



January 14, 2016

Mr. Edward Messina
Director of Monitoring, Assistance and Media Programs Division
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington DC, 20460

RE: Clarification Regarding Non-Asbestos Containing Material (non-ACM) Documentation

Dear Mr. Messina:

The intent of this correspondence is to request written clarification on the type of documentation necessary to identify building components as non-ACM.

Over the past two decades, many building owners have required contractors and subcontractors on new building/new addition construction projects to provide documentation of non-ACM building component installation. This documentation has included the following:

- Material Safety Data Sheets (MSDSs) for installed products;
- Letters from the manufacturers stipulating that their products do not contain asbestos;
- Letters from the installers stipulating that the products that they have installed do not contain asbestos.

At the completion of the construction project, a binder of the above noted documentation would be provided to the building owner. With this binder in hand, the building owner would expect that when conducting renovation or demolition in the future, that the requirements to perform a thorough inspection for the presence of friable and non-friable asbestos under Section 61.145 (a) of the NESHAP Standard would be waived.

After conversations with a variety of EPA officials at both the EPA Region V and Washington DC, it appears that there is no consensus as to what type of documentation, short of conducting bulk sample collection and laboratory analysis, would be necessary to identify newly installed building components as non-ACM. Therefore, my questions are as follows:

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1. When planning a renovation or construction project, is the collection and analysis of bulk samples using Polarizing Light Microscopy (PLM) the only way to comply with the requirements of a thorough inspection under Section 61.145 (a) of the NESHAP Standard?
2. If not, exactly what type of documentation would be acceptable to the EPA for each building component to be impacted by renovation or demolition in order to comply with Section 61.145 (a) of the NESHAP Standard?

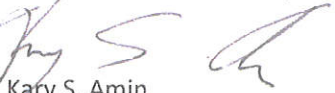
Nova Environmental Inc. strongly believes that, since asbestos is no longer mined in Canada, this is the right time for the EPA to re-introduce a ban on asbestos for use in building component products. Until there is a ban, a clarification on this issue will aid building owners in complying with the EPA's NESHAP Standard in the future.

I look forward to hearing from you soon.

Thank you for your time.

Sincerely,

NOVA ENVIRONMENTAL, INC.



Kary S. Amin
Vice President



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC 20460

AUG 15 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Kary S. Amin
Vice-President
NOVA Environmental, Inc.
5300 Plymouth Road
Ann Arbor, MI 48105

Dear Mr. Amin:

This letter provides a response to your January 14, 2016, letter to the U.S. Environmental Protection Agency (EPA) seeking clarification on the type of documentation required to identify building materials as non-asbestos containing material (non-ACM), in accordance with the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Part 61, Subpart M.

For any facility, irrespective of the date when the facility was constructed¹, the Asbestos NESHAP requires the owner/operator, prior to a renovation or demolition operation, to conduct a thorough inspection either of the whole facility or the portion of the facility that will be affected by the renovation or demolition operation. See 40 C.F.R. §61.145(a). The definitions for owner/operator, facility, renovation and demolition can be found at 40 C.F.R. §61.141.

The definitions for friable asbestos, non-friable asbestos, Category I non-friable asbestos and Category II non-friable asbestos all have one common requirement.² Each of the definitions identify Polarized Light Microscopy (PLM)³ as the test method to determine if building materials contains greater than one percent asbestos. In order to perform the PLM test, the owner/operator requires samples from building material(s) found in the facility that will be subject to the renovation or demolition operation.

¹ See 40 C.F.R. 763, Subpart I—Prohibition of the Manufacture, Importation, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products; Labeling Requirements for the few building materials banned in the United States. There is no complete ban on all asbestos-containing materials.

² See 40 C.F.R. §61.141 under Definitions

³ The test method, Polarized Light Microscopy, is found at 40 C.F.R. Part 763, Appendix E to Subpart E of Part 763—Interim Method of the Determination of Asbestos in Bulk Insulation Samples.

You state in your letter that building owners are relying on having in their possession the following documents and expect that the requirement to conduct a thorough inspection, 40 C.F.R. §61.145(a), would be waived.

- Letters from the manufacturers stipulating their products do not contain asbestos,
- Letters from the installers stipulating that the products that they have installed do not contain asbestos, and
- Material Safety Data Sheets (MSDS) for installed products.

Building owners, by relying on the above information in lieu of a thorough inspection, need to know that a written stipulation is not a guarantee for compliance purposes. It is not a common practice for the manufacturer or installer to provide PLM results that show the building material(s) are not asbestos-containing materials. EPA is aware of several situations where these stipulations were not a guarantee the building materials installed in buildings were non-asbestos containing materials. In these situations, follow-up testing on installed building materials showed some of the new building materials contained asbestos-containing materials. As to the MSDS, they are not reliable for ruling out the presence of asbestos. As stated in the Occupational Safety and Health Administration booklet entitled "Asbestos Standard For General Industry":

Labels or Material Safety Data Sheets (MSDSs) **are not required** where asbestos fibers have been modified by a bonding agent, coating, binder, or other materials, if the manufacturer can demonstrate that during handling, storing, disposing, processing, or transporting no airborne concentrations of fibers of asbestos in excess of PEL and/or EL will be released or if asbestos is present in a product in a concentration of less than 1.0 percent. [Emphasis added]. (OSHA 3095, 1995 revised, p.7)

The following are EPA's responses to your two questions from your January 14, 2016 letter.

Q1. When planning a renovation or construction project, is the collection and analysis of bulk samples using Polarizing Light Microscopy (PLM) the only way to comply with the requirements of a thorough inspection under Section 61.145(a) of the NESHAP Standard?

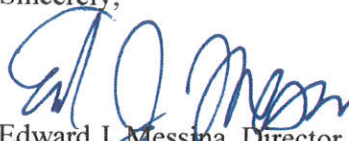
R1. The Agency did not define what constitutes a thorough inspection. That was left to the owner/operator to determine when considering a demolition or renovation operation. Recently, the Agency did respond to an inquiry about one method that, if followed as written in sections 1 through 5 and 8, would help provide a thorough inspection of the facility - ASTM E2356-14 "Standard Practice for Comprehensive Building Asbestos Surveys." The Applicability Determination Index is found at <http://cfpub.epa.gov/adi>, see #A150001. The owner/operator can comply with the asbestos NESHAP regulation by assuming building materials within the facility are asbestos-containing materials and follow the regulation, accordingly, or in accordance with §61.145(a) and the regulatory definitions of friable, non-friable, Category I non-friable or Category II non-friable asbestos-containing material, sample and analyze the building material(s) using PLM.

Q2. If not, exactly what type of documentation would be acceptable to the EPA for each building component to be impacted by renovation or demolition in order to comply with Section 61.145(a) of the NESHAP standard?

R2. Depending on the circumstances, there may be appropriate documents that show the asbestos-content or lack of asbestos-content for each building material. The documentation should provide information on how the asbestos-content was determined. However, for compliance purposes, PLM is the test method recognized in the regulatory definitions for asbestos-containing materials. EPA has elsewhere discussed how the procedures in EPA/600-93/116 ("Method for the Determination of Asbestos in Bulk Building Materials") can be consistent with the PLM procedures. See 60 Fed.Reg. 65243. One example where documentation would be acceptable is found in a school building's Management Plan. Under the Asbestos Hazardous Emergency Response Act (40 C.F.R. Part 763), school buildings are required to prepare a Management Plan that requires the local education agency to identify where asbestos-containing and suspect asbestos-containing materials are located within a school building. Samples of building materials are collected and analyzed using PLM. The results of those samples are placed in the Management Plan.

This response has been drafted in consultation with the EPA Office of General Counsel, and the Office of Air Quality Planning and Standards. EPA does not consider this response to be a final Agency action in response to a source's request for rule applicability. If you have further questions, contact Everett Bishop of my staff at (202) 564-7032 or at bishop.everett@epa.gov.

Sincerely,



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

cc: Steve Anderson, OGC
Susan Fairchild, OAQPS
Gregory Fried, OCE