



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

4APT-AEEB

JUL 21 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. H. Patrick Wong, Chief
Miami-Dade Environmental Resources Management
Air Quality Management Division
33 S.W. 2ND Avenue
Suite 900
Miami, Florida 33130-1540

Dear Mr. Wong:

This letter responds to your April 30, 2004, letter in which you requested the Environmental Protection Agency Region 4 (EPA) to provide clarification regarding the applicability of 40 C.F.R. Part 61, *National Emission Standards for Hazardous Air Pollutants*, Subpart M, *National Emission Standard for Asbestos* (Asbestos NESHAP), to the removal of asbestos-containing, resilient floor coverings. Specifically, you inquired as to whether or not Miami-Dade Environmental Resources Management (DERM) has the authority to charge a facility with a violation of 40 C.F.R. § 61.145(b) for a vinyl asbestos tile (VAT) removal if a DERM representative was unable to perform an inspection to determine both the condition of the VAT and the removal techniques being utilized.

The notification requirements contained in 40 C.F.R. § 61.145(b) are applicable to renovations involving the specified threshold amounts of regulated asbestos-containing material (RACM). Category I nonfriable asbestos-containing materials (packings, gaskets, resilient floor coverings and mastic, and asphaltic roofing materials) are considered RACM only when: (1) they will be or have been subjected to sanding, grinding, cutting, or abrading; (2) they are in poor condition and hence friable; or (3) they are located in a structure to be demolished by burning.

Under most common removal scenarios identified in EPA's *A Guide to Normal Demolition Practices Under the Asbestos NESHAP*, resilient floor tile should not be rendered friable if it was in good condition before the renovation. Some removal techniques which would not render the tile to be friable include the use of solvents or water in conjunction with long-handled scrapers or gas- or electrically-powered mechanical chisels, dry ice, and infrared machines. If the tiles are extensively damaged prior to removal, the aforementioned removal techniques could render the floor tile to be RACM. Furthermore, any removal method that will cut, grind, sand or abrade the tile as described in 40 C.F.R. § 61.141 will cause the tile to become RACM. Also, pulling the VAT off of the floor, if still attached to the subfloor by mastic, may tear VAT making it become RACM.

Bureau of Air Monitoring
& Mobile Sources

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In summary, the applicability of the Asbestos NESHAP to the removal of Category I nonfriable asbestos-containing materials (ACMs) depends on the following: (1) the condition of the material at the time of renovation, (2) the nature of the operation to which the material will be subjected, and (3) the amount of ACM involved. The notification requirements contained in 40 C.F.R. § 61.145(b) are only applicable to renovations involving threshold amounts of VAT when such VAT is considered to be RACM, or considered to be friable, or considered to be rendered RACM by the removal procedures being employed. An inspector would have to be on-site to examine the debris to determine if the method used to remove the floor tile rendered it friable.

EPA realizes that without being provided with a notification, the DERM inspector is often unable to observe the floor tile removal. Thus, the DERM inspector has no opportunity to determine the condition of the tile and to confirm that the floor tile removal is being handled properly. A state or local regulatory agency could adopt notification regulations with more stringent requirements than the Asbestos NESHAP. Such regulations could require notification for every VAT removal in order to provide inspectors with an opportunity to inspect each removal.

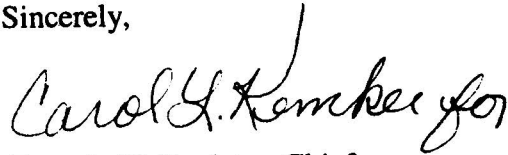
In a recent conference call that EPA held with DERM and the Florida Department of Environmental Protection (FDEP) on May 25, 2004, you pointed out a statement in the preamble to the November 20, 1990, Asbestos NESHAP Revision published at 55 Federal Register 48406. The statement located on page 48408 of the Federal Register notice states, "This policy determination stated in essence that any ACM, whether originally friable or nonfriable that become (or are likely to become) crumbled, pulverized, or reduced to powder are covered by the NESHAP." You pointed out this statement as a basis for DERM to regulate resilient floor tile removals under the Asbestos NESHAP since the tile is "likely to become" friable. Further down on the final column of page 48408, the following statement is made:

A statement in the determination to the effect that some nonfriable materials may remain nonfriable throughout demolition and renovation is evidence that this determination was intended to be narrowly interpreted and not used to require removal of all nonfriable materials. For example, materials such as resilient floor covering, asphalt roofing products, packings, and gaskets would rarely, if ever, need to be removed because, even when broken or damaged, they would not release significant amounts of asbestos fibers.

This statement demonstrates that EPA did not intend to regulate the removal of nonfriable VAT under the Asbestos NESHAP. EPA believes that the aforementioned removal techniques do not render the VAT "likely to become" friable.

I hope this letter adequately addresses your concerns regarding the removal of resilient floor coverings pursuant to 40 C.F.R. Part 61, Subpart M. If you have any questions, please contact Pamela McIlvaine of my staff at (404) 562-9197.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol G. Kemker for".

Beverly H. Banister, Chief
Air, Pesticides and Toxics
Management Division

cc: Michael Cooke, FDEP
Joseph Kahn, FDEP
Florida Local Program Directors