



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN 3 2014

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mr. Michael A. Connolly  
Deputy City Attorney  
1 South School Avenue  
Suite 700  
Sarasota, Florida 34237

RE: Applicability of the Asbestos NESHAP as it Applies to the Small Residence Exemption

Dear Deputy City Attorney Connolly:

Thank you for your November 15, 2013 letter in which you request an applicability determination of EPA's asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation, 40 C.F.R. Part 61, Subpart M, as it applies to the small residence exemption as described in the *facility* definition (see §61.141 – Definitions). Your request includes a City of Sarasota drafted Memorandum (hereinafter called "Sarasota Memorandum") that lays out the facts of the particular situation you currently face, and includes your analysis of the asbestos NESHAP regulation and prior Agency determinations. The Sarasota Memorandum concludes that the Special Magistrate's ordered demolition of the single-family residential building, located at 1729 32<sup>nd</sup> Street; Sarasota, Florida, is not subject to the asbestos NESHAP due to the small residence exemption. You request the Agency's position on this property as it applies to the asbestos NESHAP.

Background

The asbestos NESHAP provides an exemption for a small residential building (a building containing four or fewer dwelling units) from the asbestos NESHAP regulation. This exemption is found in the *facility* definition. A *facility* is defined as:

*any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or*

*building that was previously subject to this subpart is not excluded, regardless of its current use or function. [Emphasis added].*

However, there are situations where a residential building, e.g., a single-family home, can be subject to the asbestos NESHAP regulation. To make such a source-specific determination, EPA assesses whether the residence was used for an institutional, commercial, public, or industrial purpose. Also, EPA assesses whether the residence was part of an installation<sup>1</sup> or a project<sup>2</sup>.

As referenced in the Sarasota Memorandum, EPA received a March 14, 2008 letter from the Arkansas Department of Environmental Quality requesting clarity on the applicability of the asbestos NESHAP “to city-ordered demolitions of multiple residential buildings for reasons of public health, welfare and safety.” The Arkansas Department of Environmental Quality anticipated that 20 to 100 homes would be demolished as part of one project for reasons of public health, welfare, and safety. EPA’s July 3, 2008 response reiterated the Agency’s position from the 1990 rulemaking and the July 28, 1995 Notice of Clarification (60 Fed.Reg. 38725), regarding the demolition of residential buildings. As EPA stated in 1995:

*EPA considers demolitions planned at the same time or as part of the same planning or scheduling period to be part of the same project. In the case of municipalities, a scheduling period is often a calendar year of fiscal year or the term of the contract<sup>3</sup>.*

In addition, Section IV of the 1995 Notice of Clarification (60 Fed.Reg. 38726) clarified the conditions under which a residential building (e.g., a single-family home) may not be subject to the asbestos NESHAP regulation. EPA stated:

*EPA believes that individual small residential buildings that are demolished or renovated are not covered by the asbestos NESHAP. This is true whether the demolition or renovation is performed by agents of the owner of the property or whether the demolition or renovation is performed by agents of the municipality. EPA believes that the residential building exemption applies equally to an individual small residential building regardless of whether a municipality is an "owner or operator" for the purposes of the demolition or renovation. EPA believes that the exemption is based on the type of building being demolished or renovated and the type of demolition or renovation project that is being undertaken, not the entity performing or controlling the demolition or renovation.*

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<sup>1</sup> The regulation defines *Installation* as “any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).” 40 C.F.R. § 61.141.

<sup>2</sup> See 60 Fed.Reg. 38725 (July 28, 1995). In particular, the third column reiterated that “EPA does not consider residential structures that are demolished as part of a commercial or public project to be exempt from this rule. . . .” *Id.* (quoting 55 Fed.Reg. 48406, 48412 (Nov. 20, 1990) and providing examples).

<sup>3</sup> See 60 Fed.Reg. 38725 (July 28, 1995). Footnote 1.

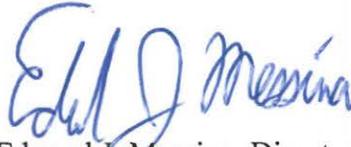
As described in the Sarasota Memorandum, the single family house on 1729 32<sup>nd</sup> Street was obtained by the City of Sarasota through an Order from the Special Magistrate with the expectation the house is to be demolished. There were no additional houses as part of the Order. It was not part of an installation. It was not associated with any private or public project. There is no indication that it is presently or was formally used for institutional, commercial, public or industrial purposes.

Response

Given the facts as presented in the Sarasota Memorandum and summarized above, the single-family residential house located at 1729 32<sup>nd</sup> Street, Sarasota, Florida, meets the conditions of a small residential building that **is not** subject to the asbestos NESHAP regulation. The house was not used for any institutional, commercial, public, or industrial purpose prior to the demolition. It is not part of an installation, nor part of any public or private project.

This response is based on information provided by the Deputy City Attorney for the City of Sarasota, Florida and has been drafted in consultation with the EPA Office of General Counsel, Office of Air Quality Planning and Standards, and the Office of Civil Enforcement.

Sincerely,



Edward J. Messina, Director  
Monitoring, Assistance, and Media Programs Division  
Office of Compliance