



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: C69

Category: Asbestos
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Title: Definition of Facility
Recipient: Cropp, J. Wayne
Author: Seitz, John S.

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References: 61.141

Abstract:

An individual residential structure (having no more than four dwelling units) being demolished under an order of a state or local government agency but owned by an individual, partnership, or corporation would not meet the definition of a facility as defined at 40 CFR 61.141. An individual residential structure which is acquired by a state or local government through the process of eminent domain for institutional, commercial or industrial purposes becomes an institutional, commercial or industrial building. Therefore, the building would be subject to the NESHAP requirements. An individual residential structure or a group of residential buildings, which are individually excluded from coverage under the NESHAP, but are acquired by a single entity for institutional, commercial or industrial purposes does become an institutional, commercial or industrial facility and, therefore, is treated as a single entity under the NESHAP.

Letter:

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

Apr 11 1990

J. Wayne Cropp, Director
Chattanooga-Hamilton County
Air Pollution Control Bureau
3511 Rossville Blvd.
Chattanooga, Tennessee 37407

Dear Mr. Cropp:

This letter is in response to your January 3, 1990 letter which you sought guidance on the definition of a "facility" pursuant to the Asbestos National Emission Standard for Hazardous Air Pollutants.

According to the definition in 40 CFR 61.141, "facility" means "any institutional, commercial, or industrial structure, installation or buildings (excluding apartment buildings having no more than four dwellings units)." The exemption for apartment buildings having no more than four dwelling units is based on the fact that such apartment buildings are considered to be equivalent to the largest category of single family structures which normally contain only small amounts of asbestos containing material. It is not the intent of the regulation to apply demolition work practice standards to structures which normally contain small amounts of asbestos (less than 80 linear meters on pipes and less than 15 square meters on other facility components).

In response to your first question, an individual residential structure (having no more than four dwelling units) being demolished under an order of a state or local government agency but owned by an individual, partnership, or corporation would not meet the definition of a facility as defined at 40 CFR 61.141. Therefore, the notification, demolition and disposal requirements in 40 CFR 61.146, 61.147, and 61.152 would not apply. Applicability is determined by the type of structure (i.e., institutional, commercial or industrial) and the amount of asbestos contained in the structure, installation or building. The fact that the demolition is taking place due to an order by a state or local agency would not subject an otherwise exempt structure to the regulation.

In response to your second question, an individual residential structure which is acquired by a state of local government through the process of eminent domain for institutional, commercial or industrial purposes becomes an institutional, commercial or industrial building. Therefore, the notification, demolition, and waste disposal requirements in 40 CFR 61.146, 61.147 and 61.152 would apply. However, while a notification for demolition would be required, the building would not be subject to the removal requirements in 40 CFR 61.147, unless asbestos is present in quantities greater than threshold amounts.

Furthermore, in response to your third question, if there are two or more residential buildings which in the aggregate contain greater than the applicability amount of asbestos and are under the control of a single entity (i.e., one owner and one operator), then the requirements of 40 CFR 61.146, 61.147, and 61.152 would apply. An individual residential structure or a group of residential buildings, which are individually excluded from coverage under the NESHAP, but are acquired by a single entity for institutional, commercial or industrial purposes does become an institutional, commercial or industrial facility and; therefore, is treated as a single entity under the NESHAP.

In response to your fourth question, EPA has no precise criteria to be utilized in determining whether a building is institutional, commercial or industrial. In the definition of a "facility", the intent is to include all types of structures except for single family residential buildings and apartment buildings having no more than four dwelling units.

Per your request, I have enclosed the September 16, 1986, memorandum which discusses appropriate asbestos removal procedures. Thank you for the opportunity to address your questions. If you have any further questions, please contact Scott Throwe of my staff at (202) 475-7002.

Sincerely,

John Seitz, Director
Stationary Source Compliance Division
Office of Air Quality Planning and Standards

Enclosure

cc: Brian Beals, Region IV
Sims Roy, (MD-13)
Omayra Salgado, (EN-341)
Charlie Garlow, (LE-134A)