



U.S. Environmental Protection Agency Applicability Determination Index

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Abstract:

EPA should always sue owners of facilities for penalties as well as injunctive relief, even if those owners are municipalities or other local government entities, unless there is a substantial reason to exercise enforcement discretion. Some reasons include: the owner is a federal entity, the owner has been very cooperative with the investigation, or the case involves one operator with violations at so many different facilities that adding all the different owners would unnecessarily complicate the case.

Letter:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of
Enforcement and
Compliance Monitoring

APR 30 1990

David T. Buente, Chief
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Post Office
Washington, D.C. 20044

Re: Policy on Suing Municipal Owners in Asbestos
Demolition/Renovation Cases

Dear Mr. Buente:

Thank you for your letter of February 21, 1990 regarding EPA's policy on suing municipal owners in asbestos NESHAP cases. I appreciate the effort your Department has devoted to asbestos enforcement and hope this letter will help to clarify EPA current policy in this area.

The preamble to the April 5, 1984 repromulgation of the asbestos NESHAP expressed the Agency's legal interpretation that the asbestos regulations apply to the owners of demolition and renovation sites. Contemporaneous with that repromulgation, EPA issued an Asbestos Strategy on April 6, 1984. That strategy said, on page 16:

"The asbestos regulations apply to each 'owner or operator' of a demolition or renovation operation. EPA has construed this language to include both the owner of the site and the part performing the demolition or renovation, usually a contractor. This position is reiterated in the preamble to the repromulgation of the standard... As a general rule, the Region should also proceed against the site owner. However, the Region may exercise discretion where an owner can show that the contract or bid specifications required that the demolition contractor comply with the asbestos regulations."

Our July 10, 1985 policy, which we previously sent you, referenced the April 6, 1984 Asbestos Strategy Document. The July 10, 1985 document said:

"Facility owners should generally be included as members of the regulated community to ensure that they hire qualified contractors to remove asbestos properly. Only where the owner has acted responsibly, for example, by hiring a reputable contractor and attempting to monitor or supervise the contractor's performance, should the Agency exercise discretion not to sue the owner."

Neither the April 1984 strategy nor the July 1985 policy distinguished between municipal and other defendants. Although your February 21, 1990 letter suggests that the EPA policies apply only to actions seeking injunctive relief, as we indicated in the April 1984 strategy, we intended our policy to apply to claims for injunctive relief and penalties.

We have been pursuing owners for years. You mentioned that we had not always sued owners, especially where it concerns local government entities. As our analysis of the past two years of asbestos referrals indicates, we always sue owners, even local governments, unless there is a good reason not to do so. I am not aware of any case in which the omission of owners was unjustified. If you are aware of any examples, please let me know. We do not distinguish municipal owners from private owners when deciding whether to refer an owner as a potential defendant.

In conclusion, we should always sue owners for penalties as well as injunctive relief, even if those owners are municipalities or other local government entities, unless there is a substantial reason to exercise our enforcement discretion. As previously mentioned, some of those reasons are: if the owner is a federal entity, if the owner has been very cooperative with our investigation, perhaps even reporting violations by the contractor, or if the case involves one operator with violations at so many different facilities that adding all the different owners would unnecessarily complicate the case.

Please contact me at 382-2820 or Charles Garlow at 475-7088 if you wish to further discuss this issue.

Sincerely,

Michael S. Alushin
Associate Enforcement Counsel for Air

cc: John Seitz
Robert Van Heuvelen
EES Assistant Chiefs
Joseph Block
Bert Frey
David Kee