

Mr. Bruce W. Ferguson
Edenspace Systems Corporation
15100 Enterprise Court Suite 100
Chantilly, VA 20151-1217

Dear Mr. Ferguson:

This letter is a follow-up to our interim response to your letter of April 30, 2003, to Administrator Whitman. In that letter, you asked us to confirm that the federal Resource Conservation Recovery Act (RCRA) household waste regulatory exclusion in 40 CFR 261.4(b)(1) applies to homeowners who dispose of plants that may contain arsenic from the soil and ground water on their property. You also requested that we interpret the scope of the exclusion to include all “do-it-yourselfer” environmental abatement activities.

In past years, the Agency has provided interpretations on the applicability of the household waste exclusion. (See our memorandum of March 7, 1995, “Applicability of the Household Waste Exclusion to Lead-Contaminated Soil” and our memorandum of July 31, 2000, “Regulatory Status of Waste Generated by Contractors and Residents from Lead-Based Paint Activities Conducted in Households.”) In general, the Agency predicates its interpretations of this exclusion on two criteria: (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 wastes generated by consumers in their homes (49 FR 44978, November 13, 1984 and 63 FR 70241, December 18, 1998).

Your question concerns the obligations of homeowners disposing of plants that have accumulated arsenic through phytoremediation projects at their residences. Thus, the first criterion would be met – that is, the waste is generated by an individual on the premises of a household.

To evaluate the second criterion, the Agency considers the source of the arsenic contamination. If the arsenic contamination resulted from normal household activities, such as common residential uses of structures made of CCA-treated wood or pesticide use in household gardens, then the arsenic-contaminated plants would be a part of the household waste stream as defined by the household waste exclusion in 40 CFR 261.4(b)(1). If, however, the original arsenic contamination resulted from significant arsenic sources other than household activities (e.g., from industrial or mining activities), then the exclusion is not applicable, and relevant state and/or federal hazardous waste laws apply to the arsenic-contaminated plant waste.

To answer your more general question about applying the household waste exclusion to all “do-it-yourselfer” abatement activities, we also would apply the two criteria discussed above to determine whether the household waste exclusion applies to waste generated from such activities. Please note that in our 1995 memorandum on lead-based paint waste (referenced

above), we clarified that the household waste need not be generated by the homeowner to fit within the household waste exclusion. As long as the waste fits within the scope of the exclusion, it is not relevant whether the waste is generated by the resident "do-it-yourselfer" or by a contractor.

Please also note that the RCRA hazardous waste regulatory program is generally implemented by the states. Authorized states' hazardous waste regulations are in effect in those states in lieu of the federal regulations. States' regulations must be equivalent to the federal regulations, but may be more stringent. Thus, in any particular state you should check with the implementing state agency to determine how your activities may be regulated.

Thank you for your interest in protecting our environment and managing waste responsibly.

Sincerely,

Robert Springer, Director
Office of Solid Waste