

U.S. Environmental Protection Agency Applicability Determination Index

Control Number: A060001

Category: Asbestos
EPA Office: CAMPD
Date: 02/16/2006

Title: Demolition under Control of Same Owner or Operator

Recipient: Kavanaugh, James L. **Author:** Alushin, Michael

Comments:

Part 61, M Asbestos

References: 61.141

Abstract:

Q: Are residential structures that are demolished as part of a larger project, such as highway expansion, subject to the asbestos requirements under 40 CFR part 61, subpart M?

A: Yes. EPA finds, pursuant to 40 CFR 61.145, that if two or more residences under the control of the same owner or operator are part of a larger demolition project, such as highway expansion, they are subject to the asbestos regulation, NESHAP subpart M.

Letter:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460 OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

Mr. James L. Kavanaugh Interim Director Missouri Department of Natural Resources Air Pollution Control Program P.O. Box 176 Jefferson City, MO 65102-0176

Dear Mr. Kavanaugh:

This regulatory determination is in response to your letter of November 4, 2005 in which you questioned a previous letter written by Region 7 to the Department of Natural Resources on May 19, 2000 concerning residential structures targeted for demolition in connection with a highway expansion project. Your request seeks clarification on the applicability of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Part 61, subpart M and whether the May 2000 letter was correct.

40 C.F.R. Section 61.141 defines installation as:

any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

Furthermore, in the Preamble of the revised asbestos NESHAP regulations published November 20, 1990 (55 FR 48412), the Agency responded to a question regarding whether a group of residential buildings at one location being demolished by one developer should be subject to the asbestos NESHAP regulations. The Agency responded:

a group of residential buildings under the control of the same owner or operator is considered an installation according to the definition of "installation" and is, therefore, covered by the rule. As an example, several houses located on highway right-of-way that are all demolished as part of the same highway project would be considered an "installation," even when the houses are not proximate to each other. In this example, the houses are under the control of the same owner or operator, i.e., the highway agency responsible for the highway project.

In the July 28, 1995 Federal Register (60 FR 38725), EPA issued a Notice of Clarification addressing the scope of the residential home exemption. EPA once again clarified that demolitions of residential buildings under the control of the same owner or operator as part of a larger demolition project (i.e., in connection with the construction of public facilities such as highways, sports arenas, or shopping malls) are not excluded from the asbestos NESHAP. (60 FR 38726).

With respect to your issue, residential structures demolished as part of a larger project are subject to the asbestos NESHAP if the demolition of the residential structures is under the control of the same owner or operator and is part of the same project. In the case of a highway expansion, one entity, e.g., the state highway department and/or the demolition contractor owns or has control over the residential structures to be demolished. These residential structures are subject to the asbestos NESHAP regulations. Please note, if one residential structure is the only structure demolished during the project, the one residential structure is not subject to the asbestos NESHAP regulations. [60 FR 38726, See EPA Interpretation]. At a minimum, the residential structures are subject to the "thorough inspection" and notification requirements under the Applicability section - SS 61.145. If the amount of regulated asbestos-containing material found in all the residential structures subject to the demolition project exceeds the regulatory threshold, then all the residential structures are subject to the full regulatory authority of the asbestos NESHAP.

The Ofice of Civil Enforcement, the Office of Air Quality Planning and Standards, the Office of General Counsel and Region 7 have reviewed this determination.

Very truly yours,

Michael S. Alushin Compliance Assessment and Media Programs Division Office of Compliance

cc: Charlie Garlow, OCE Susan Fairchild, OAQPS Chris Kaczmarek, OGC Larry Hacker, Region 7