



U.S. Environmental Protection Agency Applicability Determination Index

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Abstract:

The applicability determination in question does not alter the asbestos NESHAP. It merely clarifies the NESHAP's applicability with regard to the Jacob Javitz renovation. Therefore, it is not an "unintended rulemaking". The determination does not contradict EPA's policy of in-place management of ACM (asbestos-containing material), which is outlined in EPA's "Managing Asbestos In Place" (20T-2003, July 1990) (also known as the "Green Book"). In fact, the applicability determination supports the policy of in-place management, inasmuch as it indicates the possible consequences for owners and operators when ACM is not managed in-place, or is improperly managed. The applicability determination does not transform the lifting of nonasbestos ceiling tiles from an operation and maintenance operation into full-fledged abatement activity. The asbestos NESHAP is applicable to renovation and demolition activities, not to general maintenance activities. Since the May 2, 1991 determination was only a clarification of the asbestos NESHAP, the applicability determination adds no new annual cost for in-place management above what was contemplated in the asbestos NESHAP.

Letter:

Mr. Henry J. Singer
Director
Safety and Environmental Management Division
General Services Administration
Public Buildings Service
Washington, DC 20405

Dear Mr. Singer:

This letter is in response to Mr. Richard G. Austin's October 6, 1992 letter and your July 9, 1992 letter requesting our assistance in resolving several issues arising from the May 2, 1991 applicability determination ("Applicability of the Asbestos NESHAP to Facility Components Coated or Covered with Asbestos Containing Materials") made by the Stationary Source Compliance Division of the Environmental Protection Agency (EPA). Your letters indicate that the General Services Administration (GSA) is concerned that: 1) EPA's May 2, 1991 applicability determination is "unintended rulemaking;" 2) the applicability determination undermines EPA's policy of promoting management of asbestos in-place where feasible; 3) the applicability determination transforms the lifting of any nonasbestos ceiling tile in every school and public and commercial building, which has either asbestos fireproofing or thermal insulation, from an operation and maintenance procedure into a full-fledged abatement activity; and 4) the controls described in the applicability determination could lead to annual costs of over the \$100 million "major rule" threshold.

EPA's response to GSA's four concerns are as follows:

1) Under the May 2, 1991 applicability determination, EPA found that the asbestos National Emission Standard for Hazardous Air Pollutants (asbestos NESHAP), 40 C.F.R. 61.140 - 61.157 applied to a renovation operation at the Jacob Javitz Plaza (the Javitz renovation) in which contractors removed over 160 square feet of drop-ceiling tile in order to replace the ceiling and lighting fixtures above. The ceiling tiles were covered with asbestos that had either degraded from the sprayed-on structural insulation above, had been previously disturbed during maintenance operations, or had been disturbed in the process of removing the tile and performing the work.

This determination does not alter or in any way contradict the asbestos NESHAP; it is, in fact, fully consistent with the asbestos NESHAP and merely clarifies the NESHAP's applicability, with regard to the Javitz renovation. Therefore, it is not an "unintended rulemaking."

The work practice and waste disposal standards for demolition and renovation activities under the asbestos NESHAP are designed to reduce the emission of asbestos that can potentially be released in demolitions and renovations involving asbestos-containing material (ACM).

According to the GSA letters, GSA's major difficulty with the applicability determination is the determination's interpretation of the words "covered" and "coated", as used in the asbestos NESHAP, "as referring to facility components which have any dust or debris." The asbestos NESHAP applies to any renovation [the Javitz renovation was clearly a renovation as defined under 40 C.F.R. 61.141] where the amount of regulated asbestos-containing material (RACM) being stripped, removed, dislodged, cut, drilled, or similarly disturbed equals or exceeds a threshold amount (e.g. 160 square feet on facility components other than pipes). See 40 C.F.R. 61.145(a)(4). The asbestos NESHAP defines "remove" to mean "to take out RACM or facility components that contain or are covered with RACM from a facility." 40 C.F.R. 61.141 (emphasis added). The revised definition of "remove" was added to the asbestos NESHAP on November 20, 1990 (55 FR 48406) to make clear EPA's continuing intention to regulate any asbestos that is removed from a facility including facility components covered with asbestos. See "National Emission Standards for Asbestos Background Information for Promulgated Asbestos NESHAP Revisions," p. 4-25 (EPA 450/3-90-017, October 1990). See 40 C.F.R. 61.145(c)(2), which mandates specific work procedures "when a facility component that contains, is covered with, or is coated with RACM is being taken out of [a] facility as a unit or in sections."

The previous paragraph shows that the asbestos NESHAP clearly applies to ceiling tiles covered with RACM that are removed during a renovation. Despite GSA's reservations, there can be little question that the ceiling tiles removed in the Javitz renovation were covered with RACM. The ceiling tiles in the Javitz renovation had been contaminated by asbestos that had either fallen from the insulation above or had been disturbed during the renovation. EPA observed dry, friable asbestos strewn on the top of the ceiling tiles throughout the affected area. These facility components were "covered with RACM" under any reasonable interpretation of the word "covered." Their removal is therefore subject to the requirements of the asbestos NESHAP.

Moreover, as discussed below, there are significant health reasons for regulating such operations. The existence of dry, deteriorated RACM above these ceiling tiles greatly increases the risk of exposure to asbestos. The purpose of the demolition and renovation section of the asbestos NESHAP is generally to reduce the risk of exposure during and after such activities. EPA's decision to regulate such operation is thus consistent both with the language and the underlying purpose of the asbestos NESHAP.

2) The GSA letters state that GSA believes the May 2 applicability determination undermines EPA's policy of in-place management of ACM; however, the letters do not explain how the May 2 determination, which applies to renovations where RACM is being removed from a facility, could undermine the in-place management policy, which applies to situations where there is no renovation activity and no RACM is being removed from a facility. The May 2, 1991 determination does not undermine EPA's policy of in-place management of ACM, which is outlined in EPA's "Managing Asbestos In Place" (20T-2003, July 1990) (also known as the "Green Book"). In fact, the applicability determination supports the policy of in-place management, inasmuch as it indicates the possible consequences for owners and operators when ACM is not managed in-place, or is improperly managed.

The Green Book "...recommends a pro-active, in-place management program whenever asbestos is discovered." Pro-active management of asbestos in-place does not include allowing the asbestos to deteriorate to the point where it falls off facility components and contaminates other nonasbestos components. In fact, allowing such deterioration defeats the overriding purpose of in-place management, which is to maintain ACM in good condition, ensure proper cleanup of asbestos previously released, and prevent further release of asbestos. This deterioration greatly increases the risk of asbestos fiber release and increases the risk of exposure to airborne asbestos fibers, particularly for maintenance and utility workers. Such increased exposure could lead to increased cases of asbestosis, lung cancer, and mesothelioma, diseases which have been linked to asbestos exposure. An owner/operator of a facility that allows asbestos-containing materials to deteriorate to the point where it drops off of a facility component, and essentially becomes RACM as defined in 40 CFR 61.141, is subject to the requirements of 40 CFR 61.145 Standard for Demolition and Renovation when removing the RACM and any materials contaminated by the RACM.

3) The May 2 applicability determination does not transform the lifting of nonasbestos ceiling tiles from an operation and maintenance operation into full-fledged abatement activity. The GSA letters appear to misconstrue the scope of the asbestos NESHAP. The asbestos NESHAP is applicable to renovation and demolition activities, not to general maintenance activities. Therefore, the removal of ceiling tiles that are contaminated with asbestos dust or debris from a facility is subject to the regulation. However, lifting the ceiling tiles, moving them to the side for access to the space above the drop ceiling, and then returning the ceiling tiles would generally not be subject to the asbestos NESHAP, because such activity would not generally be defined as a renovation activity, i.e., an activity that alters the facility or its components.

The May 2 applicability determination reinforces EPA's policy of promoting management of asbestos-containing material in-place where feasible, but does not change operation and maintenance programs into full-fledged abatement programs.

EPA does, however, strongly recommend replacing any asbestos-containing ceiling tiles or ceiling tiles contaminated with asbestos dust or debris that are frequently moved for access to the space above the drop ceiling with ceiling tiles that are not contaminated and do not contain asbestos. In addition, a pro-active management plan should include provisions to prevent further contamination of the ceiling tiles. Frequently, the space above a drop ceiling contains air plenums used to transport conditioned air (for heating and cooling). When the air handling system is on, these plenums are under positive pressure, and if they leak, the air may stir up any asbestos dust or debris on the ceiling tiles, which may then contaminate the air both above and below the ceiling tiles.

4) Regarding Mr. Austin's concern for increased costs, since the May 2, 1991 determination was only a clarification of the asbestos NESHAP, the applicability determination adds no new annual cost for in-place management above what was contemplated in the asbestos NESHAP. Moreover, the \$100 million annual cost estimate is not realistic. Based on conversations with GSA, it has become evident that the GSA estimate assumes that the ceiling tiles in every building that contains asbestos above drop ceilings are contaminated with asbestos debris, and will have to be removed. It also assumes that this will have to be done annually (even where in-place asbestos management programs have been implemented). This is not the case.

First, as discussed in part three above, this determination does not change operation and maintenance programs into full-fledged abatement programs. Therefore, much of the cost that is attributed to the May 2 applicability determination is based on a faulty premise. Second, even in situations where a renovation is taking place, an asbestos abatement program is not necessary where the threshold amounts of RACM are not involved. If an owner/operator of a building implements a proper in-place management program in the maintenance of its facility, there is little to no likelihood that nonasbestos ceiling tiles would become covered with asbestos; therefore, the probability that removal of nonasbestos ceiling tiles in such facilities would trigger the requirement of the asbestos NESHAP would be significantly reduced if not eliminated. EPA believes that the practices outlined in the Green Book are being followed in many facilities across the nation. Thus in those facilities, it is significantly less probable that removal of nonasbestos ceiling tiles would trigger the requirements of the asbestos NESHAP. Finally, even where ceiling tiles have been contaminated and the asbestos NESHAP is triggered, when these contaminated items are removed, if a proper in-place management program is implemented after such removal, there should be no need for additional decontamination of such materials, especially on an annual basis. Thus these costs should be onetime costs, not annual costs. EPA has not prepared a detailed economic analysis of these costs; however, based on the facts EPA has outlined above, EPA believes that the annual costs implicated by this decision are negligible.

Ceiling tiles that are "covered or coated" with asbestos debris may be decontaminated and left in the facility or, if they are to be replaced, may be disposed of as nonasbestos-containing waste material. Wet wiping the ceiling tiles, then cleaning them with a filtered vacuum cleaner (using an air wiping device that meets the requirements of 61.152) would comply with the NESHAP. Ceiling tiles decontaminated in this manner may be treated as nonasbestos-containing materials.

We will continue to look at the decontamination issue to determine if there are other methods that would sufficiently decontaminate the ceiling tiles and also be in compliance with the asbestos NESHAP.

Sincerely yours,

William G. Rosenburg
Assistant Administrator
for Air and Radiation

bcc: Administrator
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