



## U.S. Environmental Protection Agency Applicability Determination Index

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**Control Number: A020001**

**Category:** Asbestos  
**EPA Office:** Region 5  
**Date:** 08/30/2002  
**Title:** Moving Structures  
**Recipient:** Robert Swift  
**Author:** George Czerniak

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**Subparts:** Part 61, M, Asbestos

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**References:** 61.141  
61.145(c)(1)

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### **Abstract:**

Q1: Are residential structures owned by the State subject to the asbestos NESHAP if they have less than four dwelling units?

A1: Yes, if the structures are part of a State project such as road construction or urban renewal.

Q2: Is spray on ceiling texture considered part of the wall system like tape joint compound?

A2: No. The analyses of these individual layers may not be composited with the wallboard analyses.

Q3: If the ceilings are not disturbed or demolished during the move, does the asbestos need to be removed before the move?

A3: Prior to the move, the owner or operator must determine if the move will break up, dislodge, or similarly disturb the asbestos. If such disturbances occur, the owner or operator may be subject to enforcement action.

Q4: Can the State avoid the requirements of the asbestos NESHAP by having the demolition of a residential structure occur prior to the State taking official ownership?

A4: If the structure is part of an installation, as occurs when a group of houses are demolished for a project, such activities would be considered circumvention which is prohibited by the part 61 NESHAP general provisions.

Q5: Is the movement of a single-family home purchased from a private party subject to the asbestos NESHAP?

A5: No, unless the home is part of an installation, planned development, or public project.

Q6: Is the movement of a single-family home purchased from a land developer subject to the asbestos NESHAP?

A6: Yes. Residential structures that are demolished or renovated as part of a commercial or public project are not exempt from the rule.

Q7: Is the movement of a structure that has been used for educational purposes and will contain four or less dwelling units subject to the asbestos NESHAP?

A7: Yes. Mobile classroom structures are considered institutional buildings.

Q8: Is the movement of a single-family home (not modular or mobile) purchased from a house manufacturing company subject to the asbestos NESHAP?

A8: No, based on the limited information provided.

Q9: Is the movement of portable school classrooms subject to the asbestos NESHAP?

A9: Yes. Large mobile structures for public or commercial use are regulated.

Q10: Is the movement of agricultural buildings subject to the asbestos NESHAP?

A10: Agricultural buildings used for commercial purposes, such as a dairy barn or crop storage structure, are subject. However, the rule does not apply to sheds used to store equipment for a homeowner's garden, or to farm stands that sell fresh produce and have no utilities.

Q11: Is the movement of garages subject to the asbestos NESHAP?

A11: Yes, if the residential structure associated with the garage is subject, if the garage is located at a commercial operation, or if the garage itself is used for commerce.

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**Letter:**

August 30, 2002

Robert Swift  
Minnesota Building Movers Association  
2284 CO RD 90  
Maple Plain, Minnesota 55359

Dear Mr. Swift:

This letter is being sent in response to your letter of June 7, 2002, in which you requested clarification regarding the applicability of the National Emission Standard for Hazardous Air Pollutants for asbestos (asbestos NESHAP) to various situations that involve moving a structure. The United States Environmental Protection Agency (U.S.EPA) has previously issued guidance documents that answer some of the questions you raised in your letter. Where such a previous answer exists, the relevant document that provides the answer is referenced.

Please note that nothing in this letter prohibits a state or local government from imposing additional, or more stringent, requirements than those found in the asbestos NESHAP.

Your first question was the following:

"State residential structures under 4 units, are they considered facilities?"

This response is based on the assumption that you are referring to residential structures owned by the State of Minnesota. The determination as to whether a residential structure is considered to be an affected facility under the asbestos NESHAP is based on the facts of each situation. A residential structure that contains less than four (4) dwelling units can be a facility subject to the asbestos NESHAP. For example, a state may be acquiring a number of residential structures as part of a road construction project or other type of project. The project may include multiple structures including residential structures with fewer than 4 dwelling units. If more than one residential structure is involved in the same project, they are both subject to the asbestos NESHAP. That interpretation of the regulation is supported by the enclosed Notice of Clarification published in the Federal Register on July 28, 1995.

U.S.EPA previously addressed this issue in at least two applicability determinations. Both determinations are enclosed. One determination issued on April 11, 1990, stated that an individual residential structure which is acquired by a state or local government through the process of eminent domain for institutional, commercial, or industrial purposes becomes an institutional, commercial, or industrial building and the asbestos NESHAP would apply if the amount of RACM is above the thresholds in the regulation. The second applicability determination is dated August 7, 1991, and it cites the preamble to the November 20, 1991 revisions to the asbestos NESHAP (FR 48412 November 20, 1991), in which U.S.EPA stated "For example, the demolition of one or more houses as part of an urban renewal project, a highway construction facility or other private development would be subject to the NESHAP."

Your second question was the following:

"Is spray on ceiling texture considered part of the wall system like the tape joint compound?"

U.S.EPA addressed this question in two Federal register notices. Copies of those Federal Register Notices dated January 3, 1994, and December 19, 1995, are enclosed. According to those notices, all materials added to wallboard or other base materials (e.g. sprayed on materials, paint, ceiling or wall texture, etc.) must be analyzed separately, if possible. The results of the analysis of those individual layers may not be averaged with the result of the analysis of wallboard for a composite result, but must be analyzed and reported separately. Based on those statements, spray on ceiling texture may not be treated as part of the wall system like tape and joint compound. That determination is also supported by a previous determination issued on December 22, 1993. A copy of that determination is enclosed.

Your third question was the following:

"The removal of friable asbestos in ceiling textures in residential structures: If the ceilings are not disturbed or demolished during the move does the asbestos need to be removed."

This response is applicable to those residential structures subject to the asbestos NESHAP. The asbestos NESHAP requires that the owner or operator remove all Regulated Asbestos Containing Material (RACM) from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. (See 61.145(c)(1)). It is up to the owner and operator to determine if the activities involved in moving a residential structure will cause the ceilings to be broken up, dislodged, or similarly disturbed. The asbestos NESHAP regulation requires a thorough inspection be performed prior to the commencement of demolition or renovation to determine if asbestos is present and to establish whether it will need to be removed. If the ceilings are not removed and, during the course of preparation for the move or during the actual move, the asbestos containing ceilings are broken up, dislodged, or similarly disturbed the owner and operator may be subject to enforcement actions under the asbestos NESHAP.

Attached to your letter of June 7, 2002, was a list of additional questions concerning situations involving the movement of structures. Because the facts you provided were limited, assumptions were made about the situations you described. In addition to the asbestos NESHAP regulations noted in this letter

there are General Provisions of the NESHAP found at 40 CFR Part 61, Subpart A that are applicable to owners and operators of facilities subject to the asbestos NESHAP. One of the requirements in Subpart A deals with circumvention and is found at 40 CFR 61.19. That section of the General Provisions includes the following requirement:

61.19 Circumvention.

No owner or operator shall build, erect, install, or use any article, machine, equipment, process, or method, the use of which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous dilutants to achieve compliance with a visible emissions standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

The relevant part of that requirement is the part that discusses the prohibition on the piecemeal carrying out of an operation to avoid coverage by a standard. Your questions, regarding the applicability of the NESHAP to various scenarios involving residential structures, do not indicate if the residential structures are located at a site that would be classified as an installation. For example, if a State has already indicated that a group of houses are going to be demolished in order to make room for a new highway or school, the site may be an installation even though all of the property is not yet owned by the state. Attempts to avoid the applicability of the asbestos NESHAP by conducting demolitions prior to the state taking official ownership might be classified as circumvention. The determination of whether a home would be considered to be part of an installation and subject to the asbestos NESHAP would depend on a case by case evaluation of the facts that exist in each case

Below are answers to your second page of questions regarding whether various structures are facilities under various circumstances. Please note that these answers are based on a number of assumptions. One assumption is that when you use the phrase "residential structure" you are referring to a single-family home and not a building with more than 4 dwelling units. A second assumption is that the residential structure you refer to has never been used as a commercial or institutional structure in the past. Finally, it is assumed that the residential structures are moved directly from the original site to the final site with no extended period when the structure is located at an intermediate location. Each scenario you presented is listed below with a partial or complete response to your question.

"House mover purchases a residential structure from a private party and sells that structure to another private party to be moved to their site, set on a permanent foundation for residential living."

Assuming that the residential structure is not part of an installation or located on the site of some kind of planned development or public project, then the situation you describe is probably not subject to the asbestos NESHAP. Please note that we cannot be more definite than that because the facts we have been given are too limited to make any more definite determination.

"House mover purchases a residential structure from a Land Developer and sells that structure to a private party to be moved to their site, set on a permanent foundation for residential living."

The information you provided does not provide sufficient facts to determine whether the residential structure would be classified as a facility. In the preamble to the November 20, 1991, revisions to the asbestos NESHAP (FR 48412 November 20, 1991) EPA stated the following:

"(we do) not consider residential structures that are demolished or renovated as part of a commercial, or public project to be exempt from the 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"

Based on that language and your description of the situation, it is likely that the move of the structure is subject to the asbestos NESHAP. However, the possibility exists that additional facts might result in a

different determination.

"Private party purchases a residential structure from a High School or Vo-Tech Center that has been constructed in class for educational purposes. The Private Party will then contract a house mover to move it to their site, set it on a permanent foundation for residential living."

This response is based on the assumption that the residential structure contains four or fewer dwelling units and was not used for other purposes before it was moved. For example, if the residential structure was constructed four (4) years ago and it was used as a site for classes or storage of school supplies for several years, the structure would be classified as an institutional building even if is later to be used as a residence. As discussed in more detail elsewhere in this letter, U.S.EPA has already issued a determination that mobile classroom structures are subject to the asbestos NESHAP. Although the structure built by the students will eventually be a private residence, while it is being built it functions as a classroom and, as such, it is subject to the asbestos NESHAP when moved.

"Private party purchases a structure from a Land Developer, contracts a house mover to move that structure to their site, set it on a permanent foundation for residential living."

The answer to this question is essentially the same as the answer given previously when the party purchasing the structure was the house mover. Although the limited information you provided makes a more definitive response impossible, it seems likely that the move is subject to the asbestos NESHAP.

"Private party purchases a residential structure from another private party, contracts a house mover to move that structure to their site, set it on a permanent foundation for residential living."

Without knowing whether the residential structure was subject to the regulation at the original location, it is not possible to respond to this question. In the case of the owner of a single family home (which is the only residential structure on the site) who sells the structure to another person to be used as a home, the asbestos NESHAP would not apply. However, if the original site of the structure is already identified as a site for a highway, shopping mall, etc., the move may be subject to the asbestos NESHAP depending on the facts of the situation.

"Private party purchases a structure from a Home Manufacturer Company (These are not modular or mobile homes.) The Home Manufacturer will then contract a house mover to move that structure to their site, place it on a permanent foundation for residential living. These residential structures are built on house mover's beams or on temporary foundations to the buyer's specifications."

Based on the limited information you provided, it does not appear that the structure would be a facility at the time it is moved to the final site where it will be placed on a permanent foundation. However, it is possible that additional specific facts might cause us to change that determination.

"House movers are contracted to move portable classrooms for school districts from one school to another. These buildings are designed to be moved and have temporary foundations."

U.S.EPA has already issued an applicability determination that large mobile structures used for public or commercial use are regulated under the NESHAP. The determinations specifically cites a portable classroom as an example of a mobile structure that is subject to the NESHAP when it is demolished or moved to another school. That applicability determination, number A000001, is enclosed.

"House movers contracted to move agricultural buildings to sites for private parties."

If the agricultural building was used for commercial purposes then it is a facility subject to the asbestos NESHAP. For example, a dairy barn at farm would be subject. Another example would be a storage structure for crops such as a large shed used to store potatoes on a commercial farm. However, if the "agricultural building" is merely a shed used to store equipment for a homeowners garden then it is not likely to be subject to the asbestos NESHAP. There are also some cases where an agricultural building

might be exempt from the asbestos NESHAP even though it was used for commercial purposes. U.S.EPA has previously determined that farm stands that sell fresh produce and do not have utilities are not subject to the asbestos NESHAP.

However, the applicability of the asbestos NESHAP in such situations must be determined on a case by case basis.

"House movers contracted to move garages with no suspect material in them."

This question cannot be answered without more information. Garages can be subject to the asbestos NESHAP or can be exempt. In general, if the residential structure associated with the garage is subject to the asbestos NESHAP then the garage would be subject to the asbestos NESHAP. If the garage is located at a commercial operation it would definitely be subject or if the garage itself was used for commercial purposes it would be subject.

Please note that the determinations in this letter are based on the limited background information concerning each scenario you described..

Sincerely yours,

George Czerniak, Chief  
Air Enforcement and Compliance Assurance Branch

Enclosures

cc: Jackie Deneen, MPCA