

ASBESTOS OUTREACH 2005

Frequently Asksed Questions

1. What are the reporting limits and fines for improper handling of asbestos?
Answer: The asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) requires a notification be submitted for the renovation of a facility (*altering a facility or facility component in any way, which includes the removal of regulated asbestos containing material (RACM)*), if a combination of 160 square feet of surface material, 260 linear feet of piping, or 35 cubic feet of off facility RACM is to be disturbed. The notification is also required for demolition (*wrecking or removing load-supporting structural members*) of a facility, even if no asbestos containing material (ACM) is present. All required notifications must be submitted 10-working days prior to the beginning of any work. Failure to provide the required notification could result in a penalty of \$1000 per violation. Improper handling of asbestos would be a work practice violation. Substantive work practice violations with the potential to cause serious bodily harm, property damage, or environmental damage could be subject to a minimum penalty of \$2500 per violation.
2. Is there an official “appeals process” in place for facilities in violation of the asbestos regulation(s)?
Answer: No, a Notice of Violation is just that: a notice. However, the notice will instruct the alleged violator to submit a compliance plan and will indicate who to contact to set-up an enforcement conference to discuss the alleged violations and any penalty settlement.
3. How strict would the Oklahoma Department of Environmental Quality (ODEQ) be on enforcement if there were a non-asbestos renovation currently taking place?
Answer: A renovation that does not disturb any asbestos-containing material is not a regulated activity under the asbestos NESHAP; therefore, no enforcement would be warranted.
4. Explain what happens or who gets fined if a contractor and building owner both sign the notification.
Answer: The notification requirements apply to each owner or operator of a demolition or renovation activity that is subject to the asbestos NESHAP regulation. The requirement to sign the certifications can be met by either the owner or the operator, but both bear responsibility for the proper submission of the notification and both could be subject to any penalties assessed for any violation. Determination of who is responsible for a violation and whether the other party would have reasonable knowledge of and/or consent to the violation could have bearing on how the penalty is distributed.
5. Should a facility or municipality notify ODEQ regardless of the type of demolition?
Answer: The owner or operator of a facility must submit the NESHAP notification of demolition to ODEQ even if no ACM was found to be present. If the municipality is either the owner or operator (*any person who owns, operates, controls, or supervises the facility or the demolition or renovation operation or both*), then the municipality must assure that the notification is submitted.
6. Is a “residential home program” covered where a municipality demolishes a house(s) and rebuilds on site or a house is donated to the city to be used as a public park? Explain.
Answer: By definition one residential dwelling having four or fewer dwelling units is not a facility and is not subject to the NESHAP requirement unless it was previously subject or will become subject. Any structure that was commercial, institutional, or industrial regardless of its current function does not qualify for the residential exemption under the NESHAP requirements. Also, any structure that contains a loft used as a dwelling is not considered a residential structure.

- EPA has also determined that 2 or more residential structures (generally but not necessarily within a block of one another), under common control or ownership or to be removed as part of larger project (such as to construct a parking lot, road or highway project, commercial, institutional, or industrial facility) are subject to the NESHAP regulations. Also, one dwelling that is part of a larger facility such as college or university or military base is considered a facility component and is subject to the NESHAP.
7. Are “out”/“detached” buildings covered under this NESHAP regulation?
Answer: Generally a detached building, such as a garage or outside storage building on residential property, is considered part of that residential structure and not subject to the NESHAP unless the detached structure itself were to meet the definition of a facility. If the detached structure was used for commercial, institutional, or industrial purposes; or if it currently is or had previously been part of a facility, then the structure would be subject to the NESHAP regardless of its current function.
 8. If two houses are demolished on adjacent lots, and one new house is built on that combined lot, who is the responsible party?
Answer: One single dwelling is not normally subject to the NESHAP regulation. However, if two or more houses are under common control of an owner or operator (*any person who owns, operates, controls, or supervises the facility or the demolition or renovation operation or both*) are demolished, then according to EPA’s determination they meet the definition of a facility and are subject to the NESHAP regulations and the owner / operator are the responsible parties.
 9. What happens if there is “no” owner?
Answer: Since the definition of owner is *any person who owns, leases, operates, controls or supervises the facility being demolished or renovated*, it is hard to imagine how there would be “no” owner. Would any contractor attempt to begin a renovation or demolition without knowing who has the authority and is responsible for paying for his work?
 10. Who is actually responsible for the asbestos clean-up, disposal, and transporting of RACM?
Answer: The asbestos NESHAP regulations apply to the owner [of the facility] or operator of a demolition or renovation activity. Although both parties bear the burden of compliance, one or the other may be more responsible for any violation, which will to be determined on a case-by-case evaluation.
 11. Explain/Expound as to the report ability of **multiple units** being demolished/renovated.
Answer: A notification must be made for each individual “unit” (house, apartment building, structure) if part of a larger project. Sometimes it may be easier to submit just one EPA Notification with a list attached listing each structure, inspection findings, and addresses or parcel numbers. Discuss this with your local ODEQ NESHAP representative before submitting your paperwork.
 12. Clarify the ramifications of demolishing & removal being done at the same time.
Answer: The NESHAP requires that all regulated asbestos be removed from a facility prior to demolition. Demolition may sometimes proceed in areas, which have been abated provided that no cross-contamination from non-abated areas is allowed to occur, and when worker safety is not compromised
 13. Define “start date”.
Answer: For asbestos removal work that would be the day any work begins that would *strip, remove, break up, dislodge or similarly disturb regulated asbestos material (including site preparation if it disturbed ACM)*. For demolition the start date would be the day that demolition (*the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility*) begins.
 14. What are the significant dates for the following:

Answer:

Renovations: The significant dates are the start (see question 13 above) and completion dates. These are significant because they allow the regulating authority the opportunity to schedule inspections to observe facility and work practices of the contractor and workers to insure that the regulations are being properly followed.

Demolitions: The significant dates are the start (again see question 18 above) and the completion dates. These dates are significant because they allow the regulating authority the opportunity to schedule inspections to assure that the facility was thoroughly inspected for ACM; that any required removal will or has been done prior to demolition; and that the demolition practices used will not make any non-friable ACM friable.

Clean-ups: Clean-ups are not addressed in the regulations; however, it is common for clean-ups to be required when previously unknown friable ACM is discovered in walls, foundations, etc. during renovations and demolitions. Also, clean-ups would be required after accidental fire or storm-damage to facilities, which would require renovation or demolition to clean up the site. Therefore, the significant dates would be the same as listed for renovations or demolitions.

15. What happens if the current owner is continually renovating?

Answer: The requirement is for thorough inspection prior to beginning renovation or demolition and the prior notification is required only if the combined amount of regulated asbestos containing material (RACM) to be disturbed is 260 linear feet on pipe, 160 square feet on other facility components, or 35 cubic feet off facility components where the length or area could not be previously measured. If the inspection was thorough and the RACM was properly dealt with, then eventually continued renovation would not always be dealing with RACM. But any renovation that did disturb these amounts would be subject to the NESHAP notification requirement. Just because the NESHAP regulations may not apply in some instances, such as the notification exemption when small amounts of RACM are disturbed, other agencies' regulations could and in most cases would still apply.

16. What if you know asbestos is present, but you don't know how much?

Answer: It is the responsibility of the asbestos inspector to determine the amount and types of asbestos containing material in the areas to be disturbed.

17. How or where do you go to hire a "licensed inspector"? And explain their qualifications.

Answer: The Oklahoma Department of Labor (ODOL), Asbestos Abatement Division licenses, asbestos inspectors, workers, contractors, etc. in Oklahoma. All licensing is renewed annually and a current list of licensed inspectors, etc. can be obtained from the ODOL at (405) 528-1500 (extension 250). The qualifications for each type of asbestos professional are listed in the ODOL rules found in the OKLA. ADMIN. CODE (OAC), Abatement of Friable Asbestos Materials Rules, Title 380, Chapter 50-5-5 to 6-16.

Asbestos Inspector: Inspectors are trained to identify, determine friability, and properly sample *suspect* ACM for subsequent analysis at a certified laboratory to determine if the material is ACM. An asbestos inspector license is only valid if working for a licensed asbestos management planner.

Asbestos Management Planner: The asbestos management planner has the same training required for the inspector plus additional training including, but not limited to: evaluation of inspection reports, hazard assessments, control options, how to develop operation and maintenance (O&M) and asbestos management plans, and record keeping requirements and legal implications specific to planners.

Competent person: This is found in the OSHA regulations and means, in addition to the definition in 29 C.F.R. 1926.32 (f), one who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, who has the authority to take prompt corrective measures to eliminate them, as specified in 29 C.F.R. 1926.32(f): in addition, for Class I and Class II work who is specially trained in a training course which meets the criteria of EPA's Model Accreditation Plan (40 C.F.R. 763) for supervisor, or its equivalent and, for Class III and

Class IV work, who is trained in a manner consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 C.F.R. 763.92 (a)(2).

18. What happens if asbestos is found in the middle of a job after the inspector signed off?
Answer: It is not uncommon to uncover asbestos containing material after beginning a demolition or renovation. The asbestos inspector may not have had ready access to the material during the initial inspection and this should be noted in the report. The owner/operator should already have a plan (see Item XVI on the Notification of Demolition or Renovation form) for dealing with this situation.
19. Can an inspector be held responsible once he/she signs off saying all is clear?
Answer: Due to the critical nature of their work, inspectors could face liability and litigation. Potential liability lies in three areas: contractual liability, tort (negligence) liability, and regulatory liability. Depending on the nature and scope of the contract agreed upon for the inspector's services, the inability to properly perform those services could cause liability for breach of contract. A tort is a legal wrong and breach of a legal duty is often termed "negligence". Failure to perform the services in accordance with the skills of the profession could cause the inspector to be sued in "tort". The difficulty in defining potential liability due to negligence is the lack of universally accepted performance standards for asbestos inspection activities. Regulatory liability is primarily in the areas of the inspector's compliance with certification requirements. Professional liability insurance in some form is the normal method for securing protection from possible litigation, but it obviously adds to the inspector's cost of performance.
20. What is "grinding" and explain its ramifications?
Answer: Grinding means to reduce to powder or small fragments and includes mechanical chipping or drilling. Subjecting non-friable (non-regulated) ACM to grinding (or sanding, cutting, or abrading) will make it friable and therefore it becomes regulated ACM.
21. Explain the *friability* of floor sheeting as to its report ability.
Answer: Material is considered *friable* if it can be crumbled, pulverized, or reduced to powder by hand pressure when dry. The determination of whether floor sheeting (or any other material) is *friable* or *non-friable* is made as part of the thorough inspection of a facility or facility component required prior to the commencement of a demolition or renovation activity.
ODEQ: If the inspection determines that the floor sheeting is *non-friable*, it is not subject to the asbestos NESHAP. The material does not need to be removed prior to demolition unless the demolition practices used would make the material friable.
ODOL: It is the Department's understanding that ODOL is concerned with the friable backer sheet on the sheet flooring. If it is asbestos containing and is disturbed during removal, they want to assure that workers are not exposed. Contact ODOL, Asbestos Abatement Division at (405) 528-1500 (extension 250) for complete details.
22. Address/explain OSHA vs. Class II tile removing.
Answer: Neither of these terms is mentioned in the asbestos NESHAP. Class II tile removing is described in the OSHA asbestos regulations, and the ODOL has jurisdiction of those regulations. Please contact ODOL for a more complete explanation.
23. What happens if a conflict arises between ODEQ, ODOL, and ODOT?
Answer: There normally should not be a conflict since each has different jurisdictions. ODEQ's regulations are from EPA, which has jurisdiction over the environment and its affect on public health. ODOL enforces the OSHA regulations for worker safety and ODOT regulates the transportation of asbestos waste generally as it relates to road, highway, and rail transportation.
24. Are notification forms on the ODEQ website?
Answer: Yes, they can be found on ODEQ's Asbestos Homepage found at: <http://www.deq.state.ok.us/AQDnew/asbestos/index.htm>

25. Is it permissible to FAX a copy of the “start date” to DEQ?
Answer: The DEQ routinely accepts a FAX copy of the notification to establish the “start date”, even though the regulation only states that acceptable delivery of the notification shall be by U.S. Postal Service, commercial delivery service, or hand delivery. The justification for accepting the FAX is the allowance in the regulation for telephone notification of a delayed “start date”; however, as noted in that allowance, the written notification with that “start date” must be provided to the DEQ as soon as possible before, and no later than the “start date”. Only delivery of that written notification by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable. The initial notification and any revisions in which work will begin on a date prior to that initial “start date” must be submitted at least 10-working days (2-calendar weeks) prior to beginning any work. Please note that for notifications submitted by U.S. Postal Service, the postmark is considered by DEQ as day one of the 10-working day prior notice.
26. a. Is on-line filing available for asbestos notification/permitting?
Answer: Currently that is not an option. The regulations state that each owner or operator of an applicable demolition or renovation activity shall provide a “written notice [or any required update notice] of intention to demolish or renovate” and that “delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable”.
- b. If “26a.” is true, then how do you qualify an “original signature” on the documentation?
Answer: That is something that will have to be addressed when and if that option becomes available, but currently that is not an option.
27. Who licenses the transfer and hauling off of RACM?
Answer: Asbestos transporter licensing is not part of the NESHAP. The requirements for transporting asbestos-containing waste are found in the U.S. Department of Transportation regulations at 49 C.F.R. Parts 171 and 172. These regulations require waste containment and shipping papers. The Oklahoma Corporation Commission, Transportation Division, typically handles intrastate and interstate motor carrier licensing in Oklahoma and may have special licensing requirements for asbestos transporters. The Oklahoma Corporation Commission can be contacted at (405) 521-2251.
28. Is there a list of “licensed transporters”?
Answer: ODEQ is not aware of any list. The requirements for licensed asbestos waste transporters are found in 49 C.F.R. parts 171 and 172 under the jurisdiction of US Department of Transportation. The Oklahoma Corporation Commission, Transportation Division, typically handles intrastate and interstate motor carrier licensing in Oklahoma. The Oklahoma Corporation Commission can be contacted at (405) 521-2251.
29. Is there a list of “licensed landfills”?
Answer: Landfills currently licensed to accept regulated ACM waste can be found on the ODEQ website: <http://www.deq.state.ok.us/LPDnew/SW/MSWLFsAcceptingAsbestos.htm>
30. Are Tribal Lands affected by this NESHAP regulation? Explain.
Answer: The asbestos NESHAP is a federal regulation and is applicable in all states and all tribal lands. This NESHAP is a regulation developed by EPA as required by the national Clean Air Act. The ODEQ has delegation from EPA for this regulation in Oklahoma. Currently there is no tribal delegation of any of the air programs in Oklahoma. If in the future, any of the tribes should have delegation of this NESHAP, compliance would have to be at least as stringent as the federal regulation, although they could require more stringent compliance measures.
31. Does Oklahoma have any “asbestos mills”?
Answer: ODEQ is not aware of any asbestos mills operating in Oklahoma