

Standard Interpretations / Asbestos: notification requirements and exposure monitoring.

- **Standard Number:** 1910.1001(j)(1) ; 1910.1001(j)(8)(iii) ; 1910.1001(j)(2)(i)

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>.

May 19, 1999

Mr. Edwin G. Foulke, Jr.
Jackson, Lewis, Schnitzler & Krupman
2100 Daniel Building
301 N. Main Street
Greenville, South Carolina 29601-2122

Dear Mr. Foulke:

This letter is in response to your correspondence dated December 29, 1998, requesting clarification on certain provisions of the Occupational Safety and Health Administration's (OSHA's) 29 CFR 1910.1001, the General Industry Asbestos Standard. Your inquiry concerns an employer who operates multi-unit retail establishments throughout the country, the majority being company owned or leased stand-alone single story facilities. Regarding the leased buildings or building spaces built before 1981, you ask if the business (employer) can presume that asbestos is not present in the building materials if the building/facility owner does not notify the employer that any of the materials are asbestos-containing material (ACM) or presumed ACM (PACM).

The employer may not presume the absence of asbestos in the building materials if the building/facility owner does not notify the employer that it is present. According to 29 CFR 1910.1001(j)(1), employers as well as building owners are obligated to treat as ACM installed thermal system insulation (TSI) and both sprayed-on and troweled-on surfacing materials in buildings constructed no later than 1980; the aforementioned materials are designated PACM. Employers also must treat asphalt and vinyl flooring material installed no later than 1980 as asbestos-containing. The employer or building owner may demonstrate that PACM and flooring material do not contain asbestos by complying with 29 CFR 1910.1001(j)(8)(iii). If the building/facility owner shows the employer evidence demonstrating, by following 29 CFR 1910.1001(j)(8)(iii), that the PACM and flooring material do not contain asbestos, then the employer may assume that asbestos is not present in these materials.

Also, in accordance with 29 CFR 1910.1001(j)(2)(i), employers shall exercise due diligence in informing their employees about the presence and location of ACM other than the ACM and PACM mentioned in the above paragraph. That is, employers must inform their employees of the presence and location of other ACM of which they have knowledge or should have knowledge by exercising due diligence.

The primary intent of the above two paragraphs of this letter is to explain why an employer may not presume that asbestos is not present in the building materials in an instance where the building/facility owner does not notify the employer that it is present. These two paragraphs also serve to provide clarification of the leasing employer's duties and responsibilities, in this situation, for obtaining information about the presence of ACM in the building materials. In addition to the duties and responsibilities already indicated, the leasing employer must ask the building/facility owner for information concerning the presence of asbestos. Although the standard does not explicitly require this action, the employer must do this in order to fulfill the obligation conferred by 29 CFR 1910.1001(j)(2)(i). 29 CFR 1910.1001(j)(2)(i) requires employers to exercise due diligence in complying with the requirements to inform their employees about the presence and location of both ACM and PACM and building owners are often the only and/or best source of information concerning the presence of previously installed asbestos-containing building materials.

Your next area of inquiry is exposure assessment. Under 29 CFR 1910.1001(d)(2)(iii), employers may rely upon "objective data" to demonstrate that asbestos is not capable of being released at or above the exposure limits. You ask if OSHA has set forth any regulation, ruling, guideline, or interpretation that identifies what "objective data" is acceptable to the Agency.

As the preamble to the standard explains, the "objective data" must demonstrate that an activity coupled with a specific material cannot result in excessive asbestos concentrations under "the work conditions having the greatest potential for releasing asbestos." Simply stated, objective data is information which clearly demonstrates that employees cannot be exposed to asbestos at levels above the asbestos PELs. The employer is responsible for determining if and how this type of information can be developed for the particular conditions and work performed.

You indicate that your client's work facilities/units are very similar in construction, design and operation. Given that fact, you inquire if air monitoring at a select number of units throughout the company can be utilized as "objective data" to demonstrate that all units are below the PEL and excursion limits for release of airborne concentrations of asbestos and, thus, not subject to the requirements of 29 CFR 1910.1001. If the employer develops information which clearly establishes that no employees at any of the units can be exposed above the asbestos PELs, this information may be utilized as objective data demonstrating that monitoring employee exposures is not required.

The role of objective data is to be a substitute for measuring employee exposures to asbestos. If the employer can develop objective data showing that given employees cannot be exposed above the asbestos PELs, then the employer is not required to measure those employees' asbestos exposures. As we indicated previously, the employer must determine if/how air monitoring at a select number of units can develop objective data demonstrating that no employees can be overexposed, or alternatively, can develop objective data demonstrating that some selected set of employees cannot be overexposed. Note that according to 29 CFR 1910.1001(m)(2)(ii) (D), employers must describe how the data they have developed support their exemption from measuring employee exposure to airborne asbestos.

Your next implied question is: What should the employer do if he is unable to demonstrate, using objective data from sampling various work places, that the exposures of employees at all the work places are below the asbestos PELs? And: What would OSHA suggest the employer do to establish that employee exposures at each work place are below the asbestos PELs, short of measuring employee exposures at each work place?

We have no other solution to suggest. Please note that the employer is permitted to do representative sampling at each work place. That is, if more than one employee is exposed to the same concentration level of airborne asbestos during the same time period, the employer may measure the exposure of only one of these employees and report the exposure finding as the exposure for all the employees. OSHA does not agree with your statement that the measurement of employee asbestos exposures at each work place is cost-prohibitive.

Your next request for clarification involves whether employees with asbestos exposures below the PELs must be provided the asbestos awareness training as described in 29 CFR 1910.1001(j)(7)(iv). Any employee who performs housekeeping operations in an area which contains ACM or PACM must be provided the asbestos awareness training regardless of whether the asbestos exposures are above or below the PELs. The condition that determines whether employee training is required is the presence of ACM or PACM in the area where the employee performs housekeeping operations; the employee's level of asbestos exposure is not a factor. In fact, the purpose of the training is to help keep as low as possible the asbestos exposures that occur during housekeeping operations.

You indicate that through conversation with the Office of Health Compliance Assistance you obtained an interpretation that asbestos awareness training is not required if an employer's housekeeping employees are following the requirements contained in 29 CFR 1910.1001(k)(7) for care of asbestos-containing flooring material. You ask if this interpretation is correct.

The interpretation is not correct. As we have already indicated, if ACM or PACM is present in the area where housekeeping operations are performed, the employees performing the operations must be provided asbestos awareness training.

You relate your discussion with the Office of Health Compliance Assistance concerning the areas of activities covered by the General Industry Asbestos Standard. Your understanding of the conversation was that the standard focuses primarily on protecting employees in facilities where ACM and/or PACM is being disturbed or removed. You ask if this is indeed the focus and intent of the standard.

We presume that you are referring to the primary focus of the standard insofar as installed asbestos-containing building materials are concerned. With respect to installed asbestos-containing materials, this standard focuses primarily on protecting employees who perform housekeeping operations. The Construction Industry Asbestos Standard, 29 CFR 1926.1101, is the standard that focuses primarily on protecting employees in facilities where ACM and/or PACM is being disturbed or removed.

You indicate that it was further stated that the General Industry Asbestos Standard does not apply if the ACM and PACM is intact, is not disturbed, and is not friable. You ask if this is correct.

Nonfriable PACM does not exist. PACM is thermal system insulation and surfacing material; these items are always friable. If the only ACM present is both intact and unfriable, and the employees performing housekeeping operations do not disturb it, asbestos exposure monitoring is not required. However, the ACM must be labeled, asbestos awareness training must be provided for employees performing housekeeping operations, and requirements for caring for asbestos-containing flooring material must be observed.

I hope this clarifies your concerns regarding 29 CFR 1910.1001, OSHA's General Industry Asbestos Standard. If you have any further questions, please feel free to contact Mr. Gail Brinkerhoff in OSHA's Office of Health Compliance Assistance at (202) 693-2142.

Sincerely,

Charles N. Jeffress
Assistant Secretary

UNITED STATES
DEPARTMENT OF LABOR