

refinery equipment; Manufacture of synthesized pharmaceutical products; Manufacture of pneumatic rubber tires; Automobile and light duty truck manufacturing; Fire truck and emergency response vehicle manufacturing; Manufacture of high-density polyethylene, polypropylene, and polystyrene resins, a.k.a. polymer manufacturing; Leaks from synthetic organic chemical and polymer manufacturing equipment; Air oxidation processes at synthetic organic chemical manufacturing industries; and Equipment leaks from natural gas/gasoline processing plants. These negative declarations are approved into the Wisconsin ozone SIP.

(B) On June 30, 1994, Wisconsin submitted a list of facilities subject to the post-enactment source categories listed in Appendix E to the General Preamble. 57 FR 18070, 18077 (April 28, 1992). The list included facilities covered by the source categories cleanup solvents, offset lithography, plastic parts coating, and wood furniture coating. This list is approved into the Wisconsin ozone SIP.

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#### 40 CFR Part 61

[FRL-5266-2]

#### Asbestos NESHAP Clarification of Intent

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of clarification.

**SUMMARY:** On November 20, 1990, the **Federal Register** published the Environmental Protection Agency's (the Agency's) revision of the National Emission Standard for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M. 55 FR 48406. Since the publication of this revision, EPA has received several inquiries from municipalities regarding whether the "residential building exemption" from the asbestos NESHAP applies to the demolition or renovation of isolated residential buildings with four or fewer dwelling units ("small residential buildings") that have been declared safety hazards or public nuisances by local governments. EPA is publishing this notice to clarify that, in EPA's opinion, the demolition or renovation of an isolated small residential building by any entity is not covered by the asbestos NESHAP. This notice does not affect EPA's policy regarding demolition by fire. However,

EPA also believes that the demolition or renovation of multiple (more than one) small residential buildings on the same site by the same owner or operator (or owner or operator under common control) is covered by the asbestos NESHAP.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Tom Ripp, United States Environmental Protection Agency (2223A), 401 M Street, SW., Washington, DC 20460, telephone (202) 564-7003.

**SUPPLEMENTARY INFORMATION:** This clarification does not supersede, alter, or in any way replace the existing Asbestos NESHAP. This notice is intended solely as guidance and does not represent an action subject to judicial review under section 307(b) of the Clean Air Act or section 704 of the Administrative Procedure Act.

#### I. The Asbestos NESHAP and the "Residential Building Exemption"

On April 6, 1973, the Agency published its initial NESHAP for asbestos (38 FR 8820) after determining that asbestos was associated with asbestosis and certain cancers. The initial asbestos NESHAP covered "any institutional, commercial and industrial building (including apartment buildings having more than four dwelling units), structure, facility, installation or portion thereof \* \* \*" 38 FR 8829 (codified at 40 CFR 61.22(d) (1973)). The NESHAP did not cover individual residential buildings containing four or fewer dwelling units. EPA based this "residential building exemption" on a National Academy of Sciences' Report which stated "[i]n general, single-family residential structures contain only small amounts of asbestos insulation." EPA stated that apartment houses with four or fewer dwelling units were considered to be equivalent to single-family residential structures. 38 FR 8821.

Since that time, EPA has revised the asbestos NESHAP on several occasions. EPA has not substantially revised the exemption for small residential buildings. However, EPA has stated that residential buildings demolished or renovated as part of larger projects, for instance, highway construction projects, were not exempt from the NESHAP. See Letter from John S. Seitz, Director, Stationary Source Compliance Division, U.S. EPA to Thomas S. Hadden, Supervisor, Division of Air Pollution Control, Ohio EPA, dated March 15, 1989; letter from Ann Pontius, U.S. EPA Region 5 to Thomas Hadden, dated September 28, 1988; letter from David Kee, Air Section, U.S. EPA to Richard Larson, Minneapolis Housing and

Redevelopment Authority, dated May 16, 1973.

#### II. The 1990 Revisions to the Asbestos NESHAP

On November 20, 1990, EPA published a revision to the asbestos NESHAP. 55 FR 48406. The purpose of the revision was "to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls." *Id.* The revisions revised and added several definitions in order to clarify the requirements of the NESHAP. The preamble accompanying the revisions also contained clarifying information.

In particular, the 1990 revisions clarified the definition of "facility" to include:

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) \* \* \*

*Id.* at 48415 (codified at 40 CFR 61.141). The 1990 amendments also added a definition of "installation" that stated:

Installation means 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).

*Id.* (codified at 40 CFR 61.141). In responding to comments regarding the "residential building exemption," the preamble noted that:

EPA does not consider residential structures that are demolished as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development would be subject to the NESHAP. \* \* \* The owner of a home that renovates his house or demolishes it to construct another house is not to be subject to the NESHAP.

*Id.* at 48412.<sup>1</sup> Further, in response to a comment asking whether a group of residential buildings at one location would be covered by the rule, the preamble stated:

A group of residential buildings under the control of the same owner or operator is considered an installation according to the definition of "installation" and is therefore covered by the rule.

<sup>1</sup> 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 or fiscal year or the term of a contract.