

## Standard Interpretations / Questions concerning OSHA's Asbestos Standard.

▪ **Standard Number:** 1910.1001 ; 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>.

September 5, 1996

Mr. Joseph L. Kesling  
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Des Moines, Iowa 50392-1350

Dear Mr. Kesling:

This office received the eight questions you telefaxed to Ruth McCully on August 15. Your questions concern the Occupational Safety and Health Administration's (OSHA) Asbestos standard. Your questions will be answered in the same order they were received.

**Question 1:** Does "Pre-1981 construction" refer to the date the building construction started or was completed?

**Response 1:** Generally speaking, the standard covers any construction before 1981. For example, in a building started in 1980 and completed several years later, only that part of the building built before 1981 is covered by the presumption rule.

**Question 2:** If all PACM is removed and replaced in a "Pre-1981" building as a part of tenant space improvements, do the new OSHA Asbestos Regulations still apply to this "Pre-1981" building?

**Response 2:** The Asbestos standard applies to all occupational exposures to asbestos. Once all of the ACM or PACM has been removed, the exposure or potential exposure to asbestos no longer exists. Therefore, the Asbestos standard would no longer apply.

**Question 3:** In [1910.1001(f)] methods of compliance, how is "not feasible" to be interpreted by OSHA?

**Response 3:** Feasibility is decided on a case by case basis. The investigation would focus on such areas as degree of employee exposure, available controls, current industry practice, and the unique circumstances surrounding the case.

OSHA believes that compliance with the eight-hour time weighted average of 0.1 fiber per cubic centimeter of air (0.1 f/cc) and the Excursion limit of 1.0 f/cc is feasible in most industries.

**Question 4:** How will OSHA interpret "PACM"?

**Response 4:** Presumed asbestos containing material (PACM) is thermal system insulation and surfacing material found in buildings constructed no later than 1980. In addition, resilient flooring material installed no later than 1980 must be identified as asbestos-containing. The definition clearly specifies that only certain limited materials are PACM, and is not the subject of interpretation.

**Question 5:** How will OSHA interpret "due diligence" as the term is used in [1910.1001(j)(2)]?

**Response 5:** OSHA would consider actions that a reasonable employer would take in a given situation. OSHA determined that buildings constructed after January 1981 are less likely to have asbestos-containing materials installed in them, but this is not for certain. For example, building owners may know of, or suspect that asbestos-containing materials were installed in their building after the cut-off date set by OSHA. In these cases, the building owner is responsible for investigating this material and complying with the asbestos standard.

**Question 6:** Please explain the difference in the obligations of "Building Owner" and "Employer" under the new OSHA regulation?

**Response 6:** OSHA requires a building owner who would meet the definition of "employer" in the Occupational Safety and Health Act to comply with the asbestos standard to protect their own employees as well as employees other than their own.

**Question 7:** If a tenant contractually agrees to comply with "all laws" in its lease with the landlord, will OSHA pursue the landlord, tenant, or both in the event a violation occurred?

**Response 7:** In general, a tenant in a residential setting is not an "employer" and therefore not subject to OSHA inspections. If an outside contractor is performing asbestos related work at this residential site, both the contractor and the landlord could be cited for violations. For example, if an investigation revealed that the landlord (meaning the building owner) failed to notify the contractor of the presence and location of asbestos, a citation could be issued to the landlord. If the contractor fails to comply with specific work practices the contractor could receive citations. Parties cannot shift responsibility for complying with OSHA standards by contract.

**Question 8:** Are three samples of a homogeneous material required to confirm ACM? If so, has OSHA considered the cost to an owner who may have a 50-story office building with hundreds of PACMs?

**Response 8:** ACM, by definition, is known to contain at least 1.0% asbestos and does not need further confirmation. The requirement to take three bulk samples is in reference to PACM and is only required if the employer decides they want to demonstrate that the PACM in their building does not contain asbestos. If a building owner chooses to rebut the designation of PACM, established sampling techniques must be followed and this could be costly for a 50-story building. The requirement to identify PACM, which is limited to a few materials that are readily identifiable, is maybe a cost efficient way to comply with the asbestos standard.

We appreciate the opportunity to answer your questions. If you require further information, please contact [the Office of Health Enforcement (202) 693-2190].

Sincerely,

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

**[Corrected 6/11/07]**

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