

RENOVATION/DEMOLITION

1. Consult Management Plan for survey identifying material.
2. Determine which materials are involved in reconstruction.
3. Determine if materials are sampled in sufficient number and identified. Some materials may have been missing-we are human.
4. If necessary, collect additional samples to confirm initial findings.

Example:

1. Drywall and joint compound. Always collect additional samples.
2. Materials not covered by AHERA and not represented on the report.
 - A. Roofing.
 - B. Exterior stucco or other exterior building materials.
3. Materials not observed on inspection.
 - A. Hidden materials inside walls.
 - B. Hidden materials inside inaccessible attic spaces.
 - C. Sandwiched materials discovered during the course of renovation.
5. Bottom line - "when in doubt", collect additional samples.

FEDERAL REGISTER
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Tuesday, November 20, 1990
Rules and Regulations

Section 61.145(c)(10)

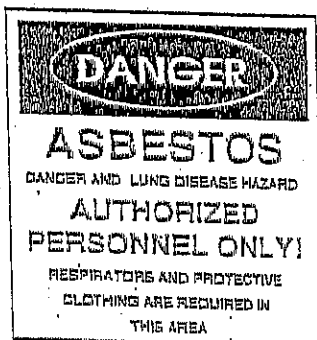
If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

FACT Sheet

California Department of Health Services Toxic Substances Control Program

ALTERNATIVE TECHNOLOGY DIVISION • July 1990

Asbestos Handling, Transport and Disposal



This Fact Sheet
was produced
by the Waste
Evaluation Unit to
assist generators
throughout the
State of California

Classification

The Department of Health Services (DHS) has classified friable, finely divided, and powdered wastes containing greater than one percent (1.0%) asbestos as hazardous waste. Asbestos includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite. A "friable" waste is one which can be reduced to a powder or dust under hand pressure when dry.

Non-friable, asbestos-containing wastes are considered to be nonhazardous (regardless of their asbestos content), and are not subject to regulation under Title 22, Division 4, Chapter 30 of the California Code of Regulations (CCR). The management of such wastes remains subject to any requirements or restrictions which may be imposed by other regulatory agencies operating under separate authority. The DHS classification standard is found in Section 66699 of Title 22, CCR. Asbestos is not presently regulated as hazardous waste under the Resource Conservation and Recovery Act (RCRA), and therefore, is considered to be a "non-RCRA" waste.

Test Method

Testing for asbestos in bulk samples must be done using the polarized light microscopy method described in the Federal Register, Volume 47, Number 103, Appendix A, pages 23376-23389, May 27, 1982 (also published in Title 40, Code of Federal Regulations (40 CFR), Part 763 as "Appendix A to Subpart F - Interim Method of the Determination of Asbestos in Bulk Insulation Samples". Asbestos quantitation is performed by a point-counting procedure or equivalent estimation method. Point-counting provides a determination of the *area percent asbestos*. Reliable conversion of area percent to percent of dry weight is not feasible unless the specific gravities and relative volumes of the materials are known.

Pursuant to Section 25198(a) of the California Health and Safety Code, testing for any purpose under the Hazardous Waste Control Law must be performed by laboratories which are certified for hazardous waste testing according to the requirements and procedures of Article 33, CCR. The Department certifies laboratories for bulk asbestos testing, but does not certify laboratories for air testing at this time. Current costs for bulk asbestos testing range from \$25 to \$100 per sample. The average cost is \$50 per sample.

Transport

In California, asbestos wastes totalling more than 50 lbs. must be transported by a registered hazardous waste hauler to an approved treatment, storage, or disposal facility. Pursuant to Section 25163(c) of the California Health and Safety Code, persons generating and transporting less than 50 lbs. of a hazardous waste to a permitted hazardous waste facility are exempt from this requirement (and the requirements concerning possession of the manifest while transporting hazardous waste) upon meeting all of the following conditions:

- The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.
- Different hazardous waste materials are not mixed within a container during the transporting.

The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces no more than 100 kilograms of hazardous waste in any month, and accumulates no more than 1000 kilograms at any one time.

Pursuant to 49 CFR 172.500, the U.S. Department of Transportation does not presently require placarding on transport vehicles for hazardous materials (such as asbestos wastes) which are classed as "Other Regulated Material" (ORM). Pursuant to 49 CFR 172.301, the proper D.O.T. shipping name and identification number must appear on all hazardous material containers of 110 gallons or less capacity. (This is the same shipping name and identification number which must appear on the manifest).

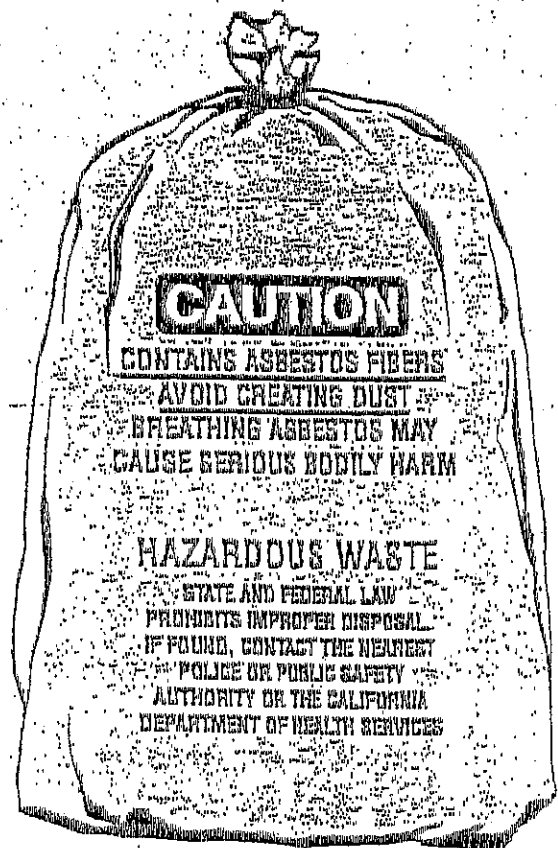
For further information regarding D.O.T. requirements contact the U.S. Department of Transportation, Division Office of Motor Carrier Safety:

Northern California - (916) 551-1300, Sacramento
Southern California - (818) 405-7110, El Monte

or the California Highway Patrol (CHP), Motor Carrier Safety Unit of the CHP Division Office nearest you (see telephone directory for local listing).

Manifests & Identification Numbers

Except as provided by Section 25163(c) of the Health and Safety Code, any hazardous wastes which are transported to a disposal site must be accompanied by a properly completed Uniform Hazardous Waste Manifest (Section 66472, CCR). To properly complete the manifest, the generator must obtain an EPA Identification (ID) number. *Permanent ID numbers* are issued to generators who routinely generate hazardous wastes. *Provisional ID numbers and*



emergency ID numbers are issued for one-time only situations and are valid for 90 days. A special provisional number is issued for asbestos containing wastes generated in the course of residential removals. For further information about ID numbers; to obtain provisional or emergency numbers; or to obtain an application for a permanent ID number, contact the DHS at (916) 324-1781.

The generator and disposal site operator must, on a monthly basis, return a copy of each manifest used to the Department.

Disposal site operators send to:

Department of Health Services
Toxic Substances Control Program
P.O. Box 3000
Sacramento, CA 95812

Generators send to:

Department of Health Services
Toxic Substances Control Program
P.O. Box 400
Sacramento, CA 95802

For copies of blank manifests write to:

Department of Health Services
Toxic Substances Control Program
Attn: Manifest Order Unit
714/744 P Street
P.O. Box 942732
Sacramento, CA 94234-7320

Pursuant to changes published in the Federal Register (Vol. 51, No. 225, November 21, 1986, page 42175) and corrected in the Federal Register of February 17, 1987 (Vol. 52, No. 31, page 4824) the proper U.S. DOT description for waste asbestos is:

RC Hazardous Substance, Solid,
N.O.S. ORM-E NA 9188 (Asbestos)

DISPOSAL

Pursuant to Section 25143.7 of the Health and Safety Code, wastes containing asbestos may be disposed of at any landfill which has waste discharge requirements issued by a Regional Water Quality Control Board that allow the disposal of such waste, provided that the wastes are handled and disposed of in accordance with the Toxic Substances Control Act (P.L. 94-469) and all applicable laws and regulations. Provisions of the Toxic Substances Control Act (TSCA) are found in Title 40, Code of Federal Regulations, Part 763.

Other applicable laws and regulations include the Clean Air Act's National Emission Standards for Hazardous Air Pollutants (NESHAP) and Title 22, California Code of Regulations, Division 4, Chapter 30 (Minimum Standards for the Management of Hazardous and Extremely Hazardous Wastes). The National Emission Standard for Asbestos is found in Title 40, Code of Federal Regulations, Part 61, Subpart M. In the Federal Register of January 10, 1989 (Volume 54, No. 6, pages 912-937) EPA proposed revisions to the Asbestos NESHAP. A final rule is expected by late 1990.

The Department does not maintain a list of disposal sites accepting asbestos waste. For information on disposal sites, contact the Regional Water Quality Control Board nearest you (see telephone directory for local listing).

Specific requirements for the operation of active and inactive disposal sites are found in Title 40, Code of Federal Regulations, Part 61, Subpart M. Additional guidance on disposal is found in the May 1985 "Asbestos Waste Management Guidance" by EPA (EPA 530-SW-007). The Department does not require Class III facilities or monofills accepting asbestos to obtain hazardous waste facility permits.

Pursuant to the Hazardous Waste Management Act of 1986 (Roberti, 1986) the Department is required to adopt treatment standards for all hazardous wastes, including hazardous asbestos wastes. As part of this program, the asbestos generator must submit a notification and a certification form to the land disposal

facility accepting this restricted waste (the Department has sample notification and certification forms).

The Department expects to adopt criteria for land disposal of asbestos waste in the next 12 months.

Fees and Taxes

State law imposes a fee and tax on the land disposal of hazardous waste. Additionally, a fee is imposed on generators of five tons or more/site/year of hazardous waste (regardless of disposition).

Land Disposal Fee and Tax

The Hazardous Waste Control Account (HWCA) land disposal fee is payable quarterly or semi-annually directly by generators who have disposed of more than 500 pounds per year of wastes to land. If the asbestos disposed involved 500 pounds or less, the disposal fee is payable by the facility which accepted the waste. If the disposal involves more than 500 pounds, the manifest should include the generator's Board of Equalization taxpayer number (listed in Section "B" of the manifest i.e. under state required items in the shaded portion). A Board of Equalization taxpayer number can be obtained from the Board by calling (916) 739-2582. Additional information on current hazardous waste fees and taxes can be obtained from the Board of Equalization at this same number, or the Department of Health Services at (916) 324-1826.

The annual Hazardous Substance Account (HSA) land disposal tax is payable July 1 of each year. The HSA tax is calculated after the Board of Equalization receives disposal returns due March 1 of each year. Persons who disposed of more than 500 pounds per year of asbestos will be billed directly by the Board of Equalization.

Generator Fee

State law imposes a fee on generators of 5 tons or more/site/year of hazardous waste regardless of disposition. The fee is payable directly by the generator, who is billed annually by the Board of Equalization.

OBTAINING FURTHER ASSISTANCE

For additional information on DHS regulations governing the management of asbestos wastes in California, write or call the Toxic Substances Control Program office nearest you:

Department of Health Services
Region 1/Sacramento
Toxic Substances Control Program
10151 Croydon Way
Sacramento, CA 95826
(916) 855-7700

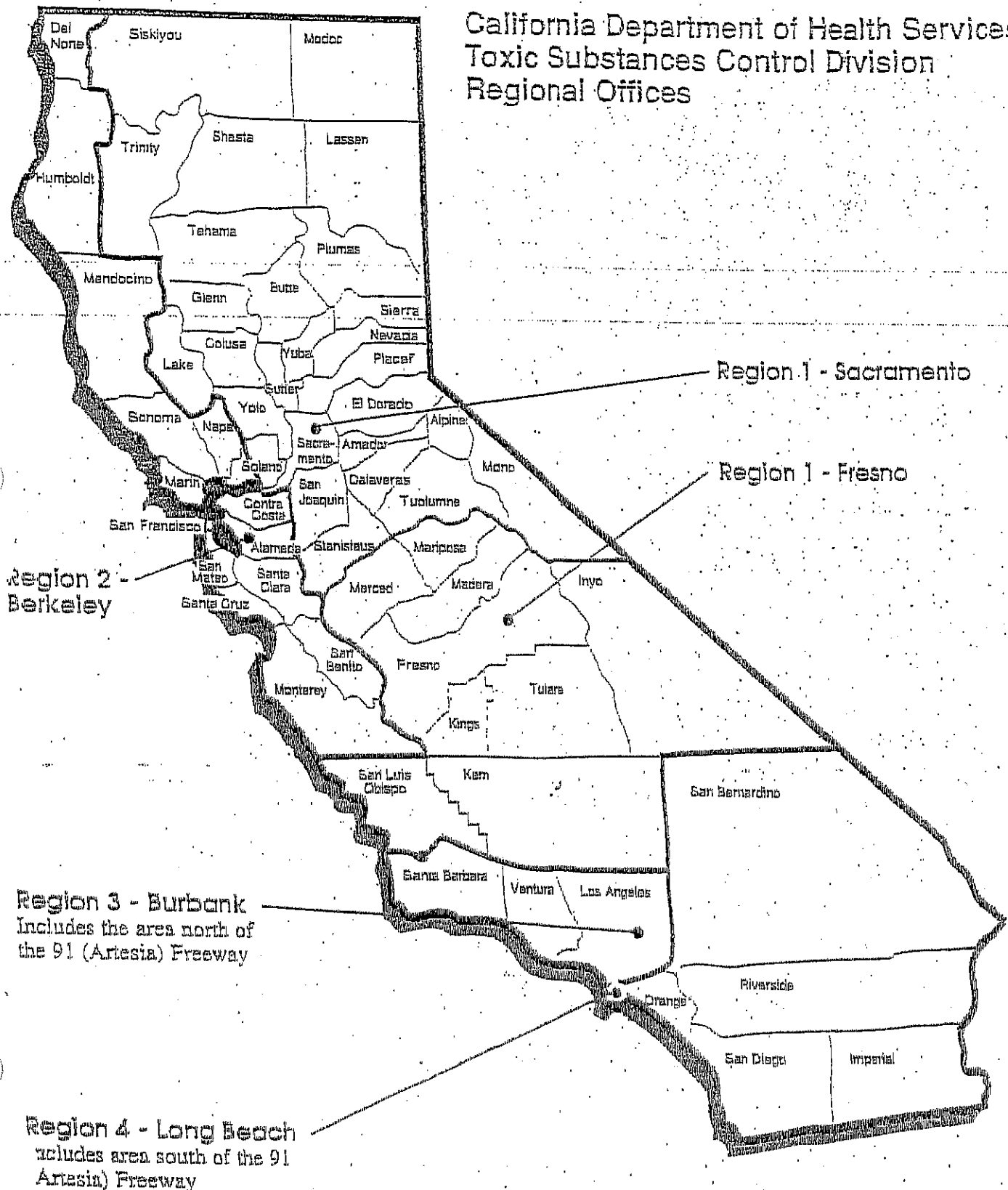
Department of Health Services
Region 1/Fresno
Toxic Substances Control Program
5545 East Shields Avenue
Fresno, CA 93727
(209) 445-5938

Department of Health Services
Region 2/Berkeley
Toxic Substances Control Program
700 Heinz Ave., Bldg. F
Berkeley, CA 94710
(415) 540-2122

Department of Health Services
Region 3/Burbank
Toxic Substances Control Program
1405 North San Fernando Blvd.
Suite 300
Burbank, CA 91504
(818) 567-3000

Department of Health Services
Region 4/Long Beach
Toxic Substances Control Program
245 West Broadway, Room 350
Long Beach, CA 90802
(213) 590-4868

California Department of Health Services
Toxic Substances Control Division
Regional Offices



Other agencies that regulate asbestos wastes in California are:

- **California State Licensing Board**
Effective January 1, 1987, asbestos removal and abatement contractors have to be certified by the State Licensing Board (Section 7058.5, Business and Professions Code). Effective July 1, 1989, state law prohibits any person from advertising for the removal of asbestos unless certified for that work and requires any person advertising asbestos removal services to include his or her certification and (Cal-OSHA) registration number in that advertising (Section 7030.6, Business and Professions Code).

For further information on the certification requirement, steps to take when contracting with a company to remove asbestos, existing laws and regulations pertaining to asbestos-related work in California, basic health information, or to obtain a list of certified contractors, call the State Licensing Board at (916) 366-5153.

- **Cal-OSHA**
A contractor must register with Cal-OSHA's Carcinogen Unit prior to any work involving asbestos (Section 6501.5, Labor Code). Call (415) 557-2037 for information on registration and notification requirements. Questions concerning occupational standards should also be addressed to Cal-OSHA.
- **Local Air Pollution Control District**
Many of the Local Air Pollution Control Districts in California have been given authority to enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) which include asbestos. In addition, these local agencies have special notification requirements when asbestos demolition or renovation operations are undertaken. Some of these agencies charge an operation fee. Check local listings to contact these agencies for further information.
- **U.S. Environmental Protection Agency (EPA)**
EPA has notification requirements pertaining to asbestos demolition and renovation operations. Call (415) 974-7633 for further information regarding

NESHAP rule compliance. For information regarding asbestos identification, health effects, abatement options, analytical techniques, monitoring, asbestos in schools, and contract documents, call the EPA Regional Asbestos Coordinator at (415) 974-7551.

Other sources of information and assistance include:

- **EPA TSCA Hotline**
Washington, D.C. (202) 554-1404. General information concerning federal requirements in the areas of industrial and commercial notification procedures, school programs, analytical methods, abatement projects, and product use restrictions.
- **Pacific Asbestos Information Center**
U.C. Extension, Berkeley, CA. (415) 643-7143. Continuing education and training for individuals and groups involved in the management, evaluation, and abatement of asbestos hazards.
- **Consumer Product Safety Commission**
Washington, D.C. (800) 638-2772. Information concerning the identification and abatement of asbestos hazards in the home. Information on asbestos in certain consumer products is also available.
- **Toxic Information Center**
San Francisco, CA. in-state (800) 233-3360, out-of-state (415) 821-5338. A general information service. Specific information on asbestos in residential settings is also available.
- **National Asbestos Council**
Decatur, GA. (404) 633-2622 Collects, generates, and disseminates information to building owners, interested professionals, and the public concerning asbestos in buildings.
- **Labor Occupational Health Program**
Berkeley, CA. (415) 642-5507. Addresses concerns regarding occupational exposure.
- **Asbestos Information Association**
Arlington, VA. (703) 979-1150. General information with emphasis on safety, health and environmental issues. Informational materials are available through the Association.

STATE OF CALIFORNIA-HEALTH AND WELFARE

DEPARTMENT OF HEALTH SERVICES

Toxic Substances Control Program

P.O. Box 942752

Sacramento, CA 94234-7320

EPA

**NATIONAL EMISSION STANDARDS
FOR
HAZARDOUS AIR POLLUTANTS
(NESHAP)**

Your renovation or demolition plans must take into consideration the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants (NESHAP). The November 20, 1990 revisions of the NESHAP regulations require the following:

- Inspection for asbestos-containing materials prior to any renovation or demolition.
- Laboratory analysis of materials to determine if their asbestos content is greater than 1%, and, therefore regulated by NESHAP.
- Removal prior to renovation or demolition of asbestos-containing materials (>1% asbestos) in excess of 260 linear feet, 160 square feet or 35 cubic feet.
- Utilization of specified work practices during asbestos abatement.
- Proper labeling of disposal containers.
- Disposal of asbestos waste material at a designated landfill.
- Written notification to U.S. EPA of the start and completion dates of asbestos abatement activities, work practices and procedures, and other information.



40 CFT PART 61 NESHP (NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS)

Effective November 20, 1990

Notification to EPA and/or Local Quality Control District

1. Renovation: If 260 Linear Feet on Pipes
160 Square Feet
35 Cubic Feet

In the case of planned renovations, the amount of material is determined by adding up the amount that will be removed or stripped during a calendar year from January 1 through December 31.

2. All Demolitions
3. Notifications Must be Postmarked 10 Working Days Prior to Activity
4. Renotification: If the Amount of ACM Changes by 20%
If the Start Date Changes

Waste Manifest and Waste Shipment Record (WSR)

1. Indicate on the Waste Manifest the Cubic Yards of Friable Asbestos
2. Indicate on the Waste Manifest the Cubic Yards of Non-Friable Asbestos

Generator's Responsibilities

1. If a copy of the manifest is not received within 35 days of the waste being received by the transporter, then you must contact the transporter or waste site operator.
2. If a signed copy of the manifest is not received within 45 days, then you must submit to EPA (and Air Quality) an exemption report.

Applicability of NESHP

1. Friable ACM
2. Non-Friable ACM That has a High Probability of Becoming Friable During Demolition or Renovation
3. Non-Friable ACM in Poor Condition or Subjected to Sanding, Grinding, Cutting, or Abrading



40 CFR Part 61 NESHAP
Page Two

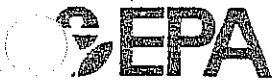
New Definition of "Asbestos Material"

Any material containing more than 1% asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763 Section 1, Polarized Microscopy.

If the asbestos content is less than 10% as determined by a method other than point counting by PLM, verify the asbestos content by point counting using PLM.

Visual Evaluation
Point Counting

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Environmental News

FOR RELEASE: THURSDAY, JULY 6, 1989

Luke Hester 202-382-4383

EPA ANNOUNCES FINAL REGULATION TO BAN NEW ASBESTOS PRODUCTS

The U.S. Environmental Protection Agency today banned almost all asbestos-containing products in the United States in stages over the next seven years. The ban will apply to new product manufacture, importation and processing. It affects at least 94 percent of U.S. production and imports, based on 1985 production-volume estimates.

"This is pollution-prevention. We're eliminating a known cancer-causing substance from the marketplace. Virtually all asbestos-containing products will be replaced with safer alternatives," said EPA Administrator William K. Reilly.

The final rule, promulgated under the Toxic Substances Control Act (section 6), bans manufacturing, importing, and processing of most U.S. asbestos products in three stages, beginning with certain products on Sept. 1, 1990, and with others on the same date in 1993 and 1996. Corresponding bans on distribution will occur in 1992, 1994 and 1997. A primary factor in determining the stage at which a category of products should be banned was the agency's projection of the availability of a safe substitute for each asbestos product. (A list of the banned products and phaseout stages is attached).

The rule bans, among other things, the use of asbestos in automotive vehicle brakes, beginning with 1994 models. Replacement brakes must be made of non-asbestos products by 1996. The rule also bans asbestos in most automotive and other gaskets in 1993 and the production of asbestos/cement pipe and asbestos shingles in 1996. Also in 1996, the use of asbestos in roof and other coatings will be banned.

Estimated costs are about \$459 million over 13 years.

Exposure to asbestos, a fibrous mineral, has been linked to a number of fatal diseases, including lung cancer, mesothelioma (a cancer of the chest and abdominal linings), gastro-intestinal cancer and asbestosis. It also is associated with a variety of other diseases. Controlling the risks posed by asbestos exposure has been especially troublesome because asbestos fibers are odorless, typically minute in size, easily suspended in air and extremely durable. Humans often are exposed unknowingly to asbestos fibers with little means of protection.

Asbestos has been in widespread use in many important industrial, construction and other applications in the United States since early in this century. Although the use of asbestos has declined significantly since this rulemaking was initiated in 1979, from 561,000 metric tons to less than 85,000 metric tons today, there is continued significant use in a variety of products.

Despite government actions to reduce asbestos emissions in the workplace, fibers continue to be released during the production, use and disposal of asbestos products. These ongoing additions of asbestos fibers into the environment pose a significant risk to current and future populations in the United States and are unnecessary since safer substances can be substituted for asbestos in the products in question.

Reilly recommended against unnecessary replacement of certain asbestos-containing products.

"Disturbing asbestos brakes, shingles or siding already in place, when there is no health or safety reason to do so, can cause a much greater health hazard than leaving them in place. If asbestos-containing products must be replaced, consumers should seek professional advice and assistance in identifying safe substitutes and in properly removing the asbestos product," Reilly said.

Reilly noted that the ban and phasedown rule announced today does not affect existing asbestos materials in commercial or public buildings. Building owners should continue to use trained professionals to inspect and assess the condition of asbestos-containing materials before deciding whether abatement action is appropriate.

Minimal economic impact is expected from the elimination of asbestos because of the availability of safe substitutes, such as wood-based products, e.g., cellulose fiber products, and construction products made of brick and concrete.

Reilly added that the rule's ban of asbestos/cement pipe or other products "should not be seen as a signal to other nations, especially developing countries, that use of these products should be discontinued. The actions taken in this rule are based on an evaluation of the specific uses of these products in the United States, the availability of substitutes

Asbestos Ban

July 6, 1989

STATUS OF ASBESTOS PRODUCTS UNDER RULE

First Stage Ban--One year after promulgation (1990)

Second Stage Ban--Four years after promulgation (1993)

Third Stage Ban--Seven years after promulgation (1996)

OEM motor vehicle brakes--effective with the next model year after the second stage ban

First Stage Ban

Felt Products

- Pipeline wrap
- Roofing felt
- Flooring felt

A/C Products

- A/C sheet, corrugated
- A/C sheet, flat

Products out of use

- V/A floor tile
- Asbestos clothing

Second Stage Ban

Friction Products

- Drum brake linings (OEM)
- Disc brake pads, LMV (OEM)
- Disc brake pads, HV (OEM)
- Clutch facings
- Automatic transmission components
- Industrial and commercial friction products

Gaskets

- Beater-add gaskets (except some industrial uses)
- Sheet gaskets (except some industrial uses)

Third Stage Ban

Coatings

- Roof coatings
- Non-roof coatings

Paper Products

- Commercial paper
- Rollboard
- Millboard
- Corrugated paper
- Specialty paper

Friction Products

- Brake blocks (OEM)
- Brake blocks (AM)
- Drum brake linings (AM)
- Disc brake pads, LMV (AM)
- Disc brake pads, HV (AM)

A/C Products

- A/C pipe
- A/C shingle

Not Banned

Missile liner

- Asbestos diaphragms
- Battery separators
- Arc chutes
- Acetylene cylinders
- Asbestos thread
- Asbestos reinforced plastic
- Sealant tape
- Electrical paper
- Asbestos packings
- Some industrial uses of sheet gaskets
- Some industrial uses of beater-add gaskets
- Mining and milling

in the U.S. market and other factors that may be unique to this country. A similar evaluation should be performed in other countries which rely heavily on the use of asbestos products before they decide whether any similar action is appropriate," Reilly said.

Publication of the final rule in the Federal Register is scheduled for July 12. The first stage ban is scheduled to take effect Aug. 27, 1990. For further information, contact the TSCA Assistance Office (TS-799), U.S. Environmental Protection Agency (Room EB-44), Washington, D.C. 20460, 202-554-1404, TDD 202-554-0551.

R-130.

#

Thursday
April 2, 1992

Part III

Environmental
Protection Agency

40 CFR Part 763

Asbestos; Manufacture, Importation,
Processing and Distribution Prohibitions;
Effect of Court Decision

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 763

[OPPTS-62114; FRL-4044-2]

Asbestos; Manufacture, Importation,
Processing and Distribution
Prohibitions; Effect of Court DecisionAGENCY: Environmental Protection
Agency (EPA).ACTION: Continuing restrictions on
certain asbestos-containing products.

SUMMARY: On October 18, 1991, the United States Court of Appeals for the Fifth Circuit, in *Corrosion Proof Fittings v. EPA*, No. 89-4596, slip op. 558 (Oct. 18, 1991), vacated and remanded most of the rule which prohibited the manufacture, importation, processing, and distribution in commerce of certain asbestos-containing products, and required the labeling of those products. Subsequently, the Court clarified the decision and held that the rule continued to govern asbestos-containing products that were not being manufactured, imported, or processed on July 12, 1989. This document identifies products that EPA believes may remain subject to the prohibition and labeling requirements of the rule, and solicits comments on EPA's determinations with respect to the status of various other asbestos-containing products as of July 12, 1989.

DATES: Comments must be submitted to EPA on or before May 4, 1992.

ADDRESSES: Written comments that contain information claimed as Confidential Business Information (CBI) should be identified by the docket number [OPPTS-62114] and submitted in triplicate, together with one version from which all claimed CBI has been deleted, to: TSCA CBI Docket Office (TS-790), Office of Pollution Prevention and Toxics, rm. E201, 401 M St., SW., Washington, DC 20460. Written comments that contain no claimed CBI should be submitted to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, rm. G004, NE Mall, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Assistance Division (TS-799), Office of Pollution Prevention and Toxics, rm. E-545, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202) 260-1404. TDD: (202) 554-0551.

I. Background

On July 12, 1989, EPA issued a final rule under section 6 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605. The rule prohibited, at staged intervals, the future manufacture, importation, processing, and distribution in commerce of almost all asbestos-containing products, and required labeling of such products (40 CFR 763.160-763.179). The first stage of the ban regulated any "new uses of asbestos," and certain specifically identified asbestos-containing products. "New uses of asbestos" means those commercial uses of asbestos not identified in 40 CFR 763.165, and not excluded specifically by the definition, the manufacture, importation, or processing of which would be initiated for the first time after August 25, 1989 (40 CFR 763.163). After August 27, 1990, the rule banned the manufacture, importation, and processing of all stage one products, and required that those products be labeled while they remained in distribution (40 CFR 763.165(a), 763.167(a), 763.171(a)). After August 27, 1992, the rule also prohibited the distribution in commerce of all stage one products (40 CFR 763.169(a)). The second and third stages of the ban regulated additional types of asbestos-containing products. These two later stages of the rule contained provisions that were comparable to the first stage, but that were to take effect from 1992 through 1997 (40 CFR 763.165(b)-(e), 763.167(b) and (c), 763.169(b)-(d), 763.171(b) and (c)).

In *Corrosion Proof Fittings*, the Court agreed with EPA's determination that asbestos is hazardous and presents similar risks throughout different industries, and affirmed the Agency's authority to issue rules that ban all uses of a toxic substance under TSCA. The Court, however, held that the asbestos ban rule was not supported by substantial evidence because EPA failed to sustain its burden under TSCA section 6(a) of showing that the products banned by the rule present an unreasonable risk, and that a less burdensome regulation would not adequately protect against that risk. The Court also found that EPA failed to give adequate notice and opportunity to comment on the use of analogous exposure data to support parts of the rule. For products that "once were, but no longer are, being produced," however, the Court found that EPA properly evaluated the risks. *Id.* at 590-591. It held that TSCA authorizes EPA to ban future uses of asbestos, and specifically refused to "disturb the

no longer are being produced in or imported into the United States." *Id.* at 591.

EPA filed a Motion for Clarification with respect to the effect of the Court's decision on the portions of the rule that regulate asbestos-containing products that were no longer being produced or imported. In response to the Motion, the Court stated that its earlier holding not to disturb EPA's decision to ban certain products applies to "products that were not being manufactured, imported, or processed on July 12, 1989," the date the final rule was issued. *Corrosion Proof Fittings*, slip op. at 1007 (November 15, 1991). It also authorized EPA to resolve factual disputes with respect to the particular products that may be in that category. *Id.* In light of this clarification, it is clear that the Court did not disturb the rule with respect to products that were originally covered by the rule, and that were not being manufactured, imported, or processed on July 12, 1989. The Court did not require the Agency to go through an entirely new rulemaking process for these products. It did, however, recognize that there may be some disagreements regarding the status of some products, and it authorized EPA to resolve such factual disputes on remand.

EPA also filed a Request for Rehearing, which the Fifth Circuit denied on November 27, 1991. The Government has decided not to file a petition for a Writ of Certiorari to the United States Supreme Court.

II. Status of Products

Based upon the Court's clarified decision, EPA believes that new uses of asbestos, vinyl/asbestos floor tile, and asbestos flooring felt products are still subject to the rule. By definition, any product that constitutes a "new use of asbestos" was not being manufactured, imported, or processed on July 12, 1989. A "new use of asbestos" is defined as a use that is initiated for the first time after August 25, 1989 (40 CFR 763.163). Based upon this definition, any product that was being manufactured, imported, or processed on July 12, 1989, automatically cannot be a "new use" of asbestos because it would have been initiated prior to August 25, 1989. Thus any product that is a "new use of asbestos" was not being manufactured, imported, or processed on July 12, 1989, and continues to be governed by the rule pursuant to the Court's clarified decision (40 CFR 763.163).

The information available to EPA as part of the rulemaking proceeding also

manufactured, imported, or processed when the final rule was issued. EPA made such a determination in the preamble to the final rule (54 FR 29460, 29484, 29492, July 12, 1989), and in the Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products. That determination was later substantiated in part by statements made to the Fifth Circuit Court of Appeals by the Asbestos Information Association of North America (AIA) and the Asbestos Institute (AI), which represent members of the asbestos industry. The two organizations told the Court that vinyl/asbestos floor tile and flooring felt were no longer produced in the United States. Recent communications from AIA, AI, and other entities, however, raise some questions about the status of these products. Therefore, EPA is requesting comments with respect to whether these products were being manufactured, imported, or processed on July 12, 1989.

Based upon information currently available to the Agency, EPA also believes that the following products may be subject to the rule: asbestos-cement (A/C) corrugated and flat sheet, A/C shingle, and asbestos clothing, flooring felt, pipeline wrap, roofing felt, commercial, corrugated and specialty paper, rollboard, and millboard. Both the AIA and the AI stated in their appeal to the Fifth Circuit that these products were not in production at the time the final rule was issued. Recent EPA efforts also indicate that these products probably were not being manufactured, imported, or processed when the final rule was issued, and the Agency is soliciting comments with respect to their status as of July 12, 1989.

Finally, there may be other asbestos-containing products identified in the rule that were not being manufactured, imported, or processed on July 12, 1989, and which therefore may continue to be subject to the rule. In the original rulemaking proceeding, EPA did not identify the status of every asbestos-containing product as of July 12, 1989. Accordingly, EPA seeks information concerning whether any of the other asbestos-containing products, which were identified in the rule but not discussed in the preceding paragraphs of

this document, were being manufactured, imported, or processed on July 12, 1989.

Commentators submitting information with respect to the July 12, 1989, status of asbestos-containing products should provide supporting documentation for any claims of manufacturing, processing, or importing as of that date. Such documentation may include records of customs declarations, or evidence of manufacturing or processing on the pertinent date.

As soon as possible after reviewing the comments, EPA will determine which asbestos-containing products were not being manufactured, imported, or processed as of July 12, 1989. The Agency will issue its determination in the Federal Register, and identify the products, in addition to new uses of asbestos, that continue to be governed by the prohibition and labeling requirements of the rule. The second notice also will provide information, to the extent that it is available to the Agency, on products that are not subject to the rule, including a list of specific asbestos-containing products and of the companies that were manufacturing, importing, or processing the products on July 12, 1989.

III. Comments Containing Confidential Business Information

All comments will be placed in the public record unless the commentator claims that they contain CBI and the comments are clearly labeled as containing claimed CBI when they are submitted. Because of the need to expedite this process, CBI claims should be accompanied by comments substantiating the claim as described in 40 CFR 2.204(e)(4). While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted to EPA for the public file.

It is the responsibility of the commentator to comply with 40 CFR part 2 so that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that information

claimed to be CBI is included, or marking "CONFIDENTIAL," "TSCA CBI," or a similar designation on the face of each document or attachment in the comment which contains the claimed CBI. EPA will consider the failure to clearly identify the claimed confidential status on the face of the comment as a waiver of any such claim and will make such information available to the public without further notice to the commentator or business.

IV. Record

EPA has established a record (docket number OPPTS-62114) for comments submitted pursuant to this document, and for other comments regarding the July 12, 1989, status of asbestos-containing products received by EPA before this document but after the Fifth Circuit decision. The Agency will supplement this record as necessary. A public version of the record, from which all CBI has been deleted, is available for inspection in the TSCA Public Docket Office, rm. G004, NE Mall, 401 M St., SW., Washington, DC, from 8 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

EPA has placed copies of the Fifth Circuit Court's decision, dated October 18, 1991, and Clarification of the decision, dated November 15, 1991, in Docket OPPTS-62114 for public review. These documents are:

1. Decision of the U.S. Court of Appeals for the Fifth Circuit in *Corrosion Proof Fittings, et al., petitioners, vs- The Environmental Protection Agency and William K. Reilly, Administrator, respondents*, No. 89-4596 (5th Cir., Oct. 18, 1991).
2. U.S. Fifth Circuit Court of Appeals Clarification of its Decision in *Corrosion Proof Fittings, et al., petitioners, vs- The Environmental Protection Agency and William K. Reilly, Administrator, respondents*, No. 89-4596 (5th Cir., Nov. 15, 1991).

Dated: February 28, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92-7236 Filed 4-1-92; 8:45 am]

BILLING CODE 5550-50-F

The following Carcinogen "Report of Use" form by Cal/OSHA must be filled in and sent to Cal/OSHA if the employer chooses to perform asbestos abatement by his/her own employees.

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
OCCUPATIONAL CARCINOGEN CONTROL UNIT

455 Golden Gate Ave, 10th floor
San Francisco, CA 94102



ADDRESS REPLY TO:
DOSH - OCCU
P.O. Box 420603
San Francisco, CA 94142

Report of Use Number: _____

REPORT OF USE
OF REGULATED CARCINOGENS

Title 8 California Code of Regulations requires reporting the use of regulated carcinogens to the Division of Occupational Safety and Health. The list below indicates those carcinogens currently regulated and references the appropriate Title 8 Section numbers (in bold) which specify the reporting requirements. Completion of the information below meets these requirements for Report of Use.

Any change in location, use, additions, or deletions of carcinogens used in your workplace, must be reported within 15 calendar days. Exceptions: 10 days for carcinogens in Sections 5212, 5219, 5220.

A copy of each written report required by the section is required to be posted in the locations where the carcinogens are present in the workplace or in another appropriate location where the posting is conspicuous to employees.

- | | |
|---|---|
| <input type="checkbox"/> 2-Acetylaminofluorene, 5209 | <input type="checkbox"/> Methylenedianiline (MDA), 1535, 5200 |
| <input type="checkbox"/> 4-Aminodiphenyl | <input type="checkbox"/> Cadmium, 1532, 5207 |
| <input type="checkbox"/> Benzidine (and its salts) | <input type="checkbox"/> Asbestos, 1529, 5208, 5208.1, 8358 |
| <input type="checkbox"/> 3,3'-Dichlorobenzidine (and its salts) | <input type="checkbox"/> Vinyl Chloride, 5210 |
| <input type="checkbox"/> 4-Dimethylaminoazobenzene | <input type="checkbox"/> Coke Oven Emissions, 5211 |
| <input type="checkbox"/> alpha-Naphthylamine | <input type="checkbox"/> 1,2-Dibromo-3-Chloropropane (DBCP), 5212 |
| <input type="checkbox"/> beta-Naphthylamine | <input type="checkbox"/> Acrylonitrile, 5213 |
| <input type="checkbox"/> 4-Nitrobiphenyl | <input type="checkbox"/> Inorganic Arsenic, 5214 |
| <input type="checkbox"/> N-Nitrosodimethylamine | <input type="checkbox"/> 4,4'-Methylenebis(2-Chloroaniline) (MBOCA), 5215 |
| <input type="checkbox"/> beta-Propiolactone | <input type="checkbox"/> Formaldehyde, 5217 |
| <input type="checkbox"/> bis-Chloromethyl ether | <input type="checkbox"/> Benzene, 5218 |
| <input type="checkbox"/> Methyl chloromethyl ether | <input type="checkbox"/> Ethylene Dibromide (EDB), 5219 |
| <input type="checkbox"/> Ethyleneimine | <input type="checkbox"/> Ethylene Oxide (EtO), 5220 |
| <input type="checkbox"/> Methylene Chloride, 5202 | <input type="checkbox"/> 1,3 Butadiene, 5201 |

Employer/Company and Division name

Telephone number

Address: Number and Street

City

County

Zip

(If there has been a change, write the previous name; address; report number)

Original signature and title of responsible representative Date

(please print name)

1. Provide the name of each carcinogen and a brief description of each process or operation which may result in employee exposure to the carcinogens.

2. The location in each workplace where the carcinogen(s) is/are present or used.

3. The number of employees engaged in each process or operation.

4. The name and address of any collective bargaining representative(s), or other representatives of the employees.

6. Nature of Business: Indicate the Standard Industrial Classification Code or, if unknown, the industry and principal product(s).

When completed this form should be mailed or faxed to the Division of Occupational Safety and Health at:

Mailing address: DOSH - OCCU
P.O. Box 420603
San Francisco, CA 94142

Fax number: (415) 703 5190