



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
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Dear Ms. Kajiya-Mills:

This letter is in response to your March 11, 2021 letter to Sara Breneman, Chief, Enforcement and Compliance Assurance Branch, United States Environmental Protection Agency (EPA) Region 5, seeking clarification regarding the residential building exemption within the Asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Part 61, subpart M. In your letter, you present four hypothetical scenarios to EPA for consideration. Additionally, your letter requests that EPA provide definitions for the terms “commercial project” and “private development” with respect to the Asbestos NESHAP.

EPA may consider whether to provide definitions for the terms “commercial project” and “private development” in future Asbestos NESHAP actions, but is not doing so at this time. However, in the interest of addressing your concerns with the distinction between commercial and private development projects and Asbestos NESHAP applicability, our response should provide some clarity.

While EPA is providing a response concerning the Asbestos NESHAP in the context of the scenarios presented in your letter, EPA encourages all owners and operators, including municipalities, to perform demolitions and renovations in a manner that minimizes any potential adverse health impacts to the public. The views and information provided in this response should not be taken as a definitive determination on Asbestos NESHAP applicability under any particular factual scenario, but to provide you, as the permitting authority, EPA’s views on these scenarios given the limited information presented. This response pertains only to federal Asbestos NESHAP requirements. Other federal, state, or local regulations may also apply. State and local agencies may promulgate regulations more stringent than the federal NESHAP requirements.

Pursuant to the Asbestos NESHAP, “residential buildings having four or fewer dwelling units” are exempt from compliance with the regulatory requirements for demolition and renovation activities. *See* 40 C.F.R. § 61.141 (definition of “facility”). However, the residential building exemption is narrow. As EPA explained in the 1995 Asbestos NESHAP Clarification of Intent:

The definition of facility specifically includes “any residential structure, installation or building” but excludes only “residential *buildings* having four or fewer dwelling units[.]” Specifically not excluded from the definition of facility were residential *installations*. EPA believes that the fact that the residential building exemption is limited to residential *buildings*, and does not include residential *installations*, shows that the residential building exemption was not designed to exempt from the NESHAP demolitions or renovations of multiple buildings at a single site by the same owner or operator.

60 Fed. Reg. 38,725, 38726 (July 28, 1995) (quoting 55 Fed. Reg. 48406, 48415 (Nov. 20, 1990)) (internal citations omitted). This is the case even where the demolition or renovation activities involve small residential buildings, including single family homes. As we have stated, “EPA does not believe the residential building exemption was designed to exempt larger demolitions or renovations on a particular site, *even where small residential buildings are involved.*” *Id.* (emphasis added). Thus, regardless of each individual residential building’s size, “[a] group of residential buildings under the control of the same owner or operator is considered an installation according to the definition of ‘installation’ and is therefore covered by the rule.”<sup>1</sup> *Id.* at 38,725.

A residential building in the following scenarios would be subject to the NESHAP’s demolition and renovation requirements provided the building meets the threshold quantities of regulated asbestos-containing material pursuant to 40 C.F.R. § 61.145:

1. A residential building containing more than four dwelling units would be subject to the NESHAP.
2. Multiple (i.e., 2 or more) residential buildings of any size under control of the same owner or operator and demolished as part of a project or installation would be subject to the Asbestos NESHAP. *Id.*
3. One or more residential buildings of any size demolished along with one or more non-residential structures as part of a commercial or public project would be subject to the Asbestos NESHAP. *Id.* Therefore, the NESHAP would apply to the demolition of a single residential building of any size where a commercial, industrial, institutional, or public building is also being demolished or renovated by the same owner or operator.
4. If an owner or operator is demolishing more than one residential building of any size in the same planning or scheduling period *or* an owner or operator is demolishing one or more residential buildings of any size along with one or more non-residential buildings in the same planning or scheduling period, the Asbestos NESHAP would apply even if the demolitions are spaced out within that planning or scheduling period. *Id.* An owner or operator may not attempt to circumvent the NESHAP by carrying out an operation in a piecemeal fashion to avoid being subject to the regulatory requirements. *See id.* at 38,726; *see also* 40 C.F.R. § 61.19.

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<sup>1</sup> The Asbestos NESHAP defines installation as “any building or structure or 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).” 40 C.F.R. § 61.141.

This is a non-exhaustive list and there may be other situations in which a residential building would be subject to the NESHAP.

Your letter presents four scenarios for consideration. To begin, EPA will address scenario two in your letter, where one developer-owned, single-family home is being demolished and replaced with one single-family home. In this scenario, the demolition would be exempt from Asbestos NESHAP requirements pursuant to the NESHAP's residential building exemption because only one residential structure consisting of four or fewer dwelling units is being demolished in isolation and not as part of a broader installation or project. EPA does not believe the NESHAP provides a distinction on whether the owner of the single-family home is an individual or a developer. The fact that the owner is a developer, alone, would not change NESHAP applicability for this scenario. The 1995 Asbestos NESHAP Clarification of Intent states as follows:

EPA believes that individual small residential buildings that are demolished or renovated are not covered by the Asbestos NESHAP. This is true whether the demolition or renovation is performed by agents of the owner of the property or whether the demolition or renovation is performed by agents of the municipality.

60 Fed. Reg. at 38,726.

Scenario one in your letter presents the example of one single-family home to be demolished with an uncertain replacement structure. The single-family home is located on "commercially zoned property." From the limited information presented, it would appear that the demolition of the one single-family home would be exempt under the Asbestos NESHAP's residential building exemption. This response assumes the demolition of one single-family home, where the demolition is not part of a project or installation and where no additional homes and no non-residential structures are being demolished. The mere fact that the property is commercially zoned does not impact applicability of the Asbestos NESHAP.

Scenario three in your letter presents the situation where a developer-owned, single-family home is being demolished to support the building of a multi-unit subdivision of single-family homes. The 1995 Asbestos NESHAP Clarification of Intent states:

EPA believes that the residential building exemption applies equally to an individual small residential building regardless of whether a municipality is an "owner or operator" for the purposes of the demolition or renovation. EPA believes that the exemption is based on the type of building being demolished or renovated and the type of demolition or renovation project that is being undertaken, not the entity performing or controlling the demolition or renovation.


60 Fed. Reg. at 38,726. The relevant consideration is the extent of the property or properties to be demolished. Where only one single-family home is being demolished in isolation and not as part of a broader project or installation, demolition of the single-family home would be exempt

from the NESHAP pursuant to the residential building exemption regardless of ownership. The same considerations that apply to scenarios one and two would apply here.

Lastly, scenario four in your letter presents the example in which the demolition of one single-family home and detached garage (on the same property) could be considered an “installation” and thus subject to the NESHAP. As previously explained, the NESHAP regulates facilities, including residential installations. However, a garage—even a detached garage— accompanying a single-family home may be considered an extension of the individual home and, therefore, part of the residence provided the homeowner is merely utilizing the detached garage as an extension of the single-family home (and not for commercial purposes). In such instances, the demolition of one single-family home and accompanying garage would be exempt from the NESHAP pursuant to the residential building exemption. However, if the garage is being used for non-residential, i.e. commercial purposes, then the demolition of the single-family home and detached garage may be considered an installation, and thus subject to the NESHAP.

We appreciate your interest in correctly applying the Asbestos NESHAP and the opportunity to work with you on addressing your questions and concerns on NESHAP applicability. If there is a specific situation where the state would like EPA’s assistance with the Asbestos NESHAP and would like to request an applicability determination, we would be happy to discuss it further with you. If you have any further questions, please feel free to contact Constantine Blathras, of my staff, at (312) 886-0671.

Sincerely,

**DOUGLAS  
ABURANO**  Digitally signed by  
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Douglas Aburano, Branch Chief  
Air Programs Branch