



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: C106

Category: Asbestos
EPA Office: Region 6
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Recipient: Hart, Jan
Author: Hepola, John R.

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

References: 61.04
61.10
61.11
61.141
61.145(a)

Abstract:

The requirement to thoroughly inspect buildings before demolition or renovation does not apply to single family dwellings ordered demolished pursuant to a city's urban nuisance program. This exemption applies regardless of whether the facility owner performs the demolition or the city has a contractor do the demolition and bills the owner or assesses a lien against the property. The procedures for requesting a waiver of the asbestos NESHAP survey requirements for single and/or multi-family and commercial properties are also discussed.

Letter:

JUL 15 1991

Ms. Jan Hart
City Manager
City of Dallas
City Hall
Dallas, Texas 75201

Dear Ms. Hart:

This is in response to your June 6, 1991, letter submitting a request by the City of Dallas for

clarification of two issues concerning asbestos surveying and abatement in conjunction with the urban nuisance program operated by the city.

Your letter states that the city has procedures, which are established by city ordinance, for the demolition of unsafe buildings and may issue an order to demolish a structure that has been designated an urban nuisance under this program. If the owner does not perform the demolition, the city may have the work done by a contractor and bill the owner. If the owner does not pay the bill, a lien is assessed against the property. The city does not own or manage the property.

EPA regulates asbestos as a hazardous air pollutant under Section 112 of the Clean Air Act in Part 61 of Title 40 of the Code of Federal Regulations (40 C.F.R. Part 61), Subparts A and M, which prescribe requirements for notification and removal, handling and disposal of regulated asbestos-containing material (RACM) for intended demolition/renovation (demo/reno) activity. These Federal standards are also known as the National Emission Standards for Hazardous Air Pollutants or NESHAP for asbestos. Current revisions to the asbestos NESHAP were made effective on November 20, 1990, by promulgation in the Federal Register (55 FR 48406-48433).

Based on EPA's interpretation of the asbestos NESHAP as it applies to demolition activity, we have completed our review of the two issues of concern. Clarification of the asbestos NESHAP requirements and applicability has been provided for each issue in Enclosures to this letter.

It is appropriate that future requests of this nature should be addressed to the Texas Air Control Board (TACB) in light of the following. Under the provisions of 40 C.F.R. Section 61.04(a) and (b) of NESHAP, all requests, submittals and other communications to the Administrator of EPA pursuant to NESHAP are required to be submitted to the appropriate Regional Office of EPA and/or EPA's delegated State agency. Full authority to implement and enforce the Federal asbestos NESHAP standards has been delegated to the state of Texas. The delegation agreement of EPA-Region 6 with Texas, which was last revised on December 28, 1982, provides that all requests, communications and submittals pursuant to NESHAP (except where a NESHAP standard specifies otherwise) are to be submitted to the appropriate delegated State agency only, instead of to EPA and the State agency.

The TACB is the delegated State agency that is responsible for implementing and enforcing the Federal asbestos NESHAP standards in Texas. [See 40 C.F.R. Section 61.04(b)(SS).] Future asbestos NESHAP requests or communications in Texas should therefore be properly addressed to the TACB and a copy may or may not be sent to EPA Region 6 as preferred. Accordingly, submittals concerning the asbestos NESHAP in Texas should be addressed to:

Ms. Jeanne Philquist
Director of Compliance Division
Texas Air Control Board
12124 Park 35 Circle
Austin, Texas 78753
Telephone: (512) 451-5711 or (512) 908-1000.

I trust that the information provided herein adequately addresses your concerns. This response represents the concerted position of EPA on each issue and has been coordinated with EPA's Office of Enforcement and the Stationary Source Compliance Division of EPA's Office of Air Quality Planning and Standards. Questions on the enclosed information may be directed to Martin E. Brittain, P.E. of my staff or his supervisor, Donna M. Ascenzi, at (214) 655-7223.

Sincerely yours,

John R. Hepola
Chief
Air Enforcement Branch (6T-E)

Enclosures

cc: Ms. Jeanne Philquist
Director of Compliance Division
Texas Air Control Board

Mr. Gary Burlbaw, Chief
Air Pollution Control Program Environmental Health Division City of Dallas Department of Health and
Human Services 320 E. Jefferson, LL - 13 Dallas, Texas 75203 ENCLOSURE 1

U.S. EPA - Region 6 Response
To
Asbestos NESHAP Issues & Concerns
of City of Dallas, Texas

Issue 1: The City of Dallas has ordinance-procedures for the demolition of unsafe buildings and may issue an order to demolish a structure that has been designated an urban nuisance under such procedures. Where the property owner does not perform the ordered demolition, the city may have the demolition done by a contractor and bill the owner. If the owner does not pay the bill, a lien is assessed against the property. The city does not own or manage the property. Clarification is requested as to whether or not the asbestos NESHAP for demolition requires an asbestos survey of single family residential structures prior to such an ordered demolition. If the survey is required, information regarding procedures for complying with this standard is also requested.

Response 1: The asbestos NESHAP requirement of 40 C.F.R. Section 61.145(a), that an affected facility be inspected or thoroughly surveyed for asbestos prior to commencing demolition, does not apply and is not required for any facility or portion thereof that consists of residential buildings, installations, or structures having in the aggregate four or fewer dwelling units and which has been ordered demolished pursuant to the City's urban nuisance program. However, any building that was formerly a residential structure, but was subsequently used only for commercial, but not residential, purposes before condemnation and ordered demolition by the City, is considered to be henceforth a commercial structure, and therefore, subject to applicable requirements of asbestos NESHAP, including the required asbestos survey, prior to demolition. This means that, when the described exemption from NESHAP applies to the ordered demolition of a single family residential structure, the NESHAP exemption applies to the demolition, regardless of whether the facility owner performs the demolition or the City has a contractor do the demolition and bills the owner/assesses a lien against the property.

This interpretation of applicability is based on the following.

1. The definition of "facility" in 40 C.F.R. Section 61.141 of the asbestos NESHAP, excludes residential buildings having four or fewer dwelling units and therefore, exempts single family residential structures from the requirements of asbestos NESHAP for demolition. An individual residential structure (having no more than four dwelling units), that is being demolished under an order of a state or local government agency, but is owned by an individual, partnership, or corporation, would not meet the definition of a facility that is subject to the asbestos NESHAP for demolition. 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 NESHAP regulations.
2. The City does not own, manage or acquire the property of the single family residential structures being demolished.
3. The subject ordered demolition of such residential structures is not considered to be for the purposes of institutional, commercial, public, industrial or urban renewal projects by the City. The City is only implementing its condemnation authority and enforcing its ordinances addressing urban nuisance, safety and public health.

To assist in identifying regulated asbestos-containing materials (RACM), the following information is also enclosed regarding the requested guidance and procedures for complying with the asbestos NESHAP, where applicable, for asbestos surveys:

- a. EPA 560/5-85-024, June 1985, Guidance for Controlling Asbestos-Containing Materials in Buildings
- b. 20T-2003, July 1990, Managing Asbestos In Place
- c. EPA 340/1-90-015, November 1990, A Guide To The Asbestos NESHAP As Revised November 1990
- d. EPA 340/1-90-020, December 1990, The Asbestos Informer
- e. EPA 340/1-90-018, December 1990, Asbestos/NESHAP Regulated Asbestos Containing Materials Guidance.

Issue 2. The City of Dallas has requested to be advised if there are procedures for the City to request a waiver of the asbestos NESHAP survey requirement for single and/or multi-family and commercial properties. In the alternative, is a waiver available for properties with a demolition order dated prior to 1989, when the City was notified of the asbestos NESHAP regulations for demolition? If such a waiver is available, information on how to apply for one is requested.

Response 2: Under the provisions of Section 112(c) of the Clean Air Act, the procedures for requesting a waiver of compliance with an applicable NESHAP emission standard are established in 40 C.F.R. Sections 61.10(b) and 61.11. The provisions are not considered applicable, however, for a waiver of compliance with the asbestos survey requirement of asbestos NESHAP for the following reasons:

1. The Act and procedures provide that the owner or operator of an existing source unable to comply with an applicable emission standard may request a waiver of compliance with that standard for a period not exceeding 2 years after the effective date of the standard.
2. The asbestos NESHAP requirement that a facility be inspected for asbestos prior to demolition or renovation was first made effective on October 14, 1975, by promulgation in the Federal Register (40FR 48292-48311). Although it was an implicit requirement and not stated explicitly in the rule, it was required that information on the amount of asbestos present in the facility, the nature of the demolition or renovation, and the measures that will be taken to control emissions of asbestos must be reported in the required notifications. The revision of asbestos NESHAP on November 20, 1990 clarified this existing requirement and expressly required a facility survey for asbestos prior to demolition or renovation.
3. Because the asbestos survey requirement became effective in 1975, the two year period for which a waiver of compliance may be granted from the effective date of this requirement has long since expired.
4. Where the asbestos survey requirement is authorized by Section 114 of the Clean Air Act for the purpose of determining applicability of and compliance with asbestos NESHAP emission standards, there is no provision for a waiver of compliance.

Additional Information: Please be advised that pursuant to Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9603(a), a person in charge of a facility is required to immediately notify the National Response Center as soon as s/he has knowledge of a release of a hazardous substance from such a facility in an amount equal to or greater than the reportable quantity for that substance. Asbestos is a CERCLA hazardous substance with a reportable quantity of one pound (See 40 C.F.R. Section 302.4).

Therefore, any demolition operation that has been ordered by and conducted under the supervision of the City, and results in the total release of more than one pound of asbestos during any 24 hour period

into the environment, would require the City or its contractor to immediately notify the National Response Center as stated above at 1-800-424-8802 or (214) 655-2222 if unable to contact the NRC. Relevant portions of the National Contingency Plan concerning this matter are enclosed. Should you have any additional questions concerning this matter, please contact Jim Staves at the above-referenced number. Also, please be advised that the State and Local Emergency Planning Committees may have additional notification requirements.