



ENVIRONMENTAL RESOURCES MANAGEMENT
AIR QUALITY MANAGEMENT DIVISION
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April 30, 2004

Beverly Spagg, Chief
Air Enforcement Branch
EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

Re: Final EPA Clarification for Asbestos Containing Resilient Floor Coverings.

Dear Ms. Spagg:

As you know, the Department of Environmental Resources Management (DERM) is the agency designated to enforce the provisions of 40 CFR 61, Subpart M in Miami-Dade County pursuant to the Air Specific Operating Agreement (SOA) between the Florida Department Environmental Protection (FDEP) and Miami-Dade County (MDC) and the 105 Contract between the United States Environmental Protection Agency (EPA) and MDC.

Occasionally, DERM receives information regarding resilient floor tile via a complaint or submittal of an Asbestos Notification after the renovation or demolition of the material has been completed. For these sites, DERM invokes its authority and charges the responsible party with a violation of NESHAPS 61.145(b), which carries a civil penalty.

Recently, a question arose from the FDEP regarding the DERM authority in charging sites with a notification violation if a representative of the department was not present to confirm the condition of the removed resilient floor tile. Specifically, a large supermarket chain hired an asbestos contractor to remove approximately 750 sq ft of resilient ACM flooring from one of its Miami-Dade stores. The contractor submitted two notifications on separate days for separate project phases. The first phase notification was submitted three (3) days after the removal was completed. During the second phase, a notification was submitted less than twenty four (24) hours prior to the removal. The DERM asbestos inspector was unable to observe either phase of the removal, however DERM issued a Notice for violation of 61.145(b) including the associated improper notification penalty. Since the responsible party neglected to provide the Department with a notification in a timely manner (at least 10 days prior to commencement of the project) they failed to provide an opportunity for the Department to inspect and confirm that the material and its removal were properly handled. The contractor has failed thus far to provide any documentation or information to indicate that the floor tiles were removed utilizing a methodology to prevent the release of asbestos fibers. In this case the Department did not charge the responsible party with any additional violations of 40 CFR 61 Subpart M, since DERM was not an eyewitness to the removal procedures.

DERM maintains that charging the responsible party in these cases with a notification violation is valid since DERM bases its authority to do so upon EPA's existing relevant guidance and

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clarifications. Specifically, the EPA letter dated August 19, 1994 addressed to Clair Fancy, Chief, Bureau of Air Regulation, Florida Department of Environmental Protection (Attachment A); and NESHAPS regulations dated November 20, 1990, page 5 of 44 (Attachment B), both explicitly address non-friable asbestos containing material that become (or are likely to become) friable, and therefore regulated, during renovation or demolition.

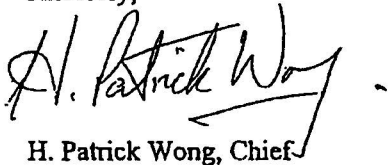
DERM fully supports the EPA's position expressed in the above mentioned documents, and contends that the process of removing or demolishing asbestos containing floor tile which is glued to the floor with mastic will typically cause this material to become friable and subject to NESHAPS under EPA guidance criteria. An informal telephone survey of several Florida local air programs indicates that other agencies are also requiring 10 day notifications for asbestos floor tile removal pursuant to the asbestos NESHAPS regulations.

Further, the EPA's stance that non-friable material can be made friable during removal was substantiated in a 1994 study commissioned by DERM and the Dade County Public Schools (DCPS), Department of Asbestos Management (Attachment C). The study concluded through air sample analyses that the fibers and dust containing chrysotile asbestos were released into the air at elevated levels when proper containment and handling procedures were not implemented during (dry) removal of resilient floor tiles.

Although DERM believes that the attached EPA guidance documents and the DERM/ DCPS study are sufficient to continue to apply NESHAPS violations of 61.145(b) in the above stated situations, we are requesting that EPA provide additional written clarification relating to this issue, and specifically regarding a state or local agency's authority to enforce violations of NESHAPS 61.145(b) through the penalty provisions of the asbestos guidelines in the above described Supermarket and similar cases. DERM suggests that a teleconference be scheduled to include the parties involved, at your earliest convenience, to facilitate discussions of all pertinent information and viewpoints.

DERM appreciates your time and consideration of this matter. If you require further information please contact me or Sharon Crabtree at (305) 372-6925.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Patrick Wong". The signature is stylized with a large, sweeping "W" and a horizontal line extending from the end.

H. Patrick Wong, Chief
Air Quality Management Division

Cc: Beverly Bannister, US-EPA Region 4
Michael Cooke, FDEP
Joseph Kahn, FDEP
Florida Local Program Directors
Tom Robertson, Miami-Dade CAO

HPW/sh