



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: C14

Category: Asbestos
EPA Office: OGC
Date: 10/11/1984
Title: Tenant Responsibility for Building Renovation
Recipient: Erwin, Gregory
Author: Alushin, Michael S.

Subparts: Part 61, M, Asbestos

References: 61.141
61.145(a)
61.145(b)

Abstract:

Although the preamble to the asbestos NESHAP clearly indicates that the standard applies to the owner or operator of the facility and the demolition and renovation contractors, the determining factor is who "owns" the demolition or renovation operation. In this case in question, the tenant has purchased the services of a contractor for the renovation of the premises, so the tenant is an "owner" for purposes of the standard.

Letter:

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

OCTOBER 11, 1984

K. Gregory Erwin, Esq.
Dow, Cogburn, and Friedman
The Coastal Tower
Suite 2300
9 Greenway Plaza
Houston, Texas 77046

Dear Mr. Erwin:

This letter responds to your request of October 4, 1984, for an interpretation of the National Emission Standard for Asbestos, 40 C.F.R 61.140 et seq.

The facts, as set forth in your letter, are that the owner of a building leases space to a tenant on an "as-is" basis, giving the tenant the right to remodel or renovate the premises as the tenant chooses. The tenant then hires a contractor to do some renovation work involving the removal of asbestos. Your question is whether the building owner or the tenant is the "owner" within the meaning of 40 C.F.R 61.146 and is responsible for notifying EPA of the renovation.

The preamble to the April 5, 1985 promulgation of the asbestos regulations clarifies the meaning of "owner" as follows:

The general provisions of 40 CFR Part 61 define "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source (40 CFR 61.02). The stationary source in this case is the demolition or renovation. The contractor would clearly be considered an owner or operator by "operating" the stationary source. The facility owner or operator, by purchasing the services of the demolition or renovation contractor, acquires ownership and control of the operation and would therefore be the "owner" for purposes of this standard. Therefore, the standard applies to both the contractor and the facility owner or operator.

49 Fed. Reg. 13659 (April 5, 1984).

Although the preamble indicates that the standard applies to the owner or operator of the facility, the determining factor is who "owns" the demolition or renovation operation. In this case, the tenant has purchased the services of a contractor for the renovation of the premises, so the tenant is an "owner" for purposes of the standard.

Ordinarily, the landlord would also be subject to the demolition and renovation regulation because the landlord would retain authority to control or supervise the demolition or renovation activity. For example, the right to approve the contractor or the renovation plans are attributes of control of the renovation operation. Only in circumstances in which the landlord has retained no authority over what is done to the building would the landlord not be subject to the asbestos NESHAP. Without having seen the lease in this instance, I express no opinion as to whether the landlord is in fact an owner of the renovation at issue.

I hope that I have adequately addressed your question. If you have any further questions, please call Elliott Gilberg of my staff at 202-382-2864.

Sincerely,

Michael S. Alushin
Associate Enforcement Counsel for Air

cc: Robert Myers, SSCD

Earl Salo, OGC

Bennett Stokes
Office of Regional Counsel
Region VI

Jim Braddock
Texas Air Control Board