



ASBESTOS REGULATORY CLARIFICATIONS

Toxic Substances Control Division
ARC – 001
February 2001

Subject: Application of the TAHPR and NESHAP to the Demolition of a Public Building

BACKGROUND

The Texas Asbestos Health Protection Rules (TAHPR) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) require that buildings be thoroughly inspected for asbestos-containing building material (ACBM) prior to demolition. If the inspection reveals that regulated asbestos-containing material (RACM) is present in the building, in combined quantities equal to or greater than the NESHAP threshold (160 square feet, 260 linear feet, or 35 cubic feet), abatement of the ACBM is also required prior to demolition.

Occasionally, a *public building* (as defined in the TAHPR) is either demolished or destroyed by natural forces, without a prior asbestos inspection, and the resulting debris is unknown as to its asbestos content. In such cases, the owner/operator must determine how the TAHPR and NESHAP rules apply to the resulting debris. Under these circumstances, regulatory issues such as the requirements of licensure, mandatory asbestos inspection, the NESHAP jurisdictional amount, and wetting and waste disposal requirements come into question.

The Texas Department of Health (TDH) seeks to clarify how the state and federal rules apply to a project where a *public building* is demolished without a thorough asbestos inspection performed prior to the demolition activity. This clarification may pertain to a variety of circumstances that include, but are not limited to, the following:

- A building is partially burned and the remaining portion must be demolished without performing an asbestos inspection due to safety considerations;
- A building is structurally unsound and in danger of imminent collapse, and it is ordered demolished by the local government without an asbestos inspection due to safety considerations; and
- The owner/operator of a demolition activity did not comply with the requirement to thoroughly inspect the building for asbestos, but seeks to perform cleanup operations in compliance with the regulations.



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RESPONSE

A **public building** ceases to exist at the commencement of **demolition** as defined by the TAHPR, that is, when load-bearing structural members are wrecked or removed. At that point, the project (i.e. the cleanup operation) is no longer subject to the provisions of the TAHPR that pertain to **public buildings**. Therefore, the work practice standards and licensure requirements of the TAHPR do not apply to the demolition debris, although the owner/operator may elect to utilize those standards in the interest of protecting public health and safety.

In contrast, the NESHAP applies to the project during all phases of demolition, including when the waste material is disposed in an appropriate landfill. This interpretation is based on the fact that the NESHAP definitions of **facility** and **demolition** are broader than the definitions of **public building** and **demolition** in the TAHPR. These NESHAP definitions allow the regulation to pertain to the cleanup of the demolition debris.

DISCUSSION

Interpretation of **Public Building**

The TDH determined that the provisions of the TAHPR that apply to **public buildings** cease to apply to a demolition project at the commencement of demolition, based on the definitions of **demolition** and **public building** in 25 TAC §295.32(31 and 73). Excerpts from the definition of **public building** are provided below, with portions underscored for emphasis:

The interior space of a building used, or to be used for the purposes that provide for public access or occupancy .. . The term includes any building during a period of vacancy, including the period during preparations prior to actual demolition... . The term does not include: .. (F) a building, facility, or any portion of which has been determined to be structurally unsound and in danger of imminent collapse by a professional engineer, registered architect, or a city, county, or state government official.

Based on this section, TDH concludes that a building would no longer be subject to public occupancy at the commencement of demolition. When wrecking and/or removal operations begin, the building is by nature structurally unsound and no longer subject to public occupancy. The



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resulting demolition debris does not have sufficient parameters to define interior space and does not meet the definition of **public building** under the TAHPR.

Demolition is defined in the TAHPR as,

The wrecking or removal of any load-supporting structural member of a public building or facility or any asbestos related removal, stripping or handling operations together with any related operations or the intentional burning of any public building or facility.

The definition of demolition in the TAHPR strictly relates to activities that cause the building to collapse or be dismantled. In some cases buildings are demolished by component removal as opposed to wrecking load bearing structural members. The clause, **asbestos related removal, stripping, or handling operations** addresses this mode of demolition activity. However, this clause does not mean that asbestos abatement activity, performed in preparation for demolition, constitutes the commencement of demolition activity.

Applicability of the NESHAP to Demolition Activity

The NESHAP definition of demolition is as follows:

The wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Based on the above definition, the NESHAP continues to apply after the removal of load-supporting structural members, since demolition is defined to include any related handling operations. This includes cleanup and disposal of demolition debris, and may also include site assessment and the cleanup of contaminated soil, on a case-by-case basis. The EPA memorandum (attached) dated June 29, 1994, entitled “Asbestos NESHAP Demolition Decision Tree Guidance Document,” describes the related operations of demolition projects in more detail. The term **facility**, to which the federal demolition standards apply, is not limited by parameters for public buildings such as “interior space” and “public occupancy” as in the TAHPR.

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A thorough asbestos inspection, performed by a licensed asbestos inspector in accordance with 25 TAC §295.34(c)(1), is required prior to demolition of a **public building** unless that building is deemed structurally unsound as described in the TAHPR. A copy of the inspection document must

be produced upon request by the TDH. Therefore, if a **public building** is demolished, and the responsible party does not produce an asbestos inspection report to the TDH upon request, they are potentially in violation of the TAHPR for failing to perform a mandatory asbestos inspection prior to demolition. This would also constitute a violation of the NESHAP; however, the TAHPR is the more stringent rule and would normally be the primary violation cited.

A building that is structurally unsound and in danger of imminent collapse, is excluded from the definition of **public building** in the TAHPR. Therefore, it is not subject to the provisions of the TAHPR that pertain to **public buildings**. Notwithstanding the above exclusion, the TAHPR state in 25 TAC §295.34(c), regarding ACBM:

...If an inspection cannot be performed before demolition or renovation is started due to the building being structurally unsound and unsafe to enter, all material must be presumed to contain asbestos and must be treated as ACBM.

In addition, section 25 TAC §295.58(h) states:

...Building material that has not been sampled, and is not beyond question as to asbestos content, must be treated as ACBM.

The TDH interprets these sections to mean that the building would not be subject to the requirement to conduct an asbestos inspection prior to demolition if it is unsound and therefore unsafe to enter and inspect. This interpretation is reinforced by the fact that the TAHPR's definition of **public building** specifically excludes buildings that are structurally unsound and in danger of eminent collapse. However, the building material that is not beyond question as to asbestos content would have to be presumed to be ACBM. The demolition debris, presumed to contain ACBM, must then be treated in accordance with the NESHAP, as described below.

NESHAP Requirements for Handling Demolition Debris

The attached EPA memorandum dated June 29, 1994, entitled "Asbestos NESHAP Demolition Decision Tree Guidance Document" provides guidance on the requirements for handling demolition debris, with and without a prior inspection for asbestos. When a facility is demolished without a



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thorough asbestos inspection, the NESHAP provides the owner/operator with several options regarding the cleanup and disposal of the demolition debris, as follows:

- Inspect the debris for RACM.
- If any amount of RACM is found, the disposal of the asbestos contaminated debris must be done in accordance with the NESHAP (§61.150). If the RACM can be isolated from the rest of the debris, the non-contaminated debris may be disposed of as normal demolition debris.
- If the thorough inspection proves that no RACM is present in the debris, no additional requirements apply.
- The owner/operator may assume, without inspecting the debris, that it is contaminated with RACM and dispose of it entirely as RACM in accordance with the NESHAP (§61.150).

The NESHAP has a threshold amount of RACM which qualifies a project as subject to the emission control procedures and disposal provisions of the rule. Regardless of the above, the EPA has clarified that the threshold shall be assumed to be exceeded if any amount of RACM is discovered in the debris, unless the owner/operator can demonstrate that the combined quantity of RACM is less than the NESHAP threshold through building and/or maintenance records.

In addition, if a facility is demolished with equal or above the threshold amount of RACM in place, the portion of the facility that contains the RACM must be demolished wet, and kept wet during waste handling with a NESHAP-trained person on site, in accordance with the NESHAP [§61.145(c)(8-9)].

Notification Requirements

The TAHPR and NESHAP both require a notification ten working days prior to demolition activity, regardless if asbestos was discovered in the mandatory asbestos inspection. Failure to notify the TDH prior to demolition activity would be a violation of the TAHPR and NESHAP.

The TAHPR is more stringent than the NESHAP with respect to notification requirements. For example, the TAHPR has more detailed requirements for amending notifications than the NESHAP. The TAHPR and NESHAP both require an amendment to the start date if the project cannot be started as originally notified. Since the provisions of the TAHPR that pertain to **public buildings**



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cease to apply to a demolition project when the wrecking or removal operations commence, only the requirements for NESHAP *facilities* apply to amending the completion date of the activity.

FREQUENTLY ASKED QUESTIONS

1. How do the TAHPR and NESHAP rules apply to the demolition of a **public building**?

Answer: Both the TAHPR and NESHAP apply up to the commencement of demolition. Of these rules, only the NESHAP applies from the commencement of demolition to site cleanup.

2. If a **public building** has been demolished without an asbestos inspection (illegally, or otherwise), must the owner/operator presume the entire debris to contain RACM and dispose of it as RACM?

Answer: No. The owner/operator may presume the debris contains RACM on the basis that it cannot be thoroughly inspected, and then dispose of it as RACM. Or, the owner/operator may choose to thoroughly inspect the debris to determine how the waste should be classified (RACM or non-regulated waste). If the debris is inspected and RACM is found, the owner/operator may isolate the RACM and dispose of the contaminated material in a landfill permitted to accept RACM. Although the NESHAP does not address training requirements of the owner/operator doing the inspection, the TDH recommends that an inspector be used who is EPA accredited, or the equivalent, for asbestos inspections. This level of training and experience helps to provide a thorough assessment of the debris.

3. If a compliance inspector discovers RACM in the debris of a demolition site, and the facility had not been inspected for asbestos prior to the demolition, must the inspector prove that a quantity of RACM greater than the NESHAP threshold was present in order to require that the contaminated waste be disposed of as RACM?

Answer: No. Unless the owner/operator produces building and/or maintenance records that show that the building did not contain RACM in combined quantities greater than the NESHAP threshold, the entire material is presumed to be contaminated. The building owner still has the option of addressing the waste as described in answer No. 2.

4. If a **public building** is demolished without an asbestos inspection, must the demolition



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operators be licensed, since the TAHPR requires that the components of the building be treated as ACBM?

Answer: No, because the provisions of the TAHPR that pertain to **public buildings** cease to apply at the commencement of demolition. At that point, licensure is not required.

5. If a **public building** is being demolished with presumed ACBM in place, must a NESHAP-trained person be onsite?

Answer: Not unless the material is RACM (including Category I and II non-friable ACM that will become RACM), and is greater in quantity than the NESHAP threshold.

6. If a property owner decides to remove demolition debris created from a building which was demolished without notification, must the owner/operator of the cleanup operation notify the TDH about the cleanup?

Answer: The owner/operator would have to notify the TDH of the cleanup if: 1) the material is presumed contaminated with RACM; or, 2) an inspection of the demolition debris shows that RACM is present. If a thorough inspection of the debris proves that no RACM is present in the debris, the owner/operator does not have to notify for the cleanup.

7. If a **public building** is demolished and a prior asbestos inspection cannot be performed because the building is structurally unsound, must it be demolished wet since the TAHPR requires such buildings to be presumed to contain ACBM?

Answer: A building that is structurally unsound is not subject to the provisions of the TAHPR that pertain to **public buildings**. In addition, those provisions would cease to apply to a **public building** at the commencement of demolition, even if it were structurally sound, prior to demolition. Therefore, the provision in the TAHPR that requires the ACBM in a **public building** to be adequately wetted during removal or other handling would not apply. However, the TDH recognizes that it is prudent to use wet-demolition practices in the interest of reducing hazardous airborne emissions.

8. If a building subject to the NESHAP is demolished with equal or above the threshold amount of RACM in place, must the building be demolished wet and with a NESHAP-trained person on site?



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Answer: Yes, in accordance with the NESHAP [61.145(c)].

9. If the owner/operator tries in good faith to thoroughly inspect the demolition debris, finds no RACM, and treats the waste as non-regulated, would he be in violation of the NESHAP if a compliance inspector subsequently finds RACM in the debris?

Answer: Yes. The owner/operator would be subject to enforcement action for failure to thoroughly inspect for the presence of asbestos.

10. If a **public building** is demolished illegally without an asbestos inspection or notification, and evidence of the demolition is obtained after the building is down, could the TDH pursue a violation under the TAHPR?

Answer: Yes, because the violation occurred when the building was subject to the provisions of the TAHPR that pertain to **public buildings**.

11. If a **public building** is moved, demolished, or by some other means removed from a slab foundation, what rule(s) would the subsequent demolition of the slab be subject to?

Answer: The NESHAP would apply, since the slab is a structure included in the NESHAP's definition of **facility**. Notification is required for demolition of the slab. RACM would have to be removed prior to demolition if present at a quantity equal to or greater than the NESHAP threshold. The provisions of the TAHPR that pertain to **public buildings** would not apply, since the slab does not meet the definition of a **public building**.

Approved

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