



U.S. Environmental Protection Agency Applicability Determination Index

Control Number: A970008

Category: Asbestos
EPA Office: Region 3
Date: 09/04/1997
Title: Residential Exemption
Recipient: Rader, Paul
Author: Spink, Marcia L.

Subparts: Part 61, M, Asbestos

References: 61.141

Abstract:

Q. A university plans to purchase all the property within the area of recently acquired residences and intends to demolish them. The university believes these demolitions are subject to the residential exemption because it considers each residence a separate site.

A. The structures in question are not subject to the residential exemption because they are part of an ongoing demolition project conducted by the university. The NESHAP Clarification of Intent (FR Notice 38725) views a continuous or single site as "parcels on the same city block" and considers these projects subject to asbestos NESHAP removal practices.

Letter:

Mr. Paul Rader, Engineer
Asbestos Program Supervisor
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311

Re: Applicability Determination Request for Residential Building Exemption (40 C.F.R. part 61, subpart M)

Dear Mr. Rader:

This letter is the Environmental Protection Agency (EPA) Region III response to your correspondence dated March 25, 1997, requesting an applicability determination under the Clean Air Act. Although previous discussions verbally established our position on this situation, this letter will formally confirm that determination.

More specifically, your letter asked for a determination as to whether activities conducted by Marshall University, located in Huntington, West Virginia, were subject to the National Emission Standard for Hazardous Air Pollutants for Asbestos (Asbestos NESHAP). As explained, Marshall University wanted to demolish residential structures owned by the University without removing the regulated asbestos containing material (RACM). The University believed that each residential structure was subject to the residential exemption from NESHAPs. Your stated position was that the subject demolitions are covered under the "Asbestos NESHAP Clarification of Intent" (60 FR 38725 Policy Statement). On November 20, 1990, the Environmental Protection Agency amended the National Emission Standard for Hazardous Air Pollutants for Asbestos (Asbestos NESHAP) to define installation in relation to the residential building exemption. Specifically, 40 C.F.R. 61.141 defined installation as any group of buildings under the control of the same owner or operator. Marshall University and the buildings under question are considered an installation according to this definition.

As you stated in your letter, Federal Register Notice 38725 clarifies EPA's intention that the residential building exemption does not apply to the renovation or demolition of residential buildings as part of larger projects. Given the close proximity (a block) of the structures to Marshall University, the fact that the majority of the area in between them is owned by Marshall, and the fact that Marshall University has been and continues to be purchasing parcels of land in that immediate area for the purpose of annexation, NESHAP regulations should be followed. The Clarification of Intent views a continuous or single site as "parcels on the same city block." Therefore, Marshall University and its acquired residential structures are one continuous site, especially since the University plans to acquire all the property in the existing site area.

The Region 3 Office has coordinated with our Headquarters Office of Compliance (OC) within the Office of Enforcement and Compliance Assurance (OECA). OECA is in agreement with us that Marshall University's residential structure demolition project is under the purview of Asbestos NESHAP and that the NESHAP residential exemption does not apply.

The U.S. EPA Administrator has delegated the authority to make applicability determinations to the Regional Administrators. The Regional Administrator redelegated this authority to the Director of the Air, Radiation and Toxics Division (ARTD) and the ARTD Associate Director for Air Programs. Accordingly, EPA hereby determines that the Asbestos NESHAP residential exemption does not apply to the Marshall University demolition project. We concur with your preliminary determination to Dr. Edward Grose, Senior Vice President for Operations at Marshall University of the need for the University to comply with asbestos NESHAP during its demolition operations.

I hope this information is helpful in clarifying the applicability of the Asbestos NESHAP to the situation at Marshall University. If there are any additional questions regarding this matter, please feel free to contact Donald J. Lott, Chief of the Pesticides and Asbestos Enforcement Section, at (215) 566-2041.

Sincerely,

Marcia L. Spink
Associate Director for Air Programs

Enclosure
cc: Donald J. Lott, EPA
Racine M. Leonard, EPA
Tom Ripp, EPA-HQ