



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: C57

Category: Asbestos
EPA Office: Region 5
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Title: Evidence Needed to Prove Enforcement Case
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Subparts: Part 61, M, Asbestos

References: 61.145(a)
61.145(b)
61.145(c)

Abstract:

An inspector does not need to witness active demolition of a facility for which there was no notification. A demolition permit and observation of a cleared site are sufficient evidence of intent to demolish and actual demolition, respectively. Photographs, blue prints, asbestos samples, and examination of debris are important.

In order to determine renovation applicability, it must be proven that the operation was subject, by having taken samples which showed friable asbestos material was present and that an amount over the 260/160 cut-off was removed.

Letter:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

Nov 25 1988

Thomas S. Hadden, Supervisor
Hazardous Pollutant Control Group
Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049, 1800 WaterMark Drive
Columbus, Ohio 43266-0149

Dear Mr. Hadden:

Thank you for your letter of October 21, 1988, to Bruce Varner, regarding various asbestos issues. Your question regarding highway demolition projects is an issue that Region V has referred to its Headquarters office for response, as it pertains to an issue of national scope. The remainder of your questions are addressed separately.

1. Regarding sufficient evidence to prosecute demolition violations, you asked if an inspector needs evidence to prosecute demolition violations, you asked if an inspector needs to witness active demolition of a facility for which there was no notification. An inspector does not need to witness active demolition. A demolition permit and observation of a cleared site are evidence of intent to demolish and actual demolition, respectively. Generally, a contract for the demolition will exist, as well as a payment in fulfillment of the contract, which would be further evidence for your cases.

If an inspector was not able to enter the facility before it was demolished to document the presence and/or amount of asbestos, you must rely on whatever circumstantial evidence you can find. Photographs of the demolition will prove that the demolition occurred and will document any evidence of asbestos in the rubble, if a sample is taken. Documentation of the amount of asbestos present in the building is critical to substantiate failure to remove asbestos before demolition, as required under 40 C.F.C. 61.147(a).

The inspector must use whatever means are available to document that the amount was over the 260/160 cut-off. First, samples must be taken of any asbestos found in the demolition debris. If the asbestos was located on pipes, the inspector must try and determine the length of pipes found in the rubble, and can try to obtain any blueprints of the building to document the amount of piping.

2. Regarding your question on renovation applicability: You must first prove that the operation was subject, by having taken samples which showed friable asbestos material was present and that over the 260/160 cut-off was removed. Hopefully the contractor that bid on the job will be able to provide you with an estimate of the amount asbestos present at the time he bid the job. A copy of the bid proposal from the asbestos removal contractor would be good circumstantial evidence of the amount, or a statement, preferably an affidavit, from this contractor would also be helpful. The strongest case would be that the inspector took samples from the pipes in the pick-up truck and also from inside the facility. If no samples were taken from the pick-up, you still have a fairly good circumstantial evidence case. Since the original complainants were company employees, you probably won't be too successful in getting any of them to sign an affidavit or be willing to testify in court against their employer. Any other witnesses who were not company employees may help document your case, as well as a check of any local landfill records of any dumping done by the defendant on the day that the removal of the boiler took place, or the day the pick-up went to a landfill. Any blueprints of building showing pipe locations or records of the boiler room would also be useful.

If you have any question, or would like to discuss any of the cases further, please call me at (312) 886-6320, or Bruce Varner at (312) 886-6793.

Sincerely yours,

Ann Pontius