCA), it is reasonable to assume that the proposed rule would apply to those wastes generated at federal facilities. DOE's LBPB wastes would be essentially the same as other LBPB wastes generated at non-DOE sites with one exception. The exception being those DOE LBPB wastes that are co-contaminated with radioactivity.

Page 70239: Types of Wastes Covered

DOE supports the EPA's proposed delineation of reduced management and disposal standards for debris-type materials under TSCA and the retention of hazardous waste management and disposal standards for the more concentrated wastes: lead paint dust, chips, sludges, etc. under RCRA. DOE agrees with EPA in that small amounts of dust and chips will be generated with the movement and handling of the larger debris wastes and, the inclusion/exclusion (respectively) of those incidental amounts should be clearly stated in both the exclusion from RCRA and the definition of debris in TSCA. DOE recommends that EPA specifically include radioactively-contaminated

LBPB in the RCRA exclusion and the inclusion of SLLW facilities as a disposal option in the TSCA final rule.

Pages 70240 and 70249: Applicability of the Exclusion to Other Toxicity Characteristic (TC) Constituents Other Than Lead

EPA needs to reconsider the proposal to limit the exclusion to only lead-contaminated debris and to require generators to test those wastes for other TC constituents. One of the reasons given for the proposed exclusion is the difficulty of sampling of these wastes and the associated lack of reliability of the toxicity characteristic leaching procedure (TCLP). Those same difficulties exist when testing for other RCRA metals that occasionally exist in paint (such as chromium or silver). Hence, if the proposed language is not changed, the waste generator will still be required to make a RCRA determination. EPA should consider expanding the exclusion to at least the other TC metal wastes. Those other metals would be expected to be in the waste infrequently and their overall hazards to human health and the environment should not exceed that of the lead component. Consideration should be given to also excluding the remaining TC constituents (pesticides and organics) due to the low probability that they would ever be encountered. As an alternative, EPA could provide additional guidance on what constitutes reasonable process knowledge to reduce or eliminate the need to test LBPB for the TC pesticides and organics.

Pages 70243 and 70248: Scrap Metal Exclusion under RCRA and Definitions

DOE requests that EPA add clarifying language to the proposed definitions of LBPB and lead-based paint architectural component debris as a reminder to generators that scrap metal building components that are recycled are not covered in those definitions. At the same time, incidental scrap metal may be co-mingled as architectural components (nails, metal flashings, windows, cabinets, etc.) and the volume be small enough to not warrant segregation. Hence, EPA should allow for small volumes of scrap metal to be covered by the exclusion for LBPB as well as architectural component debris.

DOE scrap metal containing lead paints may require disposal as SLLW. DOE contends that the incidental lead in painted radioactive scrap metal does not warrant full regulation under RCRA as mixed waste and instead should be excluded from RCRA even when managed/disposed of under DOE standards for SLLW. The DOE standards for management and disposal of SLLW are sufficient to contain both the radioactive and lead hazards associated with this waste and should be an allowed option for these wastes. DOE requests that the temporary RCRA exclusion be broadened to cover radioactively contaminated LBPB that consists of scrap metal.