

WIDE-REACHING AMENDMENTS TO ASBESTOS IN CONSTRUCTION REGULATIONS

On July 10, 1995, the Occupational Safety and Health Administration (OSHA) implemented asbestos regulations, "Asbestos in Construction" (20 CFR 1926.1101) that have impacted a wide variety of employers and employees, including all types of businesses from office work environments to manufacturing plants. The standard includes new requirements for extensive training, asbestos identification, air monitoring, and communication for employers who are involved in demolition, asbestos removal, renovation, and other construction requirements. The following article highlights the main requirements of the standard.

Regulated Facilities, Materials and Activities

According to the new regulation, asbestos management activities are required in buildings known to contain asbestos, as well as in those ***built prior to 1981***. This requirement not only regulates asbestos-containing materials (ACMs) but "Presumed Asbestos-Containing Material" (PACM) as well. PACM includes such materials as thermal system insulation (TSI), surfacing material, vinyl floor tiles and floor coverings in pre-1981 buildings.

In addition, under the new rules, regulated work activities are broken into "classes" of work activities as follows:

Class I - Actual asbestos removal of TSI or surfacing ACM or PACM

IN THIS ISSUE:

- **Wide-reaching Amendments to Asbestos in Construction Regulations**
- **New Lead Rules**
- **Underground Storage Tanks**

Class II - Removal of ACM which is not TSI or surfacing.

Class III - Repair and maintenance operations where ACM, including TSI and surfacing material is likely to be disturbed.

Class IV - Maintenance and custodial activities for employees involved in contact or clean-up of ACM and PACM or waste containing ACM and PACM.

Asbestos Identification and Notification

Employers must ensure that a "competent person" is available to: identify asbestos and hazardous, unsanitary, or dangerous conditions; select control strategies; and promptly implement corrective measures. This person must have completed the necessary training requirements specific to the class of the asbestos project.

Prior to commencing work in buildings or facilities subject to this regulation, ***building/facility owners*** must notify the following people verbally or in writing:

- 1) all prospective employers/contractors bidding for work whose employees reasonably can be expected to work in or adjacent to areas containing ACM or PACM;*
- 2) any employees of the building owner working in or adjacent to areas containing such material;*
- 3) all employers on multi-employer work sites who will be working in or adjacent to areas containing ACM or PACM;*
- 4) tenants occupying areas containing ACM or PACM.*

Contractor employers must inform the following persons of the location and quantity of ACM and/or PACM and

of the necessary precautions to ensure that airborne asbestos fibers are confined to the area:

- 1) *building/facility owners;*
- 2) *employees working in the area;*
- 3) *employers of workers in adjacent areas. At least 10 days prior to project completion, contractor employers must also inform the building or facility owners and employers of final air monitoring results and of the current location and quantity of ACM and/or PACM remaining in the area.*

Training

For Class I and II asbestos work, a competent person must be trained in all aspects of asbestos handling and removal. Such training can be obtained during a 40-hour comprehensive course for supervisors.

For Class III and IV asbestos work, a competent person should be trained in aspects of asbestos handling appropriate for the nature of the work such as glove bagging procedures, use of mini-enclosures, use of wet methods, and the identification of asbestos. Class III employees must receive at least 16 hours of training, or the equivalent to the Operations and Maintenance (O&M) course developed by EPA for maintenance and custodial workers. Class IV employees must receive at least 2 hours of "awareness training". Lifetime annual medical surveillance must be provided to employees who perform 30 or more days of Class I, II, or III work per year, and for employees who wear negative pressure respirators.

Warning Signs and Labels

The building owner is required to post signs at the entrance to mechanical rooms and other areas which contain thermal insulation (TSI) and surfacing ACM/PACM which employees can be expected to enter. The signs should identify the material present, its location, and appropriate work practices needed to ensure that ACM/PACM will not be disturbed. Signs must be posted at such a distance from the regulated area that an employee may read the signs and be able to take the necessary protective steps before entering the area marked by the signs.

Labels should be affixed to all products and containers containing asbestos, including waste containers. Where feasible, installed asbestos products should contain a visible label; however, OSHA's intent was not to require conspicuous warning labels in "public areas". Labels should contain a warning statement against breathing asbestos fibers.

Record-keeping

Records must be maintained (generally for 30 years) of any exposure measurements, bulk sample data and any medical surveillance records, if required.

LEAD-BASED PAINT FULL DISCLOSURE RULES FINALLY OUT

After almost four years in the making, the Environmental Protection Agency (EPA) and Department of Housing and Urban Development (HUD) have finally issued rules requiring full disclosure of the presence of lead-based paint in real estate. In an effort to curtail the inherent dangers of lead poisoning from lead-based paints, sales, leasing and rental agreements must provide disclosure and notification of *known* lead hazards. In addition, sellers and landlords must distribute a government pamphlet addressing ways to protect families from risks associated with lead-based paint to potential buyers and renters.

However, the new rule does not require lead paint testing, abatement or removal and does not affect those rental and sales contracts already in existence. Potential home buyers, however, may request an optional 10-day period during which a lead-based paint inspection and/or risk assessment may be performed. This cost must be borne by the potential purchaser. The disclosure provisions of the rule have staggered effective dates. For owners of more than four residential dwellings, the requirements are applicable beginning September 6, 1996. Those owners with less than four units must adhere to the new rules beginning December 6, 1996.

Lead-based paint is considered a significant risk for small children who live in older homes with deteriorated or peeling paint. The primary exposure route is typically ingestion of the small paint chips, although inhalation of lead-laden dust can occur in houses undergoing renovation activities. Approximately 86 percent of all public housing contains lead-based paint and about 1.7 million American children currently have unsafe blood-lead levels. Homes, apartments and commercial buildings built before 1978 are likely to contain lead-based paint on interior and/or exterior surfaces. Preparing surfaces for repainting, or demolishing walls during remodeling generates large amounts of hazardous lead containing dust and chips. Uncontrolled hazardous lead-containing dust poses an exposure risk to workers and residents and remains present long after the work is completed.

Although the disclosure act has finally arrived, the industry is again waiting for the training and certification rules to surface as required by Subtitle B, Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992. Several states have already begun to develop training requirements,

most notably, the Commonwealth of Virginia. North Carolina has adopted the Residential Property Disclosure Act (NCGS 47E, Article 1), effective January 1, 1996, although training requirements for lead-based paint activities have not yet been finalized in the state legislature.

DWQ IMPLEMENTS NEW UST CLASSIFICATION SYSTEM

The presence of an underground storage tank (UST) may pose a significant financial risk. Depending upon the size and use of a UST, a property owner or potential purchaser of a property may be responsible for closure, assessment and remediation costs caused by a release, even if the party never used the tank. Consequently, a relief measure was recently passed by the NC General Assembly that reduces the need to address petroleum contamination at low priority sites.

Regulated USTs Under 2N Rules

The North Carolina Division of Environment, Health and Natural Resources (NC DEHNR), Division of Water Quality (DWQ) is responsible for implementing a set of rules which govern the use and management of USTs (15A NCAC 2N regulations). Owners and operators are responsible for complying with the rules which cover UST systems used for storing motor fuel (gasoline, kerosene, diesel, aviation fuel) for resale, UST systems containing motor fuel used to service vehicles for businesses, and farm or residential tanks greater than 1,100 gallons in capacity used for storing motor fuel.

Regulated USTs under the 2N rules must be registered, annual operating fees paid, have leak detection for the UST system, and by December 22, 1998, be equipped with corrosion protection and spill/overflow prevention. Owners/operators not in compliance must bring the UST system into compliance or permanently close the USTs.

If an owner or operator chooses to close the UST, a site assessment must be performed and the tank either removed from the ground or permanently closed in place. If a release is discovered, it must be assessed and remediated in accordance with a different set of rules covered under 15A NCAC 2L Groundwater Protection Standards. There are however exceptions to the 2N regulations for certain types of farm or residential USTs.

Non-Regulated USTs Under 2N Rules

Commercial Trust Fund and the **Noncommercial Trust Fund** have been established to reimburse tank owners for costs associated with cleanups.

USTs storing heating oil for consumptive use onsite are exempt from the 2N regulations unless the heating oil is used for resale purposes. Resale of petroleum typically indicates commercial use which is regulated by 2N rules. Heating oil includes petroleum oils No. 1, No. 2, No. 4, No. 5, No. 6, Bunker C and kerosene, among other oils. Farm or residential motor fuel (gasoline, diesel) tanks under 1,100 gallons in size and used for noncommercial purposes are also not regulated. All USTs under 110 gallons capacity are exempt from the 2N requirements. Beware, however, that a release from a non-regulated UST will likely require clean up action by the responsible party.

Special Considerations - Home Heating Oil Tanks

Home heating oil tanks less than 1,100 gallons capacity are exempt from 2N technical upgrade and closure requirements. However, a release from a heating oil tank is regulated under the Groundwater Protection Rules 5A NCAC 2L, and cleanup measures must be implemented. Although it is not a requirement to remove old heating oil USTs may be subject to cleanup costs if a release has occurred. Therefore, the discovery, removal and subsequent assessment of home heating oil UST is usually in the best interest of a potential buyer. If you choose to remove your home heating oil UST and discover evidence of petroleum contamination during UST excavation, the DWQ must be notified within 24 hours of release discovery.

Who is Responsible if Contamination is Discovered?

According to the NC DEHNR Pollution Control Branch, the statutory tank owner is financially responsible for site assessment and remediation. The statutory tank owner is dependent upon the date the home heating oil tank was last utilized. If the UST has been used on or after November 8, 1984, then the current landowner can be considered the statutory tank owner. If the UST has been used on or after November 8, 1984, then the last person who used the UST is still considered the tank owner (even if they no longer own the property). Notarized proof of when the tank was last used (fuel receipts, conversion to an alternative fuel, or other proof) is required by the Pollution Control Branch to determine the statutory tank owner.

The Leaking Petroleum UST (LPUST) Trust Fund

North Carolina has two cleanup funds which provide reimbursement for costs incurred during the assessment and remediation of soil and groundwater contamination resulting from a release of petroleum from a UST. The

Eligibility

Owners and operators of commercial tanks are eligible for the funds. Among the mandatory requirements to be

considered eligible for the **Commercial Trust Fund** include: 1) all commercial tanks must be registered and annual operating fees must be paid; 2) the tanks must be in compliance with all applicable UST rules; and 3) reimbursement from the Commercial Fund only applies to releases or discharges discovered on or after June 30, 1988.

With respect to the **Noncommercial Trust Fund**, only statutory tank owners (previously defined) are eligible for reimbursement of cleanup costs. Landowners are not eligible unless they are the statutory tank owner.

The Funds will pay up to **\$1.5 million** for *reasonable and necessary costs* directly related to the cleanup of a release. *Reasonable and necessary costs* are determined by the DWQ's Reasonable Rates Document. The Trust Funds will not cover attorney fees, UST system replacement or removal, work performed that is excessive or unnecessary, and/or cleanup costs in excess of applicable deductibles.

Suspended Activity At Low Priority Tank Sites

Recently, the NC DEHNR has evaluated the demand and availability of money in the two Trust Funds for continued cleanup at UST release sites. It became evident that the Funds would be depleted by early 1997 if reimbursement keeps pace with historic trends. In an effort to reduce the strain on the depleting funds, the NC General Assembly passed HB 1350/SB 1317 which mandates that action at "Low Priority" sites be suspended until the NC DEHNR adopts risk assessment rules or until October 1997, at the latest.

The new law requires the NC DEHNR to classify all UST release sites as AB (high) or CDE (low) impact. An AB impact site includes sites 1) with a contaminated water supply well, 2) where a petroleum vapor is present in a confined space, 3) where a water supply well is located within 1500 feet that is not also served by a public water supply system, 4) where the discharge from a site results in a drinking water violation in a treated surface water supply, or 5) where the discharge poses an imminent threat.

A CDE classification site results when the site characteristics do not meet the definition of an AB site. The bill mandates that the DWQ may not require clean-up at a low (CDE) priority site. A responsible party can only be required to address emergency conditions such as ignitable vapor abatement, free product removal, source removal, or conducting an initial investigation to collect sufficient data to rank the site as AB or CDE priority.

Trust Fund Reimbursement Dropped On Low Priority Sites

Costs incurred by a responsible party to assess or remediate a release at a low priority site will no longer be reimbursable under either of the **two Trust Funds**. The only exceptions are: 1) where the costs are incurred to address imminent threats, free product removal or to perform initial characterization measures; 2) where the site is subsequently classified as AB priority; or 3) when cleanup is required under a DWQ approved consent order. When a release is discovered on or after June 21, 1996, no reimbursement is allowed for costs incurred prior to DWQ's classification of the site.

The bill allows limited access to the **Noncommercial Trust Fund** for current owners of land where a leak from a noncommercial tank has occurred. The revised statute allows landowners who are not "owners" or operators" to obtain reimbursement from up to 90% of their cost incurred above a \$5,000 deductible. The eligibility is transferable to a subsequent landowner. The revision applies only to discharges or releases discovered and reported on or after January 1, 1992, and expires on October 1, 1997.

Lastly, the bill raises tank fees, mandates the DWQ study privatization of the UST program and submit a report to the Environmental Review Commission by November 1, 1996, and provides that when the DWQ fails to act on a trust fund eligibility claim within 90 days, eligibility is considered denied and therefore appealable.