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LESS-THAN-10-DAY NOTIFICATIONS UNDER THE ASBESTOS NESHAP REGULATIONS – 40 C.F.R. PART 61, SUBPART M

INTRODUCTION

The Asbestos NESHAP notification provisions generally require owners and operators of demolition and renovation activities to provide EPA with written notification of a regulated operation at least 10 business days prior to commencement of work.¹ The regulations allow something less than the full 10-day notice for initial notifications (as opposed to revised or updated notifications) only under certain limited factual circumstances. Note that neither the Asbestos NESHAP nor EPA policy or guidance allows regional Asbestos NESHAP staff or other regional personnel to grant a “waiver” from the 10-day notification requirement.

Alternatives to the 10-day notification requirement under the Asbestos NESHAP are limited to certain circumstances specified by the rule (e.g., emergency renovations, ordered demolitions). One rationale for the less-than-10-day notifications is that EPA did not intend that notification requirements for renovations result in disruption of important industrial processes (e.g., power production). In some instances, however, it is necessary and appropriate to stop certain activities to comply with the notification waiting period. For example, when a removal is part of a planned, scheduled repair or maintenance activity, there should be no additional burden associated with notifying in advance since the operation was planned in advance.

On the other hand, if a removal operation is necessitated by an unscheduled and unplanned event, then the operation may be covered by the emergency renovation provisions and not subject to the same waiting period as the planned and scheduled event. Other removals are necessitated by unscheduled events that, although unscheduled, can be predicted from past experience and are to be reported to EPA in advance. Such reports estimate the amounts and nature of these nonscheduled renovation operations.

¹ In New England states where EPA has delegated authority to implement and enforce Asbestos NESHAP requirements under applicable state authority, EPA considers proper notification to the delegated state authority to satisfy the federal Asbestos NESHAP requirement. *See* 62 Fed. Reg. 51654 (October 2, 1997). The New England states where EPA has delegated such authority to implement and enforce the Asbestos NESHAP include Connecticut (partial), Maine, Massachusetts, and Vermont. For regulated sources in the non-delegated New England states of Connecticut (partial), Rhode Island, and Vermont, however, prior written notification of demolition and renovation operations regulated by the Asbestos NESHAP must be provided to EPA to satisfy federal requirements.

EMERGENCY RENOVATION OPERATIONS

[40 C.F.R. §§ 61.145(a)(4)(iv) and 61.145(b)(3)(iii)]

Emergency renovations are unexpected events that cannot be predicted and are caused by disruption of important industrial operations or by unsafe conditions. An emergency renovation operation is defined at 40 C.F.R. § 61.141 to mean “*a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.*”

For emergency renovation operations involving threshold amounts of asbestos, as per 40 C.F.R. § 61.145(a)(4)(iv), written notice of intent to renovate is required “as early as possible before [work begins], but not later than, the following working day.” Events that would necessitate an emergency renovation include those that may produce immediately unsafe conditions as well as those that, if not quickly remedied, could reasonably be foreseen to result in an unsafe or detrimental effect on health. For example, a boiler in an apartment building that suddenly malfunctions during the winter would need to be repaired immediately. The rule also includes equipment damage and financial burden as reasons for emergency renovations. These reasons serve to protect equipment from significant damage and to avoid imposing an unreasonable financial burden by requiring sources that experience a sudden unexpected equipment failure to wait 10 days.²

The basic characteristic that distinguishes an emergency renovation from a planned renovation is the degree of predictability of their occurrence. *See* 40 Fed. Reg. 48292 (October 14, 1975). In planned renovations, the amount of asbestos to be stripped or removed within a given period of time can be predicted, whereas no such prediction can be made for emergency renovations. Therefore, by their unexpected occurrence, emergency renovations cannot be included in notifications given for planned, individual, nonscheduled renovations.

For emergency renovations, the rule requires a written notification be prepared and submitted (postmarked) not later than one working day after renovation begins. If an incomplete notification is provided, the owner/operator must follow up with a revised/complete notification. Notification by facsimile technology (fax) is not considered an acceptable means for transmitting notifications. EPA does not require annual predictions of the quantities of asbestos to be removed as a result of emergency

² Consult the Applicability Determination Index (ADI) database web site for clarification and examples on this and other aspects of the Asbestos NESHAP. EPA periodically issues determinations of whether certain intended actions constitute the commencement of regulated activities such as construction, reconstruction, or modification (“applicability determinations”), permissions to use monitoring or record keeping which is different from the promulgated NESHAP standards (“alternative monitoring”), and a broad range of NESHAP regulatory interpretations as they pertain to sources or source categories (“regulatory interpretations”). EPA Headquarters has maintained a compilation of such letters and memoranda since they were first issued and this compilation is currently available on the Applicability Determination Index (ADI) through the link provided, below.

renovations as annual predictions are required for individual nonscheduled renovations that can be predicted based on past experience.

[A note about nonscheduled renovations: Although the usage of the term "nonscheduled renovation operation" in the context of planned renovations may appear contradictory, the term applies to individual events that cannot be precisely predicted as to their specific nature and time of occurrence but, based on experience, will occur. *See* 40 C.F.R. § 61.141. For example, a petroleum refinery or chemical plant must routinely deal with faulty valves, pumps, and pipes and other failures that occur occasionally. Because such equipment failures have occurred in the past, plant operators know that similar problems will occur in the future, even though the exact date and location are unknown. But the plant operators can be certain that they will occur and can plan accordingly. Similarly, use of the word "routine" in the definition applies to equipment failures that, based on experience, can be predicted to occur in that they occur as a matter of routine, although the exact date and location cannot be predicted. *Activities that do not occur routinely are not covered by the provisions governing individual, nonscheduled operations.* For instance, if the amount of asbestos that will be disturbed as part of a maintenance activity will exceed the threshold amounts and the activity can be planned (that is, the date and nature of the work to be done are known in advance), then the activity is a planned renovation subject to the requirements of Section 61.145(a)(4). Maintenance activities that occur as a result of the routine failure of equipment cannot be precisely predicted and would be included in the annual notification requirement for planned renovation operations involving individual nonscheduled operations. *A maintenance activity performed in connection with a sudden unexpected event, where the amount of asbestos affected exceeds the thresholds, is considered an emergency renovation.* A nonscheduled renovation differs from an emergency renovation in that, while nonscheduled renovations can be anticipated based on experience, emergency renovations cannot be predicted.]

ORDERED DEMOLITIONS

The Asbestos NESHAP, at 40 C.F.R. § 61.145(a)(3), provides that, among other things, "if the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse," then written notice of intent to renovate is required as early as possible before work begins but not later than the following working day. *See* 40 C.F.R. § 61.145(b)(3)(iii). Typically, a demolition is ordered when a building has been declared unsafe and in danger of collapse as a result of damage caused by fire. A representative from the fire department or a building inspector employed by the appropriate government agency makes this determination. These structures must typically be demolished immediately and often cannot await an inspection by EPA. To discourage abuse of this provision, the notification that is submitted must identify the government representative who ordered the demolition and the date the order was issued and the date the demolition was ordered to begin.

CONCLUSION

Under the Asbestos NESHAP, all original notifications must be submitted by owners and operators of regulated demolition and renovation activities at least 10 business days prior to the commencement of work, unless certain limited factual circumstances exist. These circumstances include emergency renovations and ordered demolitions. For any demolition or renovation, it is the responsibility of the notifying owners and operators to establish and document their classification of a regulated operation and to comply with all applicable Asbestos NESHAP requirements.

For more information:

EPA Asbestos NESHAP Rule Summary and contact page – <https://www.epa.gov/stationary-sources-air-pollution/asbestos-national-emission-standards-hazardous-air-pollutants>

EPA Headquarters Asbestos page – <http://www.epa.gov/asbestos/> and <https://www.epa.gov/asbestos/asbestos-professionals> (for asbestos professionals)

OSHA Asbestos page – <http://www.osha.gov/SLTC/asbestos/>

EPA Applicability Determination Index–
<http://www.epa.gov/compliance/monitoring/programs/caa/adi.html>

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