

Standard Interpretations / OSHA Asbestos standard.

▪ **Standard Number:** 1926.1101

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 5, 1997

Mr. Paul Cotter
Assistant Director
Texas Tech University
Post Office Box 41090
Lubbock, Texas 79409-1090

Dear Mr. Cotter:

This is in response to your letter dated October 12, 1996, where you requested clarification of the Occupational Safety and Health Administration's (OSHA) Asbestos standard. To avoid excessive delays in providing answers to your questions, one of my staff recently discussed with you by telephone the sections about which you inquired. This letter is a follow-up to that conversation.

The first question you ask is, does the OSHA regulation, 1926.1101(k), apply to owners in private residential housing? Homeowners are not considered "building owners" when they have work done in their private homes and are not affected by this OSHA regulation. One of the conditions stated in the Occupational Safety and Health Act (OSH Act) stipulates that an employer/employee relationship must exist for OSHA regulations to apply.

Your letter went on to describe different scenarios which can be summarized and answered accordingly.

When an organization or business provides housing to their employees as part of the compensation package, the "building owners" are responsible for compliance with paragraph (k) of the asbestos standard. This would be particularly important if plans were made to remodel or repair the building. The General Contractor has similar responsibilities in communicating to employees performing the work and those employees adjacent to the areas of work of the hazards of asbestos.

To answer your inquiry about state and local government agencies that supply housing to their employees, Federal OSHA does not have jurisdiction over municipal, local, or state employees. Federal agencies and federal employees are covered by the Act and are required to comply with OSHA standards. In those states with their own Occupational Safety and Health programs, public employees are covered. A list of state plan states is enclosed for your reference.

The final issue to clarify is OSHA's position on composite sampling of wall board and joint compound. Building Owners are responsible for locating the presence and quantity of presumed asbestos containing material (PACM) in buildings built before 1981. Technically, this process does not require any special training since PACM is easily recognized. PACM is thermal system insulation (TSI, such as pipe-wrap or duct insulation) and sprayed on and troweled on surfacing material (such as fireproofing material or acoustical material). OSHA limited the list to those asbestos-containing building materials that were installed most frequently and may present the greatest exposure hazard when the materials are disturbed. These are the only materials that OSHA requires an employer to bulk sample, and then, only if the employer chooses to rebut the designation of PACM.

Other building materials may contain asbestos but unless an employer has specific knowledge or should have known through the exercise of due diligence that these other materials contain asbestos, the standard does not compel the Building Owner to sample these materials. The removal of wallboard systems that contain asbestos is covered by the standard as a Class II operation and the employer needs to comply with the appropriate sections of the standard. Class II operations require that the employer conduct personal sampling but not bulk sampling. Any additional sampling an employer performs such as multi-layered composite sampling is beyond what is required by the OSHA standard. If you are sampling wallboard systems to meet the requirements of another agency, it is advisable that you use their sampling protocol.

We hope you have found this information useful. If you have additional questions please contact Wanda Bissell of my staff at (202) 219-8036 Ext. 36.

Sincerely yours,

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

Enclosure

October 12, 1996

United States Department of Labor
Occupational Safety Health Administration
Office of Compliance Assistance
Att. Gale Brinkerhoff
200 Constitution Avenue
Room North 3467
Washington, DC. 20210

Dear Sir:

I am requesting clarifications for certain sections of the 29 Code of Federal Regulations (CFR) 1926.1101 Asbestos Standards. The areas of the Occupational Safety and Health Administration (OSHA) standard I am requesting clarifications for are as follows:

1. Section 1926.1101(k) deals with the communication of hazards and places certain responsibilities on the building/facility owner to locate, quantify, and provide notification of asbestos containing materials to specified individuals. However, unlike the Environmental Protection Agency's National Emissions Standards for Hazardous Air Pollutants (NESHAP), there is no definition of the terms building and facility in 1926.1101. In the NESHAP regulations, specific types of buildings and facilities are exempted from compliance with the regulations. The

overall effect of the NESHAP regulations has been to exempt certain types of residential housing from the regulations. This exemption is found in 61.141 under the definition of facilities. Since there is no definition of building/facility in 1926.1101 standard, it would appear OSHA considers basically any type of structure to be subject to regulations in 1926.1101, including private residences. This would then require the owners of private residences to comply with the standard in the event any of the individuals or employees of the individuals listed in sections(k)(ii)(A-D) are affected. (Note: There may be provisions in the enabling legislation for OSHA that would restrict OSHA's regulatory authority over private residences. I have not been able to completely research this area.)

If you determine the regulations are applicable to the owners of private residences, then I would like to have additional clarification on the following items:

- a. Under 1926.1101, what would the specific responsibilities be for an individual that owns his/her own residence?
- b. Under 1926.1101, what would the specific responsibilities be for a non-profit entity that owns a residence and provides it to an employee as part of a compensation package? (An example would be a parsonage provided to a minister by a church.)
- c. Under 1926.1101, what would the specific responsibilities be for a business that owns a residence and provides it to an employee as part of a compensation package? (An example would be a company that owns a residence and provides it to a security guard that lives on site.)
- d. Under 1926.1101, what would the specific responsibilities be for an individual and/or corporation involved in production agricultural that owns a residence and provides it to an employee as part of his/her compensation package? (An example would be a ranch owner that provides a residence to a ranch foreman as part of a compensation package.)
- e. Under 1926.1101, what would the specific responsibilities be for a state or local government agency that owns a residence and provides it to an employee as part of a compensation package? (An example would be a state university that owns a residence and provides it to the university president as part of a compensation package.)
- f. Under 1926.1101, what would the specific responsibilities be for a federal agency that owns a residence and provides it to an employee as part of a compensation package? (An example would be a residence that is owned by the National Park Service at a National Park that is provided to a park ranger as part of a compensation package.)

2. If a general contractor, who is subject to OSHA regulation, has been engaged in each of the above examples to perform renovation activities, IE., removal of dry wall, floor coverings, what are his/her specific responsibilities under 1926.1101 to his/her employees, the owner of the residence, and any sub-contractors used at the site?

3. I am enclosing a copy of a magazine article that was forwarded to me by an associate regarding the position of OSHA Region 5 on the method of determining the concentration of asbestos in the joint compound used on the seams of sheetrock walls. I apologize for the poor quality of the copy I am forwarding to your attention. I am requesting a clarification regarding OSHA's official position on the sampling methodology to be used in the determination of the asbestos content in the wall board joint compound. Specifically, is composite sampling of the joint compound and underlying joint compound permitted for compliance with 1926.1101?

I would like to present information for your consideration. I have enclosed both correspondence and documentation regarding what I believe to be EPA's current position on this matter. As of December 19, 1995, EPA was allowing the composite sampling of the joint compound and the representative amount of the sheetrock wall board to which the joint compound has been applied. In lieu of any contradictory findings from other federal or state agencies, the EPA approved method for sampling of these materials has been accepted into the various disciplines of the asbestos industries. EPA accredited training providers have incorporated this method into their

training programs. Asbestos building surveys have been prepared that have incorporated sampling results based on the EPA method. However, the Region 5 Office appears to have essentially invalidated the results of any asbestos building surveys based on the EPA method.

The clarification by OSHA's Region 5 office (if the article is correct) seems to have been issued separate from EPA policy as stated in the Federal Register. The position of OSHA's Region 5 is difficult to comprehend given the fact EPA has both environmental responsibilities under the NESHAP regulations and state and local government employee responsibilities under the Worker Protection Rule (40 CFR 763.121). Obviously, EPA had carefully weighed the potential negative impacts of the composite sampling protocol for joint compound and wall board on the environment and state and local government employees before publishing its clarification in the Federal Register.

At the current time, Texas Tech University is in the process of preparing new asbestos building surveys and updating existing surveys. Since private industry contractors are used on many renovation projects, the University is desirous of providing information to the contractors that not only complies with current policies of the many federal, state, and local government agencies with regulatory oversight for asbestos, but also protects the employees of these same contractors. Obviously, whatever the final national OSHA national position regarding the methodology used to ascertain the asbestos content of joint compound on sheetrock walls is, it will have a significant impact on the manner of preparation of the asbestos building surveys and the techniques used in future renovation actions on these materials.

I would certainly appreciate your assistance in providing clarifications for these items to me. If you have any questions, please give me a call.

Sincerely,

Paul Cotter
Assistant Director

UNITED STATES DEPARTMENT OF LABOR

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