



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

April 28, 2021

Jeffery F. Koerner
Director, Division of Air Resource Management
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Dear Mr. Koerner:

On October 6, 2020, the Florida Department of Environmental Protection (FDEP) submitted a letter to the United States Environmental Protection Agency's (EPA) Region 4 office in Atlanta, Georgia requesting clarification regarding the applicability of the Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, to the demolition and renovation of seawalls on residential property.

EPA Region 4 is providing a Regulatory Interpretation to the FDEP regarding the applicability of the Asbestos NESHAP to seawalls located on residential property. Specifically, the FDEP is seeking clarification as to whether the residential building exemption applies to seawalls in the scenarios described below. The EPA's responses below assume the property at issue is solely residential and does not contain any commercial elements. A seawall located on commercial property would be subject to the NESHAP if the structure meets the threshold requirements located at 40 CFR 61.145.

a) The owner of a residential building wants to repair or demolish an existing seawall on their property. The owner will conduct the work.

EPA's Response: If the owner/operator will be performing demolition or renovation activities on a seawall accompanying a single residential building with four or fewer dwelling units and located on a single residential property where there is no commercial aspect to the property, the EPA believes such demolition or renovation activities would fall within the residential building exemption to the Asbestos NESHAP. Therefore, the NESHAP requirements would not apply. As stated in the 1995 Asbestos NESHAP Clarification of Intent notice, "in EPA's opinion, the demolition or renovation of an isolated small residential building by any entity is not covered by the asbestos NESHAP." 60 Fed. Reg. 38725 (July 28, 1995). However, if there are both residential and commercial aspects to the property, the NESHAP may apply.

b) The owner of a residential building wants to repair or demolish an existing seawall on their property and will hire a contractor to conduct the work.

EPA's Response: As stated in response to scenario (a) above, if the demolition or renovation is to be performed on a seawall accompanying a single residential building with four or fewer dwelling units and located on a single residential property where there is no commercial aspect to the property, the NESHAP would not apply. However, if there are both residential and commercial aspects to the property, the NESHAP may apply. Whether the homeowner or contractor performs the work in scenarios (a) and (b) does not impact NESHAP applicability.

c) The owner of a residential building wants to repair or demolish an existing seawall on their property. The homeowner's association (HOA) will hire a contractor to conduct the work.

EPA's Response: Demolition or renovation of a seawall in the scenarios set forth in (a) and (b) above would be exempt from the NESHAP pursuant to the residential building exemption. However, the residential building exemption is narrow and does not apply where (1) the seawall accompanies a residential building with more than four dwelling units, (2) the seawall accompanies multiple (more than one) residential buildings of any size on the same site and is demolished or renovated by the same owner or operator as part of the same project or installation, or (3) where a single residential building of any size (and/or its accompanying seawall) is demolished or renovated as part of a larger project or installation that includes demolition or renovation of non-residential buildings. The Asbestos NESHAP applies in each of these scenarios.

If the HOA maintains the seawalls for the community, then the HOA would be the operator of the seawalls. The demolition or renovation of a seawall spanning multiple residential properties at the same site would be regulated under the Asbestos NESHAP as a residential installation. Under definitions of 40 CFR 61.141, installation means "... 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)."

Additionally, as explained in the 1995 Asbestos NESHAP Clarification of Intent notice, the 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. See 60 Fed. Reg. at 38725.

d) Multiple owners of residential buildings all hire the same contractor to demolish or repair a seawall that runs along all their properties.

EPA's Response: In the preamble to the 1990 Asbestos NESHAP Revision, the EPA addressed whether a group of residential buildings at one location would be subject to the NESHAP. We emphasized at that time that a group of residential buildings under the control of the same owner or operator would be considered an installation and, therefore, subject to the NESHAP. 55 Fed.

Reg. 48406 (Nov. 20, 1990). In this case, the contractor would be considered an operator for the period of time that demolition or repair is occurring and the NESHAP would apply.

e) The owner of a residential building wants to repair or demolish an existing seawall on their property that is maintained by the local government.

EPA's Response: The local government that maintains the seawall would be the operator of the seawall in this situation. The EPA believes that the residential building exemption applies equally to individual residential buildings containing four or fewer dwelling units regardless of whether a municipality is an "owner or operator" for the purposes of the demolition or renovation activity. However, in this case, the municipality is not only considered an owner or operator for the purposes of the demolition or renovation but is actively maintaining the seawall(s) at all times. If the municipality is maintaining the seawall(s) for (1) a single residential building containing more than four dwelling units, (2) more than one residential building of any size at a site, or (3) a site consisting of both residential and commercial properties, then the seawall(s) would be considered an installation subject to the NESHAP.

This Regulatory Interpretation was coordinated with the EPA's Office of Enforcement and Compliance Assurance and Office of Air Quality Planning and Standards. If you have any questions about this Regulatory Interpretation, please contact Seneca Anderson at (404) 562-9050, or by email at anderson.seneca@epa.gov or Pamela Storm at (404) 562-9197, or by email at storm.pamela@epa.gov.

Sincerely,

KENNETH MITCHELL Digitally signed by
KENNETH MITCHELL
Date: 2021.04.28
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For Caroline Y. Freeman
Director
Air and Radiation Division

cc: Pawan Subramaniam, FDEP
Robert Berkowitz, FDEP
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