

UNITED STATES
DEPARTMENT OF LABOR

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• **Standard Number:** 1910.1001; 1926.1101

January 24, 1996

Ms. Lisa K. Rushton
Hopping, Green, Sams and Smith
Professional Association
Attorneys and Counselors
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314

Dear Ms. Rushton:

Thank you for your letter of September 29, concerning the Occupational Safety and Health Administration's (OSHA) Asbestos Standard (29 CFR 1910.1001 and 29 CFR 1926.1101).

You requested specific clarification on three issues related to the asbestos standard, which will be addressed in the order in which they were presented.

Your interpretation of 1910.1001(j)(4)(i) regarding warning labels and signs for building owners is correct. Signs and labels are required to be posted on or near the product. However, it is generally not feasible to put labels on walls and floors. If it is not feasible, alternatives may be used. For example, if asbestos containing floors are being serviced by employees using a common equipment room day after day, then a sign or label for the asbestos flooring can be posted in that room.

Your interpretation of 1926.1101(k)(9)(v) regarding training for Class III workers is correct. When the competent person determines that the Environmental Protection Agency (EPA) curriculum does not cover activities that the workers perform, training shall then include all elements of paragraph (k)(9)(viii), work practices and engineering controls in paragraph (g) and "hands-on" training. The length (hours) of the training was not specified in the standard.

You inquired about how your client, when installing electronic and other equipment, can ensure that the building owner has identified all asbestos containing materials (ACMs) and presumed asbestos-containing materials (PACMs) materials, and has properly labeled and/or posted those materials or work areas.

It is the responsibility of the building owner to ensure that this information is provided to all employers in the building, as well as contractors doing work in the building. Any contractor can and should request the information, if not provided, prior to any contractual agreement. The contractor may also consider requesting a walk through of the work area by an employee that has received asbestos training prior to any contractual agreement.

We hope this information is helpful. If you have any further questions please contact Wanda Bissell or Douglas Ray at OSHA's Office of Health Compliance Assistance on (202) 219-8036.

Sincerely,

John B. Miles Jr., Director
Directorate of Compliance Programs

September 29, 1995

Mr. Joseph A. Dear
Administrator, OSHA Headquarters
200 Constitution Avenue, N.W.
Washington D.C. 20210

Re: OSHA Asbestos Standards

Dear Mr. Dear:

Recently our firm was asked to research what actions a facility must take to insure that it is in compliance with the final Occupational Safety and Health (OSHA) Standards issued on June 17, 1986 (51 Federal Register 22612) for general industry and construction industry regarding occupational exposure to asbestos. Specifically, our client would like to insure that they are complying with 29 CFR 1910.1001(j)(4), which addresses the standards for communicating hazards to employees, and 29 CFR 1926.1101(k)(9)(v), which relates to the standards for training employees for Class III work.

After researching the issue and speaking with two local federal OSHA duty officers (located in Tampa and Jacksonville), it appears there is some ambiguity regarding these regulations. Therefore, this letter is to confirm our understanding of the regulations and request guidance in writing that addresses the following issues:

1. 29 CFR 1910.1001(j)(4)(i). Warning Labels

Asbestos-containing materials ("ACMs") or presumed asbestos-containing materials ("PACMs") may be present in a number of installed objects within facilities located in your Region. Specifically, ACMs or PACMs may be present in mastic that is used to attach moldings to walls, decorative surfacing materials and plasters in reception areas, resilient cafeteria floor tiles, old floor tiles that are covered by newer non-ACM floor tiles, and some of the walls themselves. Unless disturbed by specific work projects (e.g. electrical work, maintenance work, facilities work), such materials pose no potential hazard to employees or other persons entering those areas.

29 CFR 1910.1001(j)(4)(i) states that "[w]arning labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers." This language indicates that warning labels must be placed on each of the ACM or PACM objects listed above. Posting signs or labels that warn of "DANGER" and "CANCER AND LUNG DISEASE HAZARD" on all such walls, floors and reception areas would no doubt cause, on the one hand, unnecessary employee and customer alarm and, on the other hand, possible unjustified complacency among the maintenance and facilities staff. OSHA recognized this problem in its August 10, 1994, Federal Register preamble (59 Fed. Reg. at 41018), but did not initially address these concerns in its final rule. Therefore, our client questioned whether OSHA intends this language to be applied in such an unrealistic and literal manner.

According to two local federal OSHA duty officers located respectively in Tampa and Jacksonville, Florida, there was much concern over this language after the rule was promulgated. In order to address such concerns, OSHA issued a correction to the final rule on June 29, 1995. The correction added the following language to 29 CFR 1910.1001(j)(4)(i):

When a building owner or employer identifies previously installed ACM and/or PACM, labels or signs shall be affixed or posted so that employees will be notified of what materials contain ACM and/or PACM. The employer shall attach such labels in areas where they will clearly be noticed by employees who are likely to be exposed, such as the entrance to mechanical room/areas. Signs required in (j) (3) of this section may be posted in lieu of labels so long as they contain information required for labelling.

(60 Fed. Reg. 33974). Based on this language, we tentatively advised our client that labeling must be accessible to employees but need not be placed directly on the above referenced ACM and/or PACM objects. This interpretation seems consistent with the purpose of the asbestos standard, which is intended to protect the employees who may be exposed to asbestos fibers. We advised our client to notify by memo, its facilities, maintenance and other workers who may disturb such ACM or PACM in the course of their employment, of the location of such materials. Obviously, signs are required at areas such as mechanical rooms and boiler rooms that contain ACM or PACM. This notice will insure that all employees potentially exposed to potentially airborne asbestos are notified of the ACM and PACM locations.

The two local federal OSHA duty officers located in Florida that I spoke with orally confirmed this interpretation of 29 CFR 1910.1001(j)(4)(i). However, they are not authorized to issue written guidance. Therefore, we respectfully request that you confirm in writing that the aforementioned notification to all potentially affected employees satisfies the labeling requirement described in 29 CFR 1910.1001(j)(4).

2. Training for Class III Work.

29 CFR 1926.1101(k)(9)(v) requires that employers provide training to all Class III workers that is "consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth in 40 CFR 763.92(a)(2)." This training takes at least 16 hours and includes "hands-on training." (60 Fed. Reg. 34000). One "exception" is specified in the June 29, 1995, correction to OSHA's asbestos regulations. This exception reads as follows:

For Class III operations for which the competent person determines that the EPA curriculum does not adequately cover the training needed to perform that activity, training shall include as a minimum all the elements included in paragraph (k) (9) (viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that activity, and shall include "hands-on" training.

Id. Based on this language, we tentatively advised our clients that in the appropriate situations, training, consisting of less than 16 hours, will satisfy 29 CFR 1926.1101(k)(9)(v).

The regulations require training equivalent to EPA's O&M training as outlined in 40 CFR 763.92. However, the training specified in 40 CFR 763.92 is intended for school maintenance workers, not for Class III workers. Therefore, the preamble indicates that OSHA re-evaluated its training requirements and found that EPA's 16-hour course may not properly train Class III workers whose duties generally include infrequent encounters with limited types of asbestos and who generate less than a waste bag full of dust and debris. (60 Fed. Reg. 33981-33982). Therefore the preamble goes on to state that,

employers may rely on their well-trained competent persons to decide whether the O&M type course is appropriate to these tasks. . . . OSHA anticipates that the duration of the training will to some extent, reflect the complexity and hazard of the operation, but would be likely to require at least 4 hours of initial training to adequately cover the topics, methods, and hands-on portion. However, the duration of the training is not specified.

60 Fed. Reg. at 33981-82. This language clearly indicates that in the appropriate situations, where a well trained competent person determines that EPA's 16 hour training course is unnecessary, training of Class III employees may consist of less than 16 hours.

Please confirm in writing that the foregoing notification satisfies the training requirements under 29 CFR 1926.1101(k)(9)(v).

3. Employees Working at Customer Locations.

Our client is concerned about how it can comply with its obligations to its employees where those employees' jobs require them to install electronic and other equipment at customer locations. While our client intends to give such employees appropriate awareness training, our client has no control over its customers' compliance with the labeling and notification requirements under the new OSHA regulation. Any practical suggestions you can make to improve this situation would be most appreciated.

Sincerely,

Lisa Rushton

October 16, 1995

Ruth McCulley
Office of Compliance Programs
U.S. Department of Labor - OSHA
200 Constitution Ave., RM N3467
Washington, D.C. 20210

Dear Ms. McCulley:

We are sending you the enclosed information from Ms. Rushton for your appropriate response.

Please respond directly to Ms. Rushton, and send a copy to Jerry Bailey of my staff.

Sincerely,

EMZELL BLANTON, JR.
Regional Administrator

October 16, 1995

Ms. Lisa Rushton
Hopping, Green, Sams, and Smith
P.O.Box 6526
Tallahassee, Florida 32314

Dear Ms. Rushton:

This is in reference to your letter of September 29, 1995, requesting clarification of 29 CFR 1926.1101, and 1910.1001, the Asbestos Standard.

Your letter was forwarded to our Office of Compliance Programs in Washington, D.C. We forwarded your letter because you were asking other Regions for the same information. The Office of Compliance Programs will be able to respond to all your questions in the most efficient and effective manner possible.

If you have any questions regarding this information, please feel free to contact Jerry Bailey, Assistant Regional Administrator for Technical Support, at 214/767-4731, or Ruth McCulley, in the Office of Compliance Programs, at 202/219-8036.

Sincerely,

EMZELL BLANTON, JR.
Regional Administrator

October 20, 1995

MEMORANDUM FOR: RUTH MCCULLY, Director
Office of Health Compliance Assistance


FROM R. DAVIS LAYNE
Regional Administrator

SUBJECT: Lisa Rushton's Inquiry on OSHA Asbestos Standards

The attached inquiry from Ms. Lisa Rushton, an attorney for Hopping Green Sams and Smith, relates to issues of a national concern. Since she has also contacted several other regions with the same questions on OSHA's Asbestos Standards, we are forwarding her letter to your office for reply. We have informed Ms. Rushton of this action and ask that you reply directly to her and provide a copy of your response to our office.

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UNITED STATES
DEPARTMENT OF LABOR

Occupational Safety and Health Administration
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