



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: A090003

Category: Asbestos
EPA Office: CAMPD
Date: 07/03/2008
Title: Residential Structures Demolished by Municipalities for Public Safety
Recipient: Blevins, John
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Comments: See related applicability determination filed as ADI Control No. 930828.

Part 61, M Asbestos

Abstract:

Q: Does the applicability determination issued by EPA on July 15, 1993 (see ADI Control Number 930828) conflict with EPA's Clarification of Intent published in the Federal Register on July 28, 1995, as to the applicability of 40 CFR part 61, subpart M (the asbestos NESHAP) to single-family homes?

A: No. EPA believes that these documents are not in conflict, but rather are complementary and apply to different factual situations. The 1993 applicability determination responds to the issue of a large municipality-orchestrated project where multiple single-family homes are being demolished as part of that large project over the course of the same planning or scheduling period, which, for most municipalities, we believe is done on a fiscal or calendar year basis, or in accordance with the terms of a contract. It is EPA's interpretation that the demolition of such multiple single-family homes under such circumstances by a municipality is subject to the asbestos NESHAP regulation, notwithstanding the residential building exclusion contained within the definition of "facility" in the asbestos NESHAP. The 1995 Clarification of Intent, on the other hand, deals with the demolition of two or more single-family homes on the same site (e.g., a city block) that are under the control of a common owner or operator. Under that factual scenario, the single-family homes are considered to be (or, perhaps, to be a part of) an installation, as defined under the asbestos NESHAP, and are subject to the asbestos NESHAP regulation.

Letter:

July 3, 2008

MEMORANDUM

SUBJECT: Applicability of the Asbestos NESHAP to Demolitions of Residential Structures by Municipalities Due to Public Safety Concerns - Letter from ADEQ

FROM: Ken Gigliello, Acting Director
Compliance Assessment and Media Programs Division Office of Compliance

TO: John Blevins, Director
Compliance Assurance and Enforcement Division
Region VI

This memorandum responds to your request regarding the March 14, 2008 letter from the Arkansas Department of Environmental Quality (ADEQ). Their letter requests EPA's position on the applicability of the National Emission Standard for Asbestos (asbestos NESHAP), 40 CFR Part 61, Subpart M, to city-ordered demolitions of multiple residential buildings for reasons of public health, welfare, and safety. ADEQ also asked EPA to inform them if EPA did not agree with their conclusion that: 1) EPA's July 28, 1995 Asbestos NESHAP Clarification of Intent (1995 Clarification, which was published in the Federal Register (60 FR 38725), and July 15, 1993 Applicability Determination (control #930828) issued by the Stationary Source Compliance Division in OAQPS, our predecessor organization, are in conflict, and 2) the 1995 Clarification is the controlling document when analyzing the applicability of the asbestos NESHAP to such demolitions.

EPA does not agree that the documents are inconsistent based on our reading of the 1990 regulation, the 1993 Applicability Determination, which relies heavily on the regulation's preamble language, and the 1995 Clarification. In fact, based on our reading of the aforementioned documents, it is EPA's position that demolitions of individual residential buildings are regulated if they are being demolished as part of a larger project¹ 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.

Accordingly where numerous residential buildings, e.g., 20 to 100 homes as discussed in the incoming ADEQ letter, are being demolished as part of one project (for reasons of public health, welfare, and safety in the case of ADEQ), it is EPA's position that such demolitions are subject to the asbestos NESHAP requirements.

In addition, we have one comment on the two draft ADEQ Clarification Memoranda included as attachments in the March 14 letter from ADEQ. The draft designated as 2008-01 contains the following question: "Does the demolition/renovation involve more than one small residential building within 1500 feet of each other by the same owner/operator (or owner or operator under common control) as part of the same project?" This appears to be an effort to define a single "site" as that term is used within the definition of installation. As noted in the 1995 Clarification, however, the term "site" is not defined in the asbestos NESHAP and EPA has never provided specific boundaries for that term under the asbestos NESHAP. Accordingly, the use of 1500 feet as the criteria to define a site is not consistent with the Federal asbestos NESHAP regulation. Multiple residential buildings being demolished on the same site by an owner or operator would be subject to the asbestos NESHAP, regardless of their proximity to one another.

If you have questions, please call me at (202) 564-7047. The Office of Regulatory Enforcement, the Office of General Counsel and the Office of Air Quality Planning and Standards have reviewed this memorandum.

cc: Susan Fairchild, OAQPS
Randy Hill, OCE
Pam Mazakas, OCE
Tahani Rivers, OCE
Chris Kaczmarek, OGC
Phyllis Flaherty, OC

¹ Demolitions planned at the same time or that are part of the same planning or scheduling period are considered part of the same project. For municipalities, the scheduling or planning is often done on a fiscal or calendar year or the term of the contract. [See 60 FR 38725, FN 1.]