

SPECIAL Report



NATIONAL ROOFING CONTRACTORS ASSOCIATION

ASBESTOS UPDATE: EPA "CLARIFIES" ITS RULES

Executive Summary

- o EPA's principal standard for regulating asbestos is its National Emission Standard for Hazardous Air Pollutants (NESHAPs). NESHAPs is revised effective November 20, 1990, according to an agency "clarification."
- o NESHAPs only applies to "friable" asbestos-containing materials. The new clarification, however, says that if non-friable asbestos-containing materials are subjected to "sanding, grinding, cutting, or abrading," they are to be treated as friable asbestos materials. "Cutting includes sawing but does not include shearing, slicing, or puncturing."
- o Our understanding of the intent of this change is that NESHAPs will apply to asbestos-containing roof removal when mechanical roof cutters are used.
- o There is, however, an enforcement memo in effect today that exempts roofs less than 5,580 square feet in total area from the regulation, and suggests that only material released from a mechanical cutter would be considered "friable," i.e., not the whole roof.
- o When NESHAPs does apply, contractors are required to:
 1. Notify EPA
 2. Wet the materials (with some exceptions)
 3. Lower materials to the ground in dust-tight chutes or containers
 4. Deposit asbestos-containing waste material at an approved disposal site
 5. Discharge no visible emissions
 6. Have a trained person on the job site (effective 11/20/91).
- o NRCA has requested a meeting with appropriate EPA officials.
- o We urge you to call if you have questions.

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Background

Under the Clean Air Act of 1973, the Environmental Protection Agency (EPA) promulgated a regulation called the National Emission Standard for Hazardous Air Pollutants (NESHAPs). The regulation was repromulgated on April 5, 1984 (49 Federal Register 13661) and may be found in 40 CFR 61, Subpart M.

Included in its background statement regarding the original standard is the following statement from EPA:

"The intent of the asbestos standard is not to control handling of vinyl asbestos floor tile, asbestos felt roofing, or other similar materials since it is the administrator's judgment that such activities will not release asbestos in a manner which is dangerous to human health."

EPA recognized that not all asbestos-containing materials have the same potential for fiber release, and structured the regulations according to the material's "friability." EPA defined friable as follows:

"Friable asbestos material means any material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry."

Asbestos-containing roofing material (ACRM) is generally considered to be non-friable. However, because these materials must be disturbed when a roof is removed, it has been unclear whether NESHAPs applies to roofing operations, and, if so, under what circumstances. NESHAPs applies only to friable materials, so this is a crucial determination for roofing materials.

On December 5, 1985, EPA issued a mid-level memorandum in an attempt to clarify the definition of friability. The memorandum said that the regulations addressed only friable material. However, if at any point during the renovation or demolition of the asbestos material, additional friable asbestos material is either discovered or created from non-friable forms, then this additional material becomes subject to the regulations.

The memorandum went on to say: "Only material that can reasonably be expected to remain non-friable throughout the operation, such as transite board, may be considered 'non-friable,' and even that may be reconsidered depending on the techniques to be used during the renovation or demolition."

On February 23, 1990, EPA issued another memorandum regarding non-friable asbestos-containing material and how it should be handled prior to demolition projects. This memorandum says:

"Floor tile, roofing material, packing, and gaskets (normally non-friable ACM) must be inspected before demolition to determine if the ACM is in poor condition, indicated by peeling, cracking or crumbling of the material. If normally non-friable material ACM is in poor condition, then the material must be tested for friability. If the ACM is friable, it must be handled in accordance with NESHAPs. The above four non-friable ACM should be removed before demolition only if they are in poor condition and are friable. If the non-friable ACM is subjected to sanding, grinding or abrading as part of demolition or renovation, then the non-friable ACM must be handled in accordance with NESHAPs. If a building is demolished by burning, all ACM must be removed prior to the demolition."

Because roofs are not sanded, ground, or abraded as part of renovation, most EPA regions did not consider the removal of ACRM to be regulated under NESHAPs. However, because of the subjectivity of the term "friable," there were a number of interpretations made by EPA regarding the handling of ACRM.

In a letter to Jay Wayne Cropp at the Chatanooga, Tennessee, Hamilton County Air Quality Control Bureau, John Seitz, Director of Stationary Source Compliance for EPA, said:

"Roofing felt must be inspected prior to demolition, and must be tested for friability if it is in poor condition and be removed if it is friable. Because sawing abrades normally non-friable roofing felt, the material formerly occupied by the saw cut will either be crumbled, pulverized, or reduced to powder by the cutting operation. Therefore, the cutting operation and the friable material produced by that operation will be subject to NESHAPs if the amount of the asbestos exceeds the applicability amounts specified in CFR part 61.145."

The applicability amounts referred to are 260 linear feet on pipes, or 160 square feet (of friable asbestos). EPA concluded the following:

"Using standard industry practices, we have determined that removing a roof by sawing 5580 square feet will produce 160 square feet of friable asbestos material. Therefore, when sawing is used to remove roofing felt, any project that is 5580 square feet or greater is subject to the asbestos NESHAP."

It is important to note that this was an interpretative letter, and does not carry regulatory authority.

EPA "Clarification"

In the January 10, 1989 Federal Register, EPA proposed to clarify the full regulation, and asked for comments. NRCA submitted detailed comments and testified at hearings, where we expressed our concerns about some EPA interpretations of friability. Even though ACRM was generally considered to be non-friable, members were often receiving conflicting information, often from the same regulatory authority. Further, we testified that asbestos release resulting from ACRM removal is extremely low, even during "worst case" operations.

At this time, we also learned that EPA was considering expanding its definition of "friable" to include the word "break"; in other words, a material that could be broken would be considered friable. We were ultimately successful in persuading EPA that this would expand the scope of the definition far beyond the agency's intent.

In the Federal Register dated November 20, 1990, EPA issued its final rule on the asbestos NESHAPs revision. Unfortunately, this "clarification" raises more new questions than it answers old ones.

For example, the regulation says that certain non-friable materials such as floor tile, roofing products, packings and gaskets that are in good condition can be left in buildings being demolished because fiber release from these materials, even if they are damaged, is small compared to fiber release from friable materials. In other words, EPA apparently will permit a building with an asbestos-containing roof to be demolished, but will not permit a roof cutter to be used on the same roof.

In the final rule, EPA established a new definition called "Category I non-friable ACM." This category includes resilient floor covering, roofing products, gaskets, and packings. However, if these materials are in poor condition and are friable, or if they are subjected to sanding, grinding, cutting, or abrading, they are to be treated as friable asbestos material. Category I non-friable ACM that is in poor condition but is not friable and will not be subjected to sanding, grinding, cutting or abrading is not subject to NESHAPs.

EPA defines cutting as follows:

"Cutting means to penetrate with a sharp-edged instrument and includes sawing but does not include shearing, slicing, or punching."

Because the original rule did not include the word "cutting" in its definition, it is interesting that EPA considers this to be a "clarification" rather than an expansion of the rule. If it were an expansion, then EPA would be required to go through the normal rulemaking process, which includes providing the opportunity for groups like NRCA to comment, conducting a cost/benefit analysis, etc. We

have been in contact with compliance officials at EPA to attempt to better understand this "clarification."

EPA officials have told us that they consider a roof cutter to be a device that will "pulverize" asbestos-containing roofing material into friable material. However, the only material that is deemed to be friable is that which is dispersed from the saw itself, and not the ACRM that remains bound within the asphalt matrix. Therefore, the NESHAPs requirements would apply only to the dust, and not to the entire roof that is to be removed.

EPA officials have also told us that they do not believe that hand tools will render ACRM friable, in which case the regulation does not apply at all. (It is important to note that this is an interpretative determination that may be viewed differently by various EPA officials. EPA Area Directors are generally given a great deal of latitude in their enforcement activities.)

In addition, EPA officials have told us that the 5580 square foot interpretation is being revisited, and, while it is still in use by compliance officers, it is not mentioned in the new rule.

Other asbestos-containing roofing materials, of course, would be subject to NESHAPs as well. In order for such materials as transite board and asbestos cement shingles to be exempted from NESHAPs, they must be removed in a manner that will not cause the materials to be pulverized, crumbled, or reduced to powder when dry. For all roofing materials, careful handling and good work practices are critical for satisfying EPA requirements.

NESHAPs Requirements

When friable ACRM is present, i.e., when ACRM is released from a mechanical roof cutter or when other significantly damaged ACRM is being handled, then NESHAPs applies, **regardless of the level of exposure**. Under NESHAPs, the roofing contractor is responsible for the following:

1. Provide the EPA administrator with written notice of intention to demolish or renovate, 10 days in advance.
2. Adequately wet the materials to ensure they remain wet until they are collected for disposal in accordance with the regulation.
3. Carefully lower the materials to the ground or lower floor, without dropping or throwing them.
4. Transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped more than 50 feet above ground level and were not removed as units or in sections.

5. Deposit all asbestos-containing waste material at a waste disposal site operated in accordance with the provisions of the regulations.
6. Discharge no visible emissions to the outside air.
7. Provide at least one trained person on the job site (effective November 20, 1991).

NRCA Response

NRCA has requested meetings with top-level officials at EPA. We will ask for EPA to explain more specifically when NESHAPs applies to ACRM, and how roofing contractors are expected to comply with the regulation. We are also concerned, of course, that this November 20 "clarification" subjected asbestos-containing roofing materials to the EPA asbestos NESHAPs regulation when it was never intended to apply in the first place.

NRCA is also in the process of conducting additional testing on ACRM, so that future EPA interpretations can be more appropriately based on fact. EPA officials have told us that their interpretations were based on field observations and opinions as to applicability.

Contractor Compliance

Because the new rule is effective as of November 20, it is clear that EPA has the authority to enforce it subject to the interpretations as we've described them. Members preparing to commence roofing projects involving asbestos-containing materials should contact their local EPA Administrator for specific removal and disposal guidelines. A list of regional EPA offices is enclosed with this report for you to use.

It is vital that you continue to keep us informed. We are anxious to know what interpretations you receive, and what problems you encounter. We stand ready to intervene in your behalf should that be necessary.

Obviously, a good deal of work remains to be done, but we wanted to get the best current information to you as soon as possible. As always, please don't hesitate to call or write with your questions or concerns.

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REGION 3

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EPA REGIONAL OFFICES

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