



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: C75

Category: Asbestos
EPA Office: SSCD
Date: 09/05/1990
Title: Reconsideration: Determination for Paint
Recipient: Cooper, Mark
Author: Rasnic, John B.

Subparts: Part 61, M, Asbestos

References: 61.145(c)
61.150(a)

Abstract:

The application of an encapsulant to friable ACM (paint) does not cause the ACM to be excluded from the Asbestos NESHAP regulation. If the ACM is friable, it must be treated in accordance with the Asbestos NESHAP.

Letter:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20046

Sep 5, 1990

Mr. Mark Cooper
Thompson, Coe, Cousins & Irons
200 Crescent Court, Eleventh Floor
Dallas, Texas 75201-1840

Dear Mr. Cooper:

This letter is in response to your July 5, 1990 letter in which you requested EPA to reconsider our April 11, 1990 Asbestos NESHAP applicability determination for paint (enclosed).

In that determination, we stated that the application of an encapsulant to friable asbestos containing material (ACM) would not cause the ACM to then be excluded from the Asbestos NESHAP. If the ACM is friable it must be treated in accordance with the Asbestos NESHAP.

In your letter you stated that this determination is not supported by current regulations. You cite language in 40 CFR Sect 61.147 which states "...friable asbestos-containing material need not be removed before demolition if: (1) they are on a facility component that is encased in concrete or other similar material and (2) these materials are adequately wetted whenever exposed during demolition." This language refers to situations where friable ACM is not accessible without breaking through the concrete or similar material. It does not refer to situations where the friable ACM is accessible, and the owner or operator intentionally applies an encapsulant to render the material nonfriable. The Asbestos NESHAP only allows for the processing of asbestos-containing waste material into a nonfriable form (i.e., pellets or other shapes) as a waste disposal alternative (see 40 CFR Section 61.152(b)(2)(i)). This waste disposal alternative would be allowed only after the ACM has been removed from the facility.

You have also stated that your interpretation of the regulation is in line with our February 23, 1990 clarification of EPA's NESHAP policy on nonfriable ACM. In that clarification we stated that nonfriable ACM such as floor tile, roofing material, packings and gaskets, should be removed prior to demolition only if they are in poor condition and friable. The clarification does not discuss the issue of encapsulating friable ACM.

Childers has requested that EPA allow further testing of the encapsulant on a select controlled basis in order to provide additional information. As stated above, the Asbestos NESHAP does not allow for encapsulating of friable asbestos material as a means to avoid the requirements of the NESHAP. Encapsulating friable asbestos material may be an aid to ensure adequate wetting of paint containing asbestos during removal, but the NESHAP would still apply. Therefore, we do not see the need for additional testing. Childers should be aware that testing their product on facilities with greater than the applicability amount of friable ACM could subject them to a violation of the Asbestos NESHAP.

In closing, our policy, as stated in the April 11, 1990 memorandum, remains that the application of an encapsulant to friable ACM would not cause the ACM to then be excluded from the Asbestos NESHAP regulation. If the ACM is friable, it must be treated in accordance with the Asbestos NESHAP. This response has been coordinated with EPA's Office of Enforcement, Emission Standards Division, and Region VI.

If you have any questions, please contact Scott Throwe of my staff at (202) 475-7002.

Sincerely,

John B. Rasnic, Acting Director
Stationary Source Compliance Division
Office of Air Quality Planning and Standards

Enclosure

cc: Martin Brittain, Region VI (6T)