



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

DEC 8 1995

Edwin W. Baker
Executive Director
Federal Financial Institutions Examination Council
2100 Pennsylvania Avenue, NW
Suite 200
Washington, D.C. 20037

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Dear Mr. Baker:

Thank you for your recent letter regarding the applicability of Federal asbestos inspector accreditation requirements to real estate appraisers. Mr. Jack Primack forwarded your inquiry to me for reply. We appreciate your interest in these matters and encourage you to further disseminate information regarding our regulatory standards.

The Asbestos School Hazard Abatement Reauthorization Act (ASHARA) (P.L. 101-637, 100 Stat. 4589 (1990)) and the revised Asbestos Model Accreditation Plan (MAP) (40 CFR Pt. 763, Subpt. E, App. C; 59 Fed. Reg. 5236 (1994)) require persons performing asbestos-related work in public and commercial buildings to be accredited pursuant to Subtitle II of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2641 et seq.). Specifically, Sections 206(a)(1) and (3) of TSCA require accreditation for any person who inspects for asbestos-containing material ("ACM") in a public or commercial building, or who designs and conducts a response action with respect to friable ACM in such a building.

Unit I.A.3. of the revised MAP defines the term "inspection" as "an activity undertaken in a school building, or a public and commercial building, to determine the presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material (ACBM) or suspected ACBM, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed ACBM which has been previously identified." Unit III.A.3. of the MAP preamble further clarifies the intended applicability of this term:

"The statute limits the accreditation requirement to those persons who 'inspect for ACM in school buildings...or in a public or commercial building' (15 USC 2646 (a)(1)). EPA has adhered to this statutory language, and required accreditation only for those persons who inspect or reinspect specifically for ACBM. This would include,



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however, an inspection undertaken pursuant to NESHAP (40 CFR 61.145(a)) in a school, or public and commercial building, where the building owner or operator is required to thoroughly inspect for the presence of asbestos prior to commencing a demolition or renovation activity. Similarly, inspections required by other regulations would also be subject to accreditation, if the inspection, as defined in the revised MAP, included a component that was specific to ACBM, and was conducted within a school, or public and commercial building subject to the revised MAP. This includes more general inspection-type activities (e.g., environmental assessments) where asbestos is one of several potential hazards or materials that are being looked for or examined. Regardless of what other activities a person may be undertaking, if the person is inspecting for ACBM in a school, public, or commercial building, that person must be accredited to perform the asbestos inspection component of that activity. Conversely, if a person is performing an environmental assessment or building inspection that does not include an asbestos inspection component, that person does not require asbestos accreditation to perform that activity" (59 FR 5244).

The definition of inspection and the preamble language clearly set forth the scope of activities that would be subject to the accreditation requirement. Accordingly, real estate appraisers may not comment on the suspected presence of asbestos during an appraisal unless they are accredited pursuant to TSCA and the MAP. Commenting on the suspected presence or location of asbestos requires the appraiser to conduct an examination, either visual or physical, to determine whether a substance might be ACBM. This activity falls directly within the scope of "inspection," as set forth in the MAP, and any appraiser conducting this activity must be accredited. Similarly, any appraisal activity that would involve a judgment regarding the condition of ACBM or suspect ACBM (e.g., the friability of the material, the need for mitigation or removal) would require TSCA accreditation.

In your letter, you stated that the role of the real estate appraiser is to "report on building materials utilized, observed (sic) condition and measure of impact on value." This activity, so long as it does not involve activities that fall within the scope of an inspection, as set forth in the MAP, would not subject the appraiser to the MAP inspector accreditation requirement. Furthermore, when an appraisal is conducted on property that has already been inspected for ACBM by an accredited inspector, and the appraiser relies entirely upon the existing asbestos inspection report for purposes of estimating the impact of the presence or condition of asbestos on the value of the property, that appraiser would not need to be accredited.

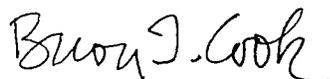
Any person seeking accreditation as an inspector must meet all of the training and examination requirements set forth in the revised MAP. Unit I.B.3. requires all persons who wish to perform inspection activities to complete an EPA-approved training course which is at least 3 days in length and pass a written examination comprised of 50 multiple-choice questions. This training is available from any of several hundred approved training providers nationwide. A comprehensive listing of these training providers may be found in EPA's quarterly publication entitled the "National Directory of AHERA Accredited Courses" (NDAAC). Copies of this report may be obtained free-of-charge by calling our NDAAC Clearinghouse operated by VISTA Computer Services, Inc. at 1-800-462-6706.

EPA advises real estate appraisers to obtain asbestos inspector training and accreditation if this will be a regular or anticipated part of their job. For those appraisers who structure their work activity so as to not trigger these requirements, or for those appraisers who may rely upon contractors to perform the asbestos component of their appraisals, EPA would recommend inspector training as beneficial, but not otherwise required.

EPA is in the process of reviewing the MAP for consistency with the Occupational Exposure to Asbestos Rules promulgated by the Occupational Safety and Health Administration (OSHA) (see 29 CFR Parts 1910 et seq.). If EPA makes revisions to the MAP as a result of this review, these changes will be published in the Federal Register.

Thank you again for writing to us about this important issue. If there are questions, or if we can be of further assistance, please contact Mr. Phil King, of my staff, at 312-353-9062.

Sincerely,



Brion T. Cook, Acting Chief
Field Programs Branch (7404)
Chemical Management Division

cc: Linda Vlier Moos
Paul Matthai
Dina Kallos
Davina Pujari
Phil King
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages **3**

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DATE	11/22/95					

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Edwin W. Baker
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"The statute limits the accreditation requirement to those persons who inspect for ACM in school buildings... or in a						
SYMBOL	2275	22-458				
SURNAME	Jacobs	Jacobs				
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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CONCURRENCES

SYMBOL	7404	7404	7404				
SURNAME	King	Fournier	Matthews				
DATE	11/28/95	12-4-95	12/4/95				

Appraisal Subcommittee

Federal Financial Institutions Examination Council

August 16, 1995

Mr. Jack Premack
 Chemical Management Division
 Environmental Protection Agency
 FPB Mail Code 7404
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OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 4

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GENERAL SERVICES ADMINISTRATION	

Dear Mr. Premack:

This letter is in confirmation of our earlier telephone conversations. Various sources have informed the Appraisal Subcommittee ("ASC") that 40 CFR Part 763, the Asbestos Model Accreditation Plan ("MAP"), as issued by the United States Environmental Protection Agency ("EPA"), precludes real estate appraisers from commenting on the suspected presence of asbestos in the performance and reporting of an appraisal. One source believes that a conflict exists between Federal regulations. We request your clarification of MAP as it pertains to real estate appraisers.

The ASC, which was established by the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), oversees, monitors and supports with grants, certain functions of the Appraisal Foundation whose constituent boards establish both criteria and standards for licensed and certified real estate appraisers. Its Appraisal Standards Board issues and maintains the Uniform Standards of Professional Appraisal Practice ("USPAP"), to which all certified and licensed appraisers must conform. USPAP requires that an appraiser address any factor which impacts on the value of a property.

We believe the issue revolves around *Section 3, Inspector* of MAP, which stipulates: "All persons who inspect for ACM [Asbestos Containing Materials] in schools or public and commercial buildings must be accredited." We believe that an appraiser is not inspecting for, and indeed is typically not trained to inspect for, asbestos. The appraiser is required to report on building materials utilized, observed condition and measure of impact on value (if market data pertaining to the impact of the presence of a hazardous material is available). We do not suggest that appraisers, without EPA-approved training, are qualified to perform analysis for purposes of mitigation. An appraiser, however, is qualified to analyze the market stigma resulting from the presence of asbestos.

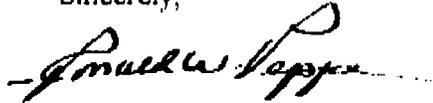
We believe EPA's MAP has been misinterpreted by the National Association of Master Appraisers and that various State representatives involved in asbestos inspecting and mitigation are generally improperly stating EPA's position relative to appraisers. Real estate appraisers "observe"--they do not "inspect" in the sense of MAP Section 3. Clients including banks, governmental agencies, attorneys and individuals require complete and accurate reporting by appraisers. Those who advise

that Federal law forbids appraisers from commenting on the suspected presence of asbestos or the potential impact on value (as evidenced by market reactions) do not, in our opinion, serve the public well.

Your written guidance in this matter would be appreciated. Since the issue appears to be national in scope, we intend to distribute your response to all State appraiser regulatory agencies, the Appraisal Foundation and the various appraiser trade organizations.

Thank you for your cooperation.

Sincerely,



for / Edwin W. Baker
Executive Director

Enclosure

The **M**aster **A**ppraiser™

No. 95268

Official Publication of the National Association of Master Appraisers

Vol. XV No. 7 July 1995

Appraisers Should Avoid Indicating Asbestos May be Present in the Appraised Property

Recent changes in the EPA's Asbestos Model Accreditation Plan have placed new restrictions on those who inspect property that may contain asbestos, including real estate appraisers.

According to EPA, if the appraiser inspects the interiors of commercial or public property during the appraisal process, he/she should not indicate the possible presence of asbestos in the property. The only person that may determine the possible presence of asbestos in this type of property is an Accredited Asbestos Inspector, according to EPA. Also included are residential properties of ten or more units, and residential rental properties. The Accredited Asbestos Inspector is one that has been trained in an EPA/OSHA approved, three-day model accreditation course, specific for asbestos inspections.

Exempted from the regulations are single family owner occupied properties.

A problem arises for the appraiser regarding compliance with the USPAP if the appraiser suspects the presence of asbestos in covered properties. Ordinarily the appraiser is required to report all factors known to the appraiser that would affect the value of the property. The USPAP provision regarding Jurisdictional Exception indicates that provisions contrary to law or public policy may excuse the appraiser from strict compliance. Advisory Opinion G-9 guides the appraiser in environmental areas.

Continued on page 2

The Appraisal Profession May be Wounded, But it Certainly is Not Dead!

Current reports that the appraisal profession is dead, may be greatly exaggerated, (to steal a phrase).

But Robert J. West, the Director of the California Office of Real Estate Appraisers, recently wrote in *The California Appraiser* that "The appraisal industry has just suffered through its worst recession in over 40 years and possibly the worst on record." These are certainly strong words, but there are others that agree with him regarding the present marketplace.

Just about the time every state has in place appraisal licensing and certification rules, the Feds implement De Minimus, interest rates increase, and electronic appraisal reports suddenly appear.

Writing to the 17,000 California appraisers, West said that regulators nationally are reporting declines in entry level licensing categories of 20% to 30%. A significant number of appraisers are no longer in business and many newcomers have left, he said.

Unofficial reports from those in attendance at the recent Appraisal Foundation meeting indicated that many appraisal associations have suffered losses of members from 17% to 23%.

According to West "it is increasingly obvious that the recent declines in work has been more a function of the economy, generally, than to less government regulation of banks or to "artificial intelligence."

There is a bright side to all this bad news, as every disaster also represents an opportunity for those who are ready. Speak to apprais-

ers who have been in business for more than 25 years, and they will tell you that they have seen the cycles before, and they generally turn around. Fewer appraisers means that the truly professional appraiser may have a significant opportunity. A few bad loans generated by the lack of an appraisal, will awaken thoughts of recent times of bank failures.

Most of us hate change, but it is always with us, and often difficult to discover. The future may require the expansion of the typical appraisal practice into new areas such as environmental practice, property inspection, and other services. Specialization has been forced upon many professional groups, and appraisers are going to need to educate themselves in Review Appraisal, Business Appraisal, Court Testimony and Real Estate Counseling areas, to name a few.

A few years ago who would have thought we would be buying our gasoline from the corner grocery store, but

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National News

95268

Asbestos, Be Careful How You Say It

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For single family owner occupied properties the appraiser can comment on asbestos by indicating that "asbestos is suspected," if this is the opinion of the appraiser.

Many appraisers think they can avoid the asbestos inspection prohibition by merely mentioning its possible presence as a part of the appraisal report, especially where the USPAP requires inclusion in the report of any items that may affect the value of the property.

But EPA clearly defines what the agency considers as an "asbestos inspection." According to EPA, an inspection "is defined to mean those activities undertaken to specifically determine the presence or location, or to assess the condition, of friable or non-friable asbestos containing building material (ACBM) or suspected ACBM, whether by visual or physical examination, or by collecting samples of such material."

An appraiser, therefore could not report on visually suspected asbestos that may be present on a covered property. Appraisers, property inspectors and environmental site assessors should no longer note in their reports any possible or suspected asbestos-

containing materials, unless the list of materials was compiled by an Accredited Asbestos Inspector.

Since a person that is not certified to make asbestos inspections cannot comment on the presence or non-presence of asbestos in covered properties, appraisers need to avoid making comments that could cause trouble.

To avoid problems the appraiser might say, "Due to the age of this building, there may be a high probability of asbestos containing materials in this building. I recommend that further testing be done by a licensed asbestos inspector." Or, "I recommend that a licensed asbestos inspector perform an inspection to determine the presence of any asbestos on this property." Using the term presumed asbestos containing materials (PACM) implies that further investigation is needed.

If you have any questions on how these recent asbestos regulations impact your appraisal practice, you may call K. K. Kilfoy at 1-800-252-2420, Ext. 103 Or Tom Garney at Ext. 111 in Texas, or your state's asbestos regulatory agency.

Nominations Being Accepted for Election to Farm & Land Advisory Council

Nominations for two positions on the Farm & Land Advisory Council are now being accepted by the Nominating Committee until August 1, 1995, according to Bill Burkle, MFLA, the Chairperson. The Farm & Land Advisory Council will hold its annual meeting at the National Conference to be held in New Orleans November 17-18, 1995.

The Council was created to provide advice and counsel to the association regarding the needs of those members of the association who hold the prestigious designation Master Farm & Land Appraiser (MFLA). All members engaged in the field of rural appraisal are encouraged to meet with the Council at their annual meeting, further the understanding of the special needs of the Farm & Land

appraiser. Two candidates for each open position will be selected by the Nominating Committee, and ballots will be mailed to all MFLA designated members on or before September 1, 1995. The new Officers and Directors will be installed at the National Conference. All members of the association in good standing, and holding the MFLA designation are eligible for election to the Council. You may nominate yourself or another member holding the MFLA.

The last day to receive nominations will be August 1, 1995. All nominations should include a resume, and other information regarding the candidate. Direct your nominations to Executive Vice President, Deborah Deane, PO Box 12617, San Antonio, TX 78212-0617.

The Master Appraiser

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The Master Appraiser

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