



U.S. Environmental Protection Agency Applicability Determination Index

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Category: Asbestos
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Recipient: Domenici, Pete V.
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Abstract:

If there is a potential for the release of particles (i.e., failure to sufficiently mix or penetrate with a liquid) from ACM, then the material has not been adequately wetted. Since the basic requirement for adequately wetting was not changed, the cost of compliance with this requirement should not change. The asbestos NESHAP does not require that a regulated work area be established. This is an Occupational Safety and Health Administration (OSHA) requirement. OSHA requires that work place asbestos concentrations be monitored during asbestos abatement work but they do not require controls for minimizing fiber release. Under the November 20, 1990 revision, the minimum notification period is 10 working days prior to the start of a job. In addition, if asbestos removal at a demolition or renovation site starts on a date other than that specified in the notice, or if other reported information changes, renotification is required and must be postmarked at least 10 working days prior to the new start date.

Letter:

Honorable Pete V. Domenici
United States Senate
Washington, DC 20510

Dear Senator Domenici:

This is in response to your December 9, 1991 letter requesting the Environmental Protection Agency's (EPA) findings and views with regard to the issues addressed in Mr. Robert W. Keers' October 7, 1991 letter. Mr. Keers raised a number of concerns regarding the "November 20, 1990 Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) Revision; Final Rule." He also feels that the EPA has given itself broad new powers that go way beyond the intent of the Clean Air Act. His concerns are addressed below.

Adequately Wet Requirements and Cost

Adequately wetting is not a new requirement of the November 20, 1990 Asbestos NESHAP Revision. However, the definition of adequately wet was clarified in the revision. Previously, adequately wet meant "sufficiently mixed or coated with water or an aqueous solution to prevent dust emissions." The current definition of adequately wet means "sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material (ACM), then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet." This revised definition made it clear that EPA's intent was to prevent emissions from ACM. If there is a potential for the release of particles (i.e. failure to sufficiently mix or penetrate with a liquid) from ACM, then the material has not been adequately wetted. Since the basic requirement for adequately wetting was not changed, the cost of compliance with this requirement should not change.

OSHA Related Issues

The asbestos NESHAP work practice is designed to minimize fiber release, and if the work practice is followed, then there should be no significant threat to the health and welfare of the public in general. The asbestos NESHAP does not require that a regulated work area be established. This is an Occupational Safety and Health Administration (OSHA) requirement. As part of a regulated area, OSHA requires negative-pressure enclosures "wherever feasible." An enclosure may not be built in all cases. Where an enclosure is erected at the removal area, asbestos NESHAP inspectors must enter the active removal area to determine compliance and to collect compliance information. Cross-program coordination with OSHA and the Toxic Substances Control Act (TSCA) is stressed and anytime potential violations are discovered, the proper authorities are to be notified. The asbestos NESHAP program provides guidance for its inspectors on some of the important OSHA and TSCA requirements.

OSHA requires that work place asbestos concentrations be monitored during asbestos abatement work but they do not require controls for minimizing fiber release. Mr. Keers discussed his air monitoring data (which was not included in the letter we received) as showing no significant fiber release. EPA believes that any level of exposure to asbestos involves some health risk, although the exact degree of risk cannot be reliably estimated. This is the reasoning EPA used in developing a work practice standard, and rejected an emission level standard.

Notification Requirements

Mr. Keers states that another large cost to his business is "the job of keeping the EPA notified." Some of the notification requirements were changed in the November 20, 1990 revised NESHAP. In the past the minimum notification period prior to the start of a job varied depending on the type of job being done and the amount of asbestos involved. Under the 1990 Revision, the minimum notification period is 10 working days prior to the start of a job. In addition, if asbestos removal at a demolition or renovation site starts on a date other than that specified in the notice, or if other reported information changes, renotification is required and must be postmarked at least 10 working days prior to the new start date. Asbestos removal at demolitions and renovations on any dates other than those specified in the notification is prohibited. The reason for this requirement is to allow enforcement personnel to observe the removal operations. This requirement is needed to prevent "rip and skip" asbestos removal operations from being completed prior to the starting date specified in the notification. This protects legitimate contractors from being underbid by unlawful operators.

A 10-day notification period is needed so that inspections may be scheduled for the most efficient use of government resources. Only in emergencies (for example, a government-ordered demolition of buildings that are in danger of imminent collapse) will EPA consider a shorter notification period appropriate. The incident described by Mr. Keers, i.e., the inability of a school to give the contractor an exact start date does not in itself constitute an emergency. If need be, the contractor must wait until the client provides the definite dates the facilities will be ready for the project.

The requirement for multiple notifications for multiple facilities (even if owned by one customer) as defined in the rule was not changed in the 1990 revision.

Finally, Mr. Keers questions the definition of disturbance, and the enforcement of the scheduled dates that the contractor provides in the notification. The federal rule requires that the notice be postmarked at least 10 days before any activity that would disturb the asbestos material. It also requires that "scheduled starting and completion dates of asbestos removal work (or any other activity, such as site preparation that would break up, dislodge, or similarly disturb asbestos material) in a demolition or renovation...", and "scheduled starting and completion dates of demolition or renovation" be included in the notification. The Federal rule requires only the date, and not a specific time when the asbestos material would be "disturbed."

I appreciate this opportunity to be of service to you and trust that this information will be helpful.

Sincerely,

John S. Seitz
Director
Office of Air Quality Planning
and Standards