



## U.S. Environmental Protection Agency Applicability Determination Index

**Control Number: A980002**

**Category:** Asbestos  
**EPA Office:** Region 1  
**Date:** 11/05/1998  
**Title:** Inactive Landfill Requirements  
**Recipient:** O'Brien, Phillip  
**Author:** DeVillars, John

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**Subparts:** Part 61, A, General Provisions  
Part 61, M, Asbestos

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**References:** 61.141  
61.145  
61.151

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**Abstract:**

Q. Do residential, commercial, industrial, or publicly-owned properties, that received asbestos-containing waste materials generated from "manufacturing" facilities (as that term is defined at 61.141) as "free fill" need to comply with the Asbestos NESHAP provisions promulgated at 40 CFR 61.145 and 61.151 and 40 CFR Part 61, Subpart A?

A. The provisions of Part 61, Subpart A apply to all sources covered by the Asbestos NESHAP unless specifically exempted. Section 61.151 would apply to all properties as long as the asbestos-containing waste material was from a regulated manufacturer and was not deposited within the past year. The provisions at 40 C.F.R. 61.145 do not apply since soil is not considered a facility component or load-supporting structure.

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**Letter:**

**AIRBORNE EXPRESS DELIVERY**

Philip J. O'Brien, PhD, Director  
Waste Management Division  
State of New Hampshire  
Department of Environmental Services  
6 Hazen Drive, P.O. Box 95  
Concord, NH 03302-0095

Re: Application of NESHAP Regulations to Asbestos Contaminated Properties in and around Nashua and Hudson, NH

Dear Dr. O'Brien:

This correspondence is a response to your letter, dated June 25, 1998, in which you request an applicability determination from EPA with respect to certain parts of the National Emission Standards for Hazardous Air Pollutants or "NESHAP" regulations, codified at 40 CFR Part 61, Subparts A and M. Specifically, you have asked whether certain NESHAP provisions apply to various properties in New Hampshire that you maintain were contaminated by manufacturing wastes generated by the Johns-Manville Corporation. Based on information provided by you, we understand these wastes were incorporated into what had been offered by Johns-Manville as "free fill" and deposited for decades at residential, commercial, and other properties in the Nashua and Hudson, NH area

Your inquiry pertains to the following regulatory requirements, each of which we address separately, below:

1. 40 CFR 61.151 (Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations); 2. 40 CFR 61.145 (Standards for demolition and renovation); and, 3. 40 CFR Part 61, Subpart A (General Provisions).

Section 61.151 Based on the information you have provided, 40 CFR 61.151 would apply to the subject properties to which Johns-Manville transported asbestos- contaminated fill materials. Since the last waste disposal occurred more than a year ago for all of the sites and the source of the waste was Manville and its manufacturing operations, the sites fall within the definition of "inactive waste disposal site" at 40 CFR 61.141. With the application of Section 61.151 to the sites, any activities undertaken by owners and operators must be accomplished in compliance with those regulations, as each requirement applies, under the specific circumstances of the particular site. Those provisions include all or a portion of the following requirements: discharging no visible emissions, covering the waste materials, installing signs and fencing, implementing an EPA-approved alternative control method, providing written notification prior to disturbing wastes, and recording information in title documents.

We understand that some of these requirements may seem burdensome when applied, for example, to individual, residential property owners or even some very small business entities. We note, however, that no such requirements should be triggered where activities are not undertaken to excavate or otherwise disturb asbestos. Therefore, the application of the requirements to any particular piece of property remains largely within the control of the owner or operator of the parcel (except, for example, where asbestos is disturbed due to weather conditions, floods, erosion, or the like). In addition, since excavation, digging, or other activities that disturb soil would not be regulated to the extent they did not involve asbestos materials, the importance of obtaining an accurate site survey cannot be overstated. For any site owner or operator, knowing precisely where asbestos waste is located on the property should provide an accurate indicator of when the requirements of 40 CFR 61.151 apply.

40 CFR 61.145 We believe the requirements of this section do not apply to activities involving the Johns-Manville waste buried on the subject properties since soil is not usually considered a facility component or a load supporting structure. Accordingly, digging, excavation, or other like activities that would disturb the asbestos waste would not be considered altering a facility component or wrecking or taking out a load supporting structure as contemplated by the definitions of "renovation" or "demolition" at 40 CFR 61.141. Although some or all of the demolition and renovation requirements might apply to activities at or in industrial, commercial, municipal, or multi-residential (i.e., greater than 4 units) facilities contaminated by Johns-Manville wastes, such application would be the result of other demolition or renovation activities not involving the Manville wastes located in soils, exclusively.

40 CFR Part 61, Subpart A (General) The general provisions of the NESHAP regulations apply to all sources covered by any portion of the NESHAP regulations, unless specifically exempted. No such exemption applies to these sites under Section 61.151 or otherwise under Part 61 and, accordingly, Subpart A of the Part 61 regulations applies. While we are aware that the application of this Subpart to some activities at or on certain smaller parcels arguably may stretch the original intent of the requirements within Subpart A, as a legal matter, the sites are not exempt and, thus, the regulatory requirements apply to regulated activities occurring on the subject properties.

I hope this letter clarifies our position regarding the application of federal NESHAP regulations to asbestos wastes located at the above-referenced properties. Note that the representations set forth in this applicability determination are intended solely as guidance on issues of applicability, not enforcement. This guidance is offered based on the specific, limited facts you have presented and does not represent final Agency action, is not binding on EPA, and does not create any enforceable rights, substantive or procedural. EPA Headquarters representatives, including contacts within the Office of Enforcement and Compliance Assurance and the Office of Air Quality Planning and Standards, have reviewed and concurred on this determination along with legal and technical representatives within the Office of Environmental Stewardship, EPA Region 1 (New England).

If you have any further questions or concerns about this matter, please do not hesitate to contact the Regional NESHAP Coordinator, Wayne R. Toland, in the Air Technical unit at (617)565-3260. For legal matters, contact Senior Attorney Hugh W. Martinez in the Regulatory Legal Office, at (617)565-4526.

Sincerely yours,

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John P. DeVillars, Regional Administrator  
EPA Region 1 - New England

cc: Pamela Sprague, NH DES