

Standard Interpretations

/ Asbestos medical surveillance requirements for class III work performed less than 30 days per year

- **Standard Number:** 1926.1101(h) ; 1926.1101(m)

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

February 10, 2015

Ms. Marna Wenderott
Albuquerque Public Schools
P.O. Box 7977
Albuquerque, New Mexico 87194

Dear Ms. Wenderott:

Thank you for your April 7, 2014, email to the Occupational Safety and Health Administration (OSHA), inquiring about your letter in 2012, with questions regarding the medical surveillance requirements of OSHA's Asbestos standard at 29 CFR 1926.1101. We apologize if your earlier letter was somehow misrouted, but your emailed copy was referred to OSHA's Directorate of Enforcement Programs for a reply. This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any question not delineated within your original correspondence. For clarification, your specific questions are paraphrased below, followed by OSHA's responses.

Background: Per our phone conversation on July 1, 2014, you explained that the workers only perform Class III asbestos work. You further explained that these workers performed this type of work less than 30 days per year. The workers are required to wear respiratory protection because they perform repair and maintenance operations that disturb thermal system insulation (TSI) and surfacing material.

Question 1: What medical surveillance is required for workers performing Class III asbestos work and required to wear respiratory protection if the scope of their asbestos work is only that under paragraph 1926.1101(g)(9)(v), less than 30 days per year?

Response: You stated your workers perform only Class III asbestos work as described at 1926.1101(g)(9)(v):

...which involve the disturbance of thermal system insulation or surfacing material, or where the employer does not produce a "negative exposure assessment" or where monitoring results show a PEL has been exceeded, shall wear respirators which are selected, used and fitted pursuant to provisions of paragraph (h) of this section.

You also stated that the workers wear respiratory protection because they perform Class III work that disturbs TSI or surfacing material. Per paragraph 1926.1101(h)(1)(v), respirators must be used during:

Class III asbestos work when TSI or surfacing ACM or PACM is being disturbed.

Medical surveillance is described at paragraph 1926.1101(m), and further defined at paragraphs 1926.1101(m)(1)(i)(A) and (m)(1)(i)(B), which specify the criteria for providing medical surveillance to workers as follows:

1926.1101(m)(1)(i)(A) The employer shall institute a medical surveillance program for all employees who for a combined total of 30 or more days per year are engaged in Class I, II and III work or are exposed at or above a permissible exposure limit. For purposes of this paragraph, any day in which a worker engages in Class II or Class III operations or a combination thereof on intact material for one hour or less (taking into account the entire time spent on the removal operation, including cleanup) and, while doing so, adheres fully to the work practices specified in this standard, shall not be counted.

1926.1101(m)(1)(i)(B) For employees otherwise required by this standard to wear a negative pressure respirator, employers shall ensure employees are physically able to perform the work and use the equipment. This determination shall be made under the supervision of a physician.

Since your workers are only engaged in Class III work less than 30 days per year, they would not meet the criteria for coverage under paragraph 1926.1101(m)(1)(i)(A), but they would meet the criteria at paragraph 1926.1101(m)(1)(i)(B). Therefore, the employer must ensure that the workers are physically able to use a negative pressure respirator. Such determinations must be supervised by a physician, pursuant to provisions of paragraphs 1926.1101(h)(2)(ii) and (m)(1)(ii).

The frequency of the *respirator-only* determination would be, initially, prior to assignment of the employee to an area where negative-pressure respirators are worn, per paragraph 1926.1001(m)(2)(i)(A), and annually thereafter, per paragraph (m)(2)(i)(C), or more frequently if the examining physician determines that need per paragraph (m)(2)(i)(D).

Question 2: It is my understanding that the medical surveillance requirements specified in the Asbestos Standard at paragraph 1926.1101(m) would take precedence over the medical provisions of the Respiratory Protection standard, 29 CFR 1910.134. Is that correct?

Response: Yes. Under the Asbestos standard, employers are required to provide medical surveillance pursuant to paragraph 1926.1101(m). Additionally, employers must follow the requirements at paragraph 1926.1101(h)(2) for establishing a respiratory protection program. As specified at paragraph 1926.1101(h)(2)(i), the employer must implement a respiratory protection program:

...in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

Note, in the above provision the employer is not required to implement the requirements at paragraph 1910.134(e) for providing the respirator medical evaluation, because the medical surveillance requirements under 1926.1101(m) already include the physician's evaluation of the respiratory system. We also refer you to a similar OSHA letter of interpretation to Dr. Jim Rafferty, May 10, 2007, available at: www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=25908.

New Mexico operates its own occupational safety and health program under a plan approved and monitored by OSHA. The New Mexico Occupational Health and Safety Bureau (OHSB) adopts and enforces standards and investigates safety and health concerns in workplaces throughout the state, and has jurisdiction over workers in the state. State Plans are required to have standards and enforcement programs that are at least as effective as OSHA's, but may have different or additional requirements. For specific information regarding New Mexico's requirements for asbestos, you may contact New Mexico OHSB directly at the following address:

New Mexico Occupational Health & Safety Bureau
Environmental Department Field Offices for Albuquerque and Las Cruces.
5500 San Antonio Drive, N.E.
Albuquerque, NM 87109
Phone: 505-222-9500
Fax: 505-222-9510
Web: www.nmenv.state.nm.us/Ohsb_Website/sitemap.htm

Thank you for your interest in occupational safety and health. We hope this provides the clarification you were seeking. OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at www.osha.gov. If you have any further questions, please feel free to contact the Office of Health Enforcement at 202-693-2190.

Sincerely,

Thomas Galassi, Director
Directorate of Enforcement Programs

UNITED STATES DEPARTMENT OF LABOR

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