



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

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Roger D. Randolph, Deputy Director
Air Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

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REGION

Dear Mr. ~~Randolph~~ *Roger*:

Your letter, dated March 25, 1993 requesting clarification of certain provisions of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos, has been referred to our office for response.

Specifically, you ask whether or not demolitions of residential dwellings by a city government (city) for "public safety" reasons; e.g. for disease control and protection from criminal activities which might occur in abandoned residential dwellings, would be subject to the NESHAP even if the city does not assume ownership of the residential buildings.

Ownership is not relevant in determining whether the NESHAP applies to a building being demolished. What matters is the purpose for which a building is used. This determines whether it is a "facility" which must comply with the NESHAP. However, there have been some questions as to whether or not residential dwellings that are demolished or ordered demolished by a city are covered by the definition of facility.

The Environmental Protection Agency (EPA) attempted to clarify the definition of "installation" in the preamble to the NESHAP. EPA explained that:

A group of residential buildings under control of the same owner or operator is considered an installation according to the definition of 'installation' and is, therefore, covered by the rule. As an example, several houses located on highway right-of-way that are all demolished as part of the same highway project would be considered an 'installation' even when the houses are not proximate to each other. In this example, the houses are under control of the same owner or operator; i.e., the highway agency responsible for the highway project.

Therefore, the demolition of more than one residential building(s) by an owner or operator of an installation is subject to the NESHAP since the exemption is only for buildings containing four or fewer dwelling units, and not for installations. For example, if a city owns or controls a block containing 20 houses and orders more than one of them to be demolished, the operation would be subject to the NESHAP.

Additionally, EPA attempted to clarify the definition of "facility" in the preamble to the NESHAP. EPA explained that:

EPA does not consider residential structures that are demolished or renovated as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development would be subject to the NESHAP....The owner of a home that renovates his house or demolishes it to construct another house is not to be subject to the NESHAP.

There are questions as to whether or not a city ordered demolition of a single residential dwelling for "public safety" is a demolition for "institutional, commercial, public or industrial" purposes. We believe that these demolitions should be treated in the same manner as urban renewal projects and it may even be argued that they are a form of urban renewal. We intend to further clarify this position with an amendment to the asbestos NESHAP.

You outline five examples of demolitions and ask for EPA's determination as to which cases require notification, and which cases require the NESHAP work practices to be followed. Notification is required in all cases where the demolition is subject to the NESHAP. In cases where notification is required, then the NESHAP work practices must be followed if the cumulative amount of asbestos is at least the threshold amounts (160 square feet, 260 linear feet) of regulated asbestos-containing material (RACM). Your examples and EPA's responses are discussed below.

Example 1. A city, through its eminent domain authority, acquires a tract of residential buildings each with four or fewer dwelling units. The intention is to demolish these buildings so that XYZ Motor Company can construct an auto assembly plant.

Response. Regardless of the purpose of the demolition, in this case the demolition involves multiple residential buildings that are under the control of the same owner or operator and would be considered an "installation" subject to the NESHAP.

Example 2. A city acquires a single parcel of land which has a single-family dwelling unit on it. The building is demolished in order to add six parking spaces to an existing city building.

Response. There is some question as to whether or not the current regulation (on its face) covers the situation where a single residential building containing four or fewer dwelling units is demolished to expand a facility or installation. However, based on the language in the preamble to the November 20, 1990 revision to the asbestos NESHAP and based on other applicability determinations issued by EPA, it was EPA's intent to cover this situation.

Example 3. A city acquires a number of connected parcels of property, each with a residential building containing four or fewer dwelling units. The buildings will be demolished for the purposes of constructing a shopping center.

Response. Again, regardless of who owns/operates the property or purpose of the demolition, in this case the demolition involves multiple residential buildings under the control of the same owner or operator. Thus the buildings would be considered an "installation" subject to the NESHAP.

Example 4. A city determines that an abandoned residential building (containing four or fewer dwellings units) in the middle of a residential block poses a public safety hazard. The city does not own the building, contracts to have the building demolished, and there are no plans for the use of the lot after the demolition.

Response. There is a question as to whether or not the NESHAP applies when only one residential building is demolished. The preamble states that the demolition of a building for the purposes of urban renewal is covered by the NESHAP even if only one building is involved. The city is an operator of the demolition activity in that the city has control over the contractor who will demolish the building. We believe that this type of demolition can be construed to be urban renewal and therefore that the preamble intended that this type of demolition be subject to the rule. EPA intends to clarify this policy through notice and comment in an upcoming amendment to the rule.

Example 5. This is essentially the same situation as above except that the city takes ownership of the property prior to the demolition.

Response. Same as our response to Example 4 except that the city is now an owner as well as being an operator.

Although some cities may only demolish one building at a time, or several buildings scattered throughout the city, over the course of the year, a city may demolish a significant number of buildings. In an extreme case, more than 1,000 abandoned homes were demolished in one month. Typically these houses are in run-down or poor neighborhoods, and the question of environmental equity arises. The asbestos NESHAP clearly allows for individual homeowners to renovate or demolish their own homes without being subject to the NESHAP. However, it was not EPA's intent to allow for the mass demolition or continuing demolition of vacant or dilapidated houses without such demolitions being subject to the requirements of the NESHAP. The responsible parties (including cities) must inspect for asbestos, and if less than the threshold amount of asbestos is found, the only requirement is to notify EPA or its delegated agency of the demolition.

This response has been coordinated with the Office of Enforcement, the Office of General Council, the Stationary Source Compliance Division, and the Emission Standards Division. If you have any questions, please call Alice M. Law, at (913) 551-7623.

Sincerely,



William A. Spratlin, Director
Air and Toxics Division

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