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Governor

# Department of Environmental Protection

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Tallahassee, Florida 32399-2400

Colleen M. Castille  
Secretary

May 20, 2004

Ms. Beverly Spagg, Chief  
United States Environmental  
Protection Agency, Region 4  
Air Enforcement Branch  
61 Forsyth Street, Southwest  
Atlanta, Georgia 30303

Re: Asbestos NESHAP Notification Requirements for Removal Projects Involving  
Resilient Floor Coverings

Dear Ms. Spagg:

The United States Environmental Protection Agency ("EPA") has delegated federal authority for implementation and enforcement of 40 C.F.R. 61 Subpart M, the National Emission Standard for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP") to the State of Florida, Department of Environmental Protection ("Department"). The Department adopted 40 C.F.R. 61 Subpart M, Asbestos NESHAP, by reference in Chapter 62-204.800, Florida Administrative Code ("F.A.C.") and also adopted and implements rules included in Chapter 62-257, F.A.C. that further outline the fees and requirements applicable to asbestos removal projects in Florida (the "Asbestos Program"). The Asbestos Program is carried out in Florida by six district offices of the Department and by eight approved local pollution control agencies that act on behalf of the Department in this regard. Each local pollution control agency has a Specific Operating Agreement ("SOA") with the Department to implement and enforce the Asbestos Program in a manner that is at least as stringent as the Department's.

Category I nonfriable asbestos containing material ("ACM") is defined in the Asbestos NESHAP as asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos as determined using the method specified in appendix E, subpart E, 40 C.F.R. part 763, section 1, Polarized Light Microscopy. The Asbestos NESHAP requires notification for renovations disturbing Regulated Asbestos-Containing Material ("RACM") above certain threshold amounts, and for all demolitions. The Asbestos NESHAP identifies RACM as: (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Based upon EPA rules and guidance, the Department has determined that the Asbestos NESHAP notification requirements do not apply to the removal of Category I nonfriable ACM that is in good condition and has not become RACM. For example, an EPA Applicability Determination letter, dated April 15, 1991 (copy enclosed as Exhibit 1), states, at page 1, that "the asbestos NESHAP does not require notification of renovation activities where Category I materials are kept in a non-friable condition during removal." In separate correspondence to the Department, dated August 19, 1994 (copy enclosed as Exhibit 2), EPA also has stated that if resilient floor covering is in good condition it is not subject to the Asbestos NESHAP, including notification, unless the "renovation process causes the material to become RACM." See also EPA's document, entitled, "Asbestos NESHAP Regulated Asbestos Containing Materials Guidance," (copy enclosed as Exhibit 3), at paragraph "3," which states that Category I ACM must be inspected for friability to determine if it is subject to the Asbestos NESHAP. In addition, EPA, in a document, entitled, "Demolition Practices Under the Asbestos NESHAP" (copy enclosed as Exhibit 4), at page 5 of 15, lists the following three methods of removal of ACM resilient floor tiles as methods that, in general, are not considered so destructive as to automatically render the floor tiles to be RACM: removal by use of water, amended water, or solvents, in combination with use of scrapers, including use of gas or electrically-powered, mechanical scrapers; removal by use of dry ice; removal involving use of infrared machines. Finally, EPA states in the preamble to its 1990 Asbestos NESHAP rule (copy enclosed as Exhibit 5) that "if at any point during the renovation . . . additional friable asbestos material is . . . created from nonfriable forms, *then* this additional friable material becomes subject to the regulations *from the time of creation . . .*" (Emphasis added.)

All of the foregoing support the Department's determination that Category I ACM is presumed not to be RACM, and, therefore, not subject to removal project notification requirements under the Asbestos NESHAP, unless evidence is presented to show the material in question is in poor condition or has been rendered friable by removal activity. In other words, Category I nonfriable ACM that is in good condition and that ~~has not been~~ subjected to significant destructive removal practices--such as sanding, grinding, cutting or abrading--is not RACM. While it may occur that, during removal of resilient floor tiles, the tiles may break, such breakage does not necessarily make the tiles RACM. The Department believes that a case by-case-determination has to be made to verify the condition of the Category I nonfriable ACM and whether the method of removal has made the tiles RACM. I have enclosed five Applicability Determination letters from EPA (Exhibit 6), supporting that a case-by-case determination must be made.

Questions regarding the Department's determination recently have been raised, however, by a local pollution control agency. Copies of relevant background materials (the local pollution control agency's Notice of Violation and the underlying courtesy notifications received by the

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local pollution control agency) are enclosed (as Exhibit 7) for your information. We plan to have a conference call soon to discuss these issues with EPA and the local pollution control agency. In connection with this discussion, the Department requests clarification of the following questions:

When is an owner or operator required by the Asbestos NESHAP to submit an asbestos notification for the removal of Category I nonfriable ACM?

Would the 10 working day waiting period apply in the removal of Category I nonfriable ACM that is not RACM?

How much sanding, grinding, cutting, or abrading would make Category I nonfriable ACM become RACM?

How would the change from Category I nonfriable ACM to RACM be determined?

If no notification typically is required when the project involves removal of Category I nonfriable ACM, and the Department or its local agencies consequently do not have an opportunity to conduct an Asbestos NESHAP compliance inspection, who determines that Category I nonfriable ACM has become RACM?

In the absence of an Asbestos NESHAP compliance inspection, how does the Department or its local agencies verify whether Category I nonfriable ACM has become RACM?

Thank you for taking the time to address this matter. Please contact Mr. Rick Butler at 850/921-9586 or by email with any questions or if more information is needed.

Sincerely,



Michael G. Cooke, Director  
Division of Air Resource Management

MGC/rb/jw

cc: Patrick Wong  
Joe Kahn  
Dick Dubose