



U.S. Environmental Protection Agency Applicability Determination Index

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Category: Asbestos
EPA Office: SSCD
Date: 12/05/1985
Title: Addition. Friable Mater. Discovered/Created
Recipient: Kertcher, Larry F.
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References: 61.141
61.145(b)
61.150
61.154

Abstract:

If at any point during the renovation or demolition, additional friable asbestos material is either discovered or created from non-friable forms, this additional friable material becomes subject to the regulations from the time of creation or discovery.

Letter:

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

DECEMBER 5, 1985

Office of Air and Radiation

MEMORANDUM

SUBJECT: NESHAP Applicability Determination - Removal of Non-friable Material

FROM: Director
Stationary Source Compliance Division
Office of Air Quality planning and Standards

TO: Larry F. Kertcher, Chief
Air Compliance Branch
Air Management Division, Region V

This is in response to your memo dated June 18, 1985, concerning the applicability of the asbestos NESHAP, 40 CFR Part 61, Subpart M to the removal of non-friable asbestos material that may become friable during its removal. We have discussed this issue with the Offices of Enforcement and Compliance Monitoring and General Counsel, as well as the Emission Standards and Engineering Division, in order to develop an approach based upon our interpretation of the asbestos demolition and renovation requirements. As written, this interpretation applies not only to non-friable material which becomes friable during removal (i.e., friable material created during removal), but also in the case when friable asbestos is found at a site previously thought to contain no asbestos (i.e., friable material discovered during removal).

The regulations define "friable asbestos" material as any material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize or reduce to powder when dry. There is no reference in the definition or in other parts of the regulations to the potential of material to become friable. Rather, the definition appears to exclude potentially friable material from applicability because (1) the definition specifies that the asbestos must be able to be crumbled by hand pressure, rather than solely defining friable asbestos as material containing more than 1 percent asbestos, (2) the definition includes the modifier "when dry" but not "when broken," etc. and (3) the regulations are written to prevent the escape of asbestos fibers, which would not be a problem before the material actually becomes friable.

However, even though the regulations address only material that is presently friable, it does not limit itself to material that is friable at the time of notification. Rather, if at any point during the renovation or demolition, additional friable asbestos material is either discovered or created from non-friable forms, then this additional friable material becomes subject to the regulations from the time of creation or discovery. This additional friable material will become subject to all of the regulations, including the notification requirements. As written in 40 CFR .61.146(c)(3), the written notice of intent to demolish or renovate must include an estimate of the approximate amount of friable asbestos material present in the facility. If, subsequent to submitting this written notice, the owner or operator finds that this original estimate was inaccurate (due either to the discovery of additional friable material or to non-friable material being broken up resulting in friable material), the notice should be amended to inform EPA (and/or a delegated State agency) that this material was not accounted for in the original notice (e.g., that notification was not sent for this additional material).

This additional notification would be required whether or not the source had originally notified. Where notice has already been given, the owner or operator must submit this additional notification as early as possible (telephone notification, followed by a written statement, should be encouraged) but may continue immediately with the renovation or demolition, because the enforcement agency is aware that the operation is taking place. Where the owner or operator of a demolition project failed to submit the initial notification (notification is required even if no asbestos is thought to be present) and asbestos material is discovered or created during demolition, the owner or operator may have to temporarily suspend operation and must send written notification 10, or 20, days before continuing the demolition activity, depending on the amount of friable asbestos present. In this situation, suspension of operation is necessary so that the enforcement agency will have an opportunity to monitor compliance with the substantive requirements. The Regional Offices may be flexible with this waiting period, and may (1) encourage sources to notify by telephone followed by written notification, (2) begin the 10, or 20, day period from the day of the phone call and/or (3) shorten the waiting period if appropriate (depending on the additional amount of asbestos created or discovered and if any needed inspections can be arranged within a shorter time frame). However, it should be understood that the Regional Offices have no obligation to shorten the waiting Period and that owners and operators do have an obligation to wait 10, or 20, days unless otherwise directed by EPA or the State. Owners or operators may avoid this inconvenience by (1) inspecting the building adequately before demolition so that any asbestos present is found, (2) notifying EPA and/or the State of all asbestos present in both friable and non-friable forms in the original notification, and (3) taking proper care during the removal so that non-friable materials remain non-friable.

The owner or operator is not exempt from the other requirements of the standard, such as wetting, during this waiting period. When non-friable material is fractured or otherwise becomes friable during the removal, the operator must wet after the fracture occurs and follow all of the additional requirements in 40 CFR .61.147 and .61.152. In some instances these requirements may be burdensome. For example, when ragged edges result from the removal of the material, such edges may be friable. In order to avoid having to place these sometimes large pieces into plastic bags for their disposal, an operator may instead, for example, choose to paint these ragged edges in order to Prevent the release of asbestos fibers. The material will still be considered friable because the Paint is a temporary means to Prevent fiber release (e.g., analogous to wetting) which can be chipped away, and therefore does not make the large pieces of material "non-friable". Since it would be impossible to separate the non-friable portion from the friable portion without creating new friable edges, all such material must be disposed of at an acceptable EPA disposal site meeting the requirements of 40 CFR .61.156.

The implementation of this determination is not intended to result in a relaxation of the notification requirements. Only material that can reasonably be expected to remain non-friable throughout the operation, such as transit board, may be considered "non-friable", and even that may be reconsidered depending on the techniques to be used during the renovation or demolition. In the initial notification, the owner or operator should describe the methods which will be used to avoid creating friable asbestos, pursuant to 40 CFR .61.146(c)(6). Materials that can easily become friable and would be expected to become friable during the operation, such as pipe insulation wrapped in tape, will still be considered friable, even before the tape is removed or cut. Similarly, the owner or operator is expected to make a good-faith effort to determine if asbestos is present in a building before concluding that it is not. Such a good-faith effort of building inspections, review of plans, and other reasonable measures, on the owner or operator should include in the notification a statement that an inspection was conducted and no asbestos was found to be present. Also, the owner or operator should note the presence of non-friable asbestos in the description of the facility in the original notice, pursuant to 40 CFR .61.146(c)(2).

If you have any questions or comments concerning this determination, please contact Doreen Cantor at FTS 382-2874.

Edward E. Reich

cc: Air and Waste Management Division Director
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