



Environmental Review Information Sheet:

Clarification Regarding the Treatment of Asbestos in Residential Demolition and Renovation Projects

May 2011

In April 2009, the Ohio Department of Development Office of Housing and Community Partnerships released an Environmental Review Information Sheet entitled "Lead-Based Paint and Asbestos Considerations for Residential Demolition." This document summarized Ohio Environmental Protection Agency and Ohio Department of Health regulations regarding the treatment of lead and asbestos in residential demolition projects. At that time, Ohio EPA guidance regarding the applicability of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) included an exemption for "isolated" residential structures with four or fewer dwelling units.

Recently, Ohio EPA and the U.S. Environmental Protection Agency have provided additional guidance regarding the applicability of the asbestos NESHAP when a municipality, government entity, or other owner/operator considers the demolition/renovation of multiple homes during a specific planning period. **In short, demolitions/renovations of individual residential buildings are subject to the asbestos NESHAP if they are being demolished /renovated as part of a larger project or if the residences meet the definition of an installation.** The "isolated" residential exemption is only applicable if a demolition/renovation activity is not part of a larger project and the building does not meet the definition of an installation. Letters from Ohio EPA and U.S. EPA that explain the asbestos NESHAP are attached. Please note that the new guidance applies to all projects undertaken by a municipality, government entity, or other owner/operator, regardless of funding source.

For more information regarding the application of the asbestos NESHAP to residential demolition and renovation projects, contact an Ohio EPA District Office or Local Air Agency (DO/LAA). A list of contacts is available on the Ohio EPA website: http://www.epa.ohio.gov/dapc/atu/asbestos/asb_cont.aspx.



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November 1, 2010

Mr. Richard Duffy, Acting Director
Compliance Assessment and Media Program Division (2223A)
U.S. EPA
1200 Pennsylvania Ave., NW
Washington, D.C.

RE: Clarification of asbestos NESHAP regulations regarding demolition of multiple residential structures for urban renewal projects

Dear Mr. Duffy,

On October 20, 2010, members of my staff had a conference call with Mr. Everett Bishop, U.S. EPA national asbestos program coordinator and Mr. Jeff Bratko, U.S. EPA Region V asbestos program coordinator to discuss the details of the residential exemption determination and how it applies to the NESHAP when municipalities are demolishing/renovating multiple residential structures as part of an urban renewal project. Ohio EPA has been applying the residential exemption (when there is only one house on a site/block during the same planning period) for these types of urban renewal projects. It was during our state asbestos training with inspectors from throughout the state (September 27-30, 2010) in which Mr. Bratko attended, that we were informed the residential exemption does not apply in this situation (except in emergency related circumstances).

We had conducted an extensive internal review before coming to the decision of allowing the residential exemption after reviewing all the applicability determinations relating to this subject and the 1995 Federal Register. Although the Federal Register notice was supposed to add clarity to the asbestos NESHAP, we found the rule and guidance confusing. During our October 20, 2010 conference call with U.S. EPA staff, we requested a written clarification from U.S. EPA to clarify how the NESHAP applies in this situation. It was suggested that we make this written request to you.

After many discussions and e-mails with Mr. Bishop and Mr. Bratko, I would like to provide the following to you what we now believe to be an accurate representation of how U.S. EPA applies the NESHAP in these situations. Upon your review, we would appreciate your comments and any clarifications regarding this matter.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director



1.) When a jurisdiction (city, county, village, township) decides to demolish multiple homes during a specific planning period (calendar year, FY; etc), the NESHAP considers this to be an "urban renewal" project. The funds used for this project can come from one or multiple sources. Under this scenario ALL residential homes within that specific geographic jurisdiction (regardless of location/proximity) would be subject to the NESHAP regulations (all must have surveys; submit notifications; and conduct asbestos abatement if the accumulative amounts of RACM meet or exceed the thresholds of the project). This also means that the residential exemption of "isolated" homes would NOT apply (no residential exemptions), except for those isolated residential structures that might qualify due to an immediate emergency situation which are determined to be a threat to public health and safety. In addition, the specific homes would not have to be identified at the beginning of the planning period (homes can be selected throughout the planning period) and just the fact that the jurisdiction has control and intends to order the demolition/renovation of multiple numbers of homes would subject these homes to the NESHAP regulations.

2.) Additionally, I am requesting that U.S. EPA provide a definition or clearer understanding of "planning period" as it applies to this situation.

Currently, we are informing the governmental jurisdictions and regulated community that they must meet the federal NESHAP requirements for these urban renewal projects. Once you have developed a written response, I request that every U.S. EPA Regional Office and state air agency receive the guidance throughout the country. As you are aware, there are many urban renewal projects underway and making sure that the various urban areas are applying the NESHAP rule in a similar manner will provide for more regulatory certainty and uniform environmental protection

Thank you for your prompt attention to this matter.

Sincerely,



Robert Hodanbosi,
Chief, Division of Air Pollution Control

CC: Cheryl Newton, Region V
Everett Bishop, USEPA/Headquarters
Jeff Bratko, USEPA/Region V
Marcus Glasgow, Legal
Paul Koval, DAPC
Tom Buchan, DAPC
Frederick Jones, DAPC



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OFFICE OF
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Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
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Dear Mr. Hodanbosi:

This letter is in response to your letter dated November 1, 2010 in which you asked how the asbestos National Emissions Standard for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Part 61, Subpart M applies to municipalities that are demolishing/renovating multiple residential structures as part of an "urban renewal" project. In addition, you requested that the Agency provide a definition or clearer understanding of "planning period" as it applies to your situation.

The first issue deals with a governmental entity that is considering the demolition/renovation of multiple homes within its jurisdiction during a specific planning period, i.e., calendar year, fiscal year, grant project period, etc., as part of an "urban renewal" project. The funds for this "urban project" may come from a single source or could come from several funding sources.

On November 20, 1990, EPA published a revision to the asbestos NESHAP regulation. (See 55 FR 48406). The purpose of the revision was "to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls." The revisions revised and added several definitions in order to clarify the requirements of the NESHAP. The preamble accompanying the revisions contained clarifying information. In particular, the 1990 revisions clarified the definition of "facility" to include, in part:

Any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units) . (See 40 CFR 61.141 – Facility)

In the preamble to the 1990 amendments to the asbestos NESHAP, EPA stated that it does not consider residential structures that are demolished as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development would be subject to the asbestos NESHAP. It is EPA's position that demolitions/renovations of individual residential buildings are regulated

if they are being demolished/renovated as part of a larger project or if the residences meet the definition of an installation, e.g., more than one residence on the same site or one residence being demolished along with commercial buildings on the same site under the control of the same owner or operator.

In your scenario, residential homes within the governmental jurisdiction, i.e., city, county, village or township, that are or will be part of the "urban project" are subject to the thorough inspection requirement of the asbestos NESHAP. The governmental unit is considered the operator of the demolition/renovation operation since it is managing the contractor(s) that will be implementing the demolition/renovation operation of the "urban renewal" project. (See 40 CFR 61.141 – Definitions - Owner or Operator of a Demolition or Renovation Operation). If the "urban project" is a demolition operation, a thorough inspection is required and a Notification must be submitted to the appropriate state or local air program agency or to the regional EPA office, whether there is asbestos or not. If it is a renovation operation, a thorough inspection is required and a Notification must be submitted only if the amount of asbestos-containing material that is friable or will be made friable during the renovation operation exceeds the regulatory threshold. If the total amount added together from every house that is part of the "urban project" exceeds 260 linear feet of pipe or 160 square feet from any facility component, then the "urban project" is regulated under the asbestos NESHAP, and the demolition operations are subject to the asbestos emission control requirements (61.145(c)) and waste disposal requirements (61.150).

As to which homes comprise the project, the government entity should know with some certainty which homes will be part of the demolition project before it begins. There may be instances, depending upon the circumstances, where additional homes may be added or subtracted from the final list of homes scheduled for demolition under the project. In the end, all homes scheduled for demolition under the project are subject to the asbestos NESHAP demolition requirements. Notwithstanding this long standing interpretation, however, there may be instances where the "isolated" single family home exemption still applies. The 1995 Clarification of Intent (60 FR 38725), for instance, describes that an isolated, single family home (including a residential structure with four dwelling units or less) is not subject to the asbestos NESHAP regulation. There may be an instance where a municipality is demolishing a single family home which is not part of a larger project, and which does not meet the definition of an installation, in which case the demolition of the home would not be subject to the asbestos NESHAP.

The second issue you raise deals with the meaning of the phrase "planning period" as it applies to the situation described above. In this regard, you specifically request a definition for or a clearer understanding of that phrase. The phrase "planning period" is not defined in the asbestos NESHAP. The Agency, however, did provide guidance in a 1995 Clarification of Intent, 60 FR 38725. At Footnote 1, the Agency stated that demolition operations planned at the same time or as part of the same planning period or scheduling period are considered to be part of the same project, and that in the case of municipalities, a planning or scheduling period is often a fiscal or calendar year or the term of a contract.¹ The fact that demolitions might be spread out over multiple fiscal or calendar years or even multiple contracts, however, does not necessarily mean they are not occurring as part of the same planning period. It is not unusual for large scale demolition projects to take place in phases that may include more than one fiscal year, calendar year, or contract. Such demolitions could still be occurring as a part of the same project or plan and the planning period for such project or plan and the associated demolitions could extend over several years and involve multiple contracts. Depending on the specific facts in any given situation, such situations could very well be subject to the asbestos NESHAP.

I appreciate the opportunity to respond your inquiry. This letter has been reviewed by the Office of General Counsel, the Office of Air Quality Planning and Standards and the Office of Civil Enforcement, Air Enforcement Division.

Sincerely,



Richard F. Duffy, Acting Director
Compliance Assessment and Media Programs Division
Office of Compliance

cc: Air and Radiation Division, US EPA Region 5
Superfund Division, Community and Land Revitalization Branch, US EPA Region 5

¹ A demolition/renovation operation that is broken into smaller operations so that the total amount of regulated asbestos-containing material is less than 260 linear feet/160 square feet is not allowed under the asbestos NESHAP regulation. This would be viewed as Circumvention – 40 C.F.R. §61.19.