



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: A970005

Category: Asbestos
EPA Office: METD
Date: 07/22/1996
Title: Small Projects
Recipient: Lott, Trent
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Subparts: Part 61, M, Asbestos

References: 61.19

Abstract:

Q. Is there any limit on the number of small scale, short duration projects that can be conducted annually at a facility?

A. There might be a limit on the number of small-scale, short-duration projects that can be conducted annually at a facility. Also, notification under the asbestos NESHAP is required if it can be predicted that the combined additive amount of regulated asbestos containing material (RACM) to be removed or stripped during a calendar year of January 1 through December 31 exceeds the threshold amount (260 linear feet, 160 square feet, or 35 cubic feet). Additionally, 40 CFR 61.19 prohibits the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

Q. After friable asbestos debris has been removed and placed in a "leak-tight" container as defined in 40 CFR 61 Subpart M, does the debris still have to be kept adequately wet as defined in the standard?

A. Yes. If the asbestos-containing waste material is not adequately wet, then it was placed in the container in a dry state, or the container was not "leak-tight."

Q. Do the requirements of 40 CFR 61 Subpart M apply to apartment complexes where each residential building contains four or fewer dwellings?

A. Yes. The apartment complex is a residential installation containing more than one building, and is covered by the rule.

Q. If an owner rents more than four single residential dwellings which are not part of a single complex, are these structures subject to the regulation under 40 CFR 61 Subpart M?

A. If the dwellings are isolated/scattered and are part of a normal demolition or renovation activity, then they are not subject to 40 CFR Part 61 Subpart M.

Q. Are single family private residences subject to any part of 40 CFR Subpart M, including the provisions of the standard addressing intentional burning?

A. Assuming that the residential building was never used for commercial purposes, a demolition or renovation activity isolated to that building is not subject to the asbestos NESHAP. If any residential building is being demolished by fire, for fire training purposes, then the building is deemed to be an institutional building, and is subject to the asbestos NESHAP.

Q. Is there any requirement under 40 CFR 61 Subpart M that requires "double" bagging friable asbestos debris or using a specific thickness or color plastic bag for disposal of asbestos debris?

A. No.

Q. What criteria does EPA require to determine when nonfriable asbestos has become friable?

A. The definitions of friable ACM and RACM are somewhat subjective and determinations for some materials must be made on a case-by-case basis. See the guidance document on RACM and a January 8, 1992 applicability determination on what constitutes crumbled, pulverized, or reduced to powder.

Q. How are broken pieces of material classified? The resulting pieces still can't be reduced to powder by hand pressure.

A. When nonfriable materials are broken, many times, the edges at the break have become friable. The amount of damage that a nonfriable material can sustain before being classified as RACM must be determined on a case-by-case basis. Please see the above referenced January 8, 1992 determination for further information.

Q. Suppose a project will involve 125 linear feet of pipe insulation. However, the volume of ACM waste produced by the 125 linear feet of pipe insulation exceeds 35 cubic feet. Must notification be made for this project?

A. No. If it is clear that the asbestos-containing waste material came from the 125 feet of pipe, and contains no other RACM, then the asbestos NESHAP does not apply even if the debris exceeds 35 cubic feet.

Letter:

Honorable Trent Lott
United States Senate
Washington, DC 20510-2403

Dear Senator Lott:

I am responding to your letter of April 18, 1996, on behalf of your constituent, Terry Coggins, who requested written clarification of certain lead and asbestos policy issues. The U.S. Environmental Protection Agency (EPA) sent you a response on May 30, 1996, with respect to Mr. Coggins' questions about lead.

I have enclosed the responses prepared for your constituent's questions on the Asbestos Hazard Emergency Response Act (AHERA) and the National Emission Standards for Hazardous Air Pollutants (NESHAP). Also, please find enclosed documents that provide further clarification in response to Mr. Coggins' questions.

I hope these responses are helpful in addressing your constituent's concerns. If you need more information or have any additional questions, please let me know.

Sincerely,

Lynn R. Goldman, M.D.
Assistant Administrator

Enclosures

Response to AHERA* Questions

*Please note that the National Emission Standards for Hazardous Air Pollutants (NESHAP) asbestos standard applies to one of the questions asked.

Question 1: When the worker training requirements specified in the AHERA standard (40 CFR 763) were extended to abatement activities conducted in commercial, public, and some residential buildings, an exception was made for "small scale, short duration" projects. Specifically, EPA did not appear to require "accredited" asbestos abatement professionals to be utilized for a "small scale, short duration" project.

Is this interpretation correct?

Response: Yes, EPA does not require Model Accreditation Plan (MAP) accreditation for asbestos-abatement professionals conducting "small-scale, short-duration" projects. However, operations and maintenance (O&M) training under the AHERA schools rule (not accreditation) is required for "small-scale, short-duration" projects done in schools. Also, EPA recommends O&M training for small-scale, short-duration projects done in other buildings. In addition, OSHA, state and local requirements may be applicable.

Question 2: A "small scale, short duration" project as defined in appendix C to subpart E of 40 CFR 763 is a project where asbestos (either TSI, surfacing material, or miscellaneous) must be disturbed or removed.

Can a project be considered "small scale, short duration" project if more than 3 linear feet of pipe insulation or 3 square feet of miscellaneous or surfacing material must be removed or disturbed?

Response: A project cannot be considered a "small-scale, short-duration" project if more than 3 linear feet of pipe insulation or 3 square feet of miscellaneous or surfacing material must be removed or disturbed. Accredited workers are required for such projects.

Are there any size or volume constraints on the amount of asbestos that can be disturbed or removed during any single small scale, short duration project?

Response: Yes, size and volume constraints exist on the amount of asbestos that can be disturbed or removed during any single small-scale, short-duration project. Small-scale, short-duration" repair or removal work must fit into a single glove bag (removal of asbestos-containing thermal system insulation) or a single prefabricated minienclosure (repairs to small amounts of friable asbestos-containing material only if they are required in the performance of maintenance activities that are not intended solely to be asbestos-abatement actions).

Is there any limit on the number of small scale, short duration projects that can be conducted annually at a facility?

Response: There might be a limit on the number of small-scale, short-duration projects that can be conducted annually at a facility. For example, you are not supposed to try to avoid more restrictive requirements for asbestos abatement by attempting to conduct them as a series of "small-scale, short-duration" projects. Also, notification under the asbestos NESHAP is required if it can be predicted that the combined additive amount of regulated asbestos containing material (RACM) to be removed or stripped during a calendar year of January 1 through December 31 exceeds the threshold amount (260 linear feet, 160 square feet, or 35 cubic feet). Additionally, 40 CFR 61.19 prohibits the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

Question 3: The worker training requirements specified in 40 CFR 763 appear to apply only to projects (excluding small scale, short duration projects) involving interior building components. Specifically, roofing work and other exterior work is excluded from accreditation requirements in this standard.

Is this interpretation correct?

Response: Worker training requirements specified in 40 CFR 763, including those for accreditation under the MAP, apply to interior building projects done in schools and public and commercial buildings. Additionally, OSHA, state and local training requirements may apply.

Question 4: The worker training requirements applicable to schools, public buildings, and commercial buildings as specified in 40 CFR 763 do not appear to apply to any abatement activity involving non-friable asbestos containing materials.

Is this interpretation correct?

Response: In general, worker training requirements applicable to schools and public and commercial buildings do not apply to any abatement activity involving non-friable asbestos-containing materials. However, OSHA, state and local training requirements may apply.

Question 5: What criteria must be applied to determine when a nonfriable asbestos containing material is made friable?

Response: Nonfriable asbestos-containing material is made friable if, when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure.

If a nonfriable component such as a piece of floor tile is broken into small pieces (0.25 in2 squares or smaller) in a removal process, resulting pieces still can't be reduced to powder by hand pressure. Does EPA still classify these pieces nonfriable and consider this removal process one that can be performed by unaccredited workers?

Response: If floor tiling is removed by a method that does not render it friable -- i.e., it is not able, when dry, to be crumbled, pulverized, or reduced to powder by hand pressure, then such removal is not considered to be a response action, and MAP-accredited workers are not needed. See Policy Clarification re: Vinyl Asbestos Tile, Office of Prevention, Pesticides and Toxic Substances, AHERA Interpretive Guidance Workgroup, July 1992 (enclosed).

Question 6: Does EPA consider painting (for cosmetic or routine maintenance for purposes only) an asbestos containing surfacing material, miscellaneous material, or thermal system insulation an activity that requires accredited workers? Again, the purpose of the painting is for cosmetic purposes only -- not for the purpose of encapsulation.

Response: EPA does not consider painting (for cosmetic or routine maintenance purposes only) an asbestos-containing surface material, miscellaneous material, or thermal system insulation an activity that requires accredited workers.

Question 7: Does the AHERA requirements in 40 CFR 763 mandating routine facility inspections and management plan development apply to "for-profit" private schools as they apply in public k-12 schools?

Response: AHERA mandates requiring facility inspections and management plan development do not apply to "for-profit" private schools, but they do apply to "nonprofit" private K-12 schools.

Question 8: When conducting an asbestos abatement operation that is not a small scale, short duration project, what length of ACM pipe insulation or area of ACM surfacing/miscellaneous material triggers the requirement to use accredited workers? Does this limit apply to each individual project conducted at a facility or to the total amount of material abated in all non-small scale, short duration projects conducted at the facility? Again, projects referenced in this question are those which do not meet the definition of small scale, short duration projects.

Response: I believe your constituent is asking about a "response action" other than a "small-scale, short-duration" project. Such projects must be designed and conducted by MAP-accredited persons. Additionally, OSHA, state and local training requirements may apply.

Response to NESHAP Questions

Question 1: After friable asbestos debris has been removed and placed in a "leak-tight" container as defined in 40 CFR 61 Subpart M, does the debris still have to be kept adequately wet as defined in the standard?

Response: Yes. If the asbestos-containing waste material is not adequately wet, then it was placed in the container in a dry state, or the container was not "leak-tight."

Question 2: Does the requirements of 40 CFR 61 Subpart M apply to apartment complexes where each residential building contains four or fewer dwellings? For example, an owner has an apartment complex consisting of six buildings. Each building contains only four residential dwellings. Would the complex be subject to the regulation under 40 CFR Subpart M?

Response: Yes. The apartment complex is a residential installation containing more than one building, and demolition or renovation activities on residential installations with more than one building were not exempt from the rule. For further information regarding residential installations, please see our July 28, 1995 Federal Register (FR) notice of clarification (enclosed).

Question 3: Suppose an owner rents more than four single residential dwellings. These residential dwellings are not part of a single complex. Are these structures subject to the regulation under 40 CFR 61 Subpart M?

Response: If the dwellings are isolated/scattered and are part of a normal demolition or renovation activity, then they are not subject to 40 CFR 61 Subpart M (the asbestos NESHAP). Again, please refer to the July 28, 1995 FR notice.

Question 4: Are single family private residences subject to any part of 40 CFR Subpart M, including the provisions of the standard addressing intentional burning.

Response: Assuming that the residential building never met the definition of "facility" (e.g., it was never used for commercial purposes) then a demolition or renovation activity isolated to that building is not subject to the asbestos NESHAP. If any residential building is being demolished by fire, for fire training purposes, then the building is deemed to be an institutional building, and is subject to the asbestos NESHAP.

Question 5: Is there any requirement under 40 CFR 61 Subpart M that requires "double" bagging friable asbestos debris or using a specific thickness or color plastic bag for disposal of asbestos debris?

Response: There are no requirements in the asbestos NESHAP for "double bagging" asbestos-containing waste material, or for using a specific thickness or color of plastic bag. The asbestos NESHAP only specifies that the containers must be "leak-tight," and specifies requirements for labeling the containers.

Question 6: 40 CFR 61 Subpart M defines regulated asbestos-containing material (RACM) as friable material or Category I or II nonfriable ACM that has been or will be made friable during a demolition or renovation. What criteria does EPA require to determine when nonfriable asbestos has become friable?

Response: The definitions of friable ACM and RACM are somewhat subjective and determinations for some materials must be made on a case-by-case basis (e.g., removal of floor tile mastic by manual methods may or may not cause the normally Category I material to become RACM). Copies of a guidance document on RACM and of a January 8, 1992 applicability determination on what constitutes crumbled, pulverized, or reduced to powder, are enclosed.

Question 7: If a nonfriable component such as a piece of floor tile or asbestos-containing cement product is broken into smaller pieces in a removal process. The resulting pieces still can't be reduced to powder by hand pressure. Does EPA still classify these pieces nonfriable and therefore non-RACM under 40 CFR 61 Subpart M?

Response: When nonfriable materials are broken, many times, the edges at the break have become friable. The amount of damage that a nonfriable material can sustain before being classified as RACM must be determined on a case-by-case basis. Please see the above referenced January 8, 1992 determination for further information.

Question 8: The NESHAP notification requirements for a renovation activity is triggered when one or more of the following threshold quantities of RACM is affected: 260 linear feet of pipe insulation; 160 square feet of other ACM; 35 cubic feet of material that can't be identified. Suppose a project will involve 125 linear feet of pipe insulation. However, the volume of ACM waste produced by the 125 linear feet of pipe insulation exceeds 35 cubic feet. Must notification be made for this project?

Response: No. If it is clear that the asbestos-containing waste material came from the 125 feet of pipe, and contains no other RACM, then the asbestos NESHAP does not apply even if the debris exceeds 35 cubic feet.