



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: A930001

Category: Asbestos
EPA Office: SSCD
Date: 02/26/1993
Title: Leaving/Missing RACM-Citation/violation
Recipient: Jones, Kurt
Author: Rasnic, John B.
Comments: NOTE: Asb. Reg.s were in Sub. B (61.20 et seq.) before 4/85

Subparts: Part 61, B-Asb, Asbestos Demolition/Renovation (Now Sub. M)
Part 61, M, Asbestos

References: 61.145(c)(1)

Abstract:

This is a request for an interpretation of 40 CFR 61.145 (c)(1). The issue is whether or not leaving/missing RACM is sufficient to generate a NESHAP citation/violation, or must that missed RACM have been broken-up, dislodged or similarly disturbed. If the contractor discovers that they missed some RACM before moving on to another section of the abatement project and corrects this problem, then they would not be in violation of 40 CFR 61.145(c)(1). However, if an inspector discovers any amount of RACM that was missed from an abatement project and it appears to the inspector that the contractor is finished in that area, the Agency has sufficient grounds to generate a citation for the NESHAP violation.

Letter:

Mr. Kurt Jones
Basic Industries, Inc.
P.O. Box 83780
Baton Rouge, LA 70884-3780

Dear Mr. Jones:

This is in response to your letter dated October 28, 1992 requesting an interpretation of 40 CFR 61.145(c)(1) pertaining to the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). In your letter, you specifically asked is leaving/missing RACM sufficient to generate a NESHAP citation/ violation, or must that missed RACM have been broken-up, dislodged or similarly disturbed.

Specifically, if the contractor discovers that they missed some RACM before moving on to another section of the abatement project and corrects this problem, then they would not be in violation of 40 CFR 61.145(c)(1). For example, during an abatement project a small amount of RACM is not removed. The job entails subsequent demolition, but before the demolition activity begins, and before any inspection by the regulating agency, the still undisturbed material is discovered and properly abated. This would not be a violation of the asbestos NESHAP. However, if an inspector discovers any amount of RACM that was missed from an abatement project and it appears to the inspector that the contractor is finished in that area, the Agency has sufficient grounds to generate a citation for the NESHAP violation.

Generally, if anyone conducting an abatement project that is subject to the NESHAP leaves/misses any RACM during an abatement, they are potentially in violation of 40 CFR 61.145(c)(1) which states, "Remove all RACM from facility being demolished or renovated before any activity begins that would break, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal." If the RACM that is left/missed falls under 40 CFR 61.145(c)(1)(ii) or (iii), or if the contractor intended to leave the RACM intact during a renovation, then that would not be a violation. For example, a contractor intends to leave a length of pipe with RACM intact during a renovation, provided this intention can be supported.

This determination has been coordinated with EPA's Office of Enforcement and the Emission Standards Division of the Office of Air Quality Planning and Standards. If you have any questions, please contact Chris Oh of my staff at (703) 308-8732.

Sincerely,

John B. Rasnic, Director
Stationary Source Compliance Division Office of Air Quality Planning and Standards

cc: Sims Roy, ESD (MD-13)
Charlie Garlow, OE (LE-134A)
Tom Ripp, SSCD (EN-341W)
Regional Asbestos NESHAP Coordinators