



ASBESTOS REGULATORY CLARIFICATIONS

Environmental and Consumer Safety Section
Regulatory Services Division
ARC – 010
November 2001

Subject: **The Applicability of TAHPR and NESHAP to Painting Asbestos-Containing Materials (ACM)**

BACKGROUND

The Texas Asbestos Health Protection Rules, (TAHPR), and the National Emission Standard for Hazardous Air Pollutants (NESHAP) do not specifically address painting asbestos-containing building material (ACBM), or asbestos-containing material (ACM) as a regulated or non-regulated activity. The term asbestos-related activity is defined in the TAHPR, but there remain questions as to whether or not painting is an asbestos-related activity. The NESHAP addresses the disturbance of regulated asbestos-containing material (RACM) at quantities equal to or greater than the NESHAP threshold, but gives limited guidance as to specific activities, such as painting, that may constitute a regulated activity. In short, if a building owner/operator decides to apply paint to a substrate that qualifies as ACM (i.e. the substrate contains greater than one percent asbestos), would the owner/operator be subject to the TAHPR and/or NESHAP?

RESPONSE

In accordance with the TAHPR, painting the ACBM would constitute an asbestos-related activity if any amount of the ACBM was disturbed by the activity. Similarly, the activity would be regulated under NESHAP if RACM was disturbed through the painting process; however, the NESHAP qualifies that RACM, equal to or greater than 160 square feet, 260 linear feet, or 35 cubic feet (the NESHAP threshold), must be disturbed or dislodged through the process in order to be regulated.

DISCUSSION

The issue of painting, from the perspectives of the TAHPR and the NESHAP, is discussed separately below.



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TAHPR

In order to clarify the issue of painting as it relates to the TAHPR, several terms need to be considered. These include *asbestos regulated activity* and *encapsulation* as defined by the TAHPR and the term *disturbance* as determined by the Texas Department of State Health Services (DSHS).

The TAHPR, 25 TAC '295.32 (18), states that *the disturbance (whether intentional or unintentional), removal, encapsulation, or enclosure of asbestos, including preparations or final clearance, the performance of asbestos surveys, the development of management plans and response actions, asbestos project design, the collection or analysis of asbestos samples, monitoring for airborne asbestos, bidding for a contract for any of these activities, or any other activity required to be licensed under the Texas Asbestos Health Protection Act.* In addition, *encapsulation* is included as an activity that qualifies as *asbestos abatement* as defined in 25 TAC '295.32 (8).

The term *encapsulation*, which is included in the definitions of the terms *asbestos-related activity* and *asbestos abatement*, is further defined by TAHPR, 25 TAC '295.32 (35) as follows: *a method of control of asbestos fibers in which the surface of asbestos containing material (ACM) is penetrated by or covered with a liquid coating prepared for that purpose.* Since encapsulation, as defined, is qualified by the use of a product intended for the purpose of encapsulation, the application of paint to a surface would not qualify as *encapsulation*.

Although currently not defined in the TAHPR, the DSHS considers *disturbance* to include, but not be limited to, an activity that 1) renders the ACM to a condition in which the asbestos is no longer bound to its matrix, or 2) disturbs or dislodges the ACM from the surface in which it is supported or adhered to, or 3) any other activity that causes asbestos fibers to be released. The above determination was derived, in part, from the OSHA definition, in 29 CFR 1926.1101(b), as follows: *disturbance means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM... .*

The DSHS recognizes that some building owners may not have the experience necessary to make informed decisions regarding the probability of a painting activity being regulated under the TAHPR. The building owner may choose to seek the advice of a licensed asbestos consultant or management planner to assess the areas to be painted and to determine if the painting would disturb the ACM. If the assessment indicates that the ACM would not be disturbed, the building owner may

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choose not to have an abatement contractor do the painting. In contrast, if the assessment indicates that ACM would likely be disturbed, the building owner must consider abatement (i.e. removal, encapsulation, or enclosure) by a licensed asbestos contractor prior to painting. Under these circumstances, following the advice of a licensed asbestos consultant or management planner will allow the building owner to substantially reduce the risk of exposing the public.

NESHAP

The NESHAP provides for the applicability of the rule with regard to actions that constitute regulated activities. A thorough inspection of the affected area for the presence of ACM is required. The owner/operator determines whether the amounts of RACM are equal to or greater than the NESHAP threshold. If the amount of RACM to be disturbed through the renovation process will be equal to or greater than 160 square feet, 260 linear feet or 35 cubic feet, then the NESHAP will apply.

If the NESHAP requirements apply, a NESHAP-trained representative must be present during the disturbance of RACM. If the painting activity does not involve disturbing the amounts of RACM as described above, no further requirements apply.

FREQUENTLY ASKED QUESTIONS

1. Is painting the interior space of a public building regulated under the TAHPR?

Answer: Painting would be regulated under the TAHPR only if the activity disturbs ACBM.

2. Is painting ACBM considered to be encapsulation?

Answer: Painting would not be considered encapsulation unless the product applied to the ACBM is an asbestos encapsulant. By definition, an asbestos encapsulant is a product intended for encapsulating ACBM. Paint that is not described by the manufacturer as an asbestos encapsulant would not qualify as such under the TAHPR.

3. Does painting constitute renovation as defined by the TAHPR?

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Answer: No. The TAPHR, '295.32 (75) states that renovation is the *additions to or alterations of the building for purposes of restoration by removal, repairing, and rebuilding.*

4. Is there a regulatory distinction in the TAHPR regarding painting asbestos-containing building material (ACBM)?

Answer: No. Painting becomes regulated by the TAPHR only when ACBM is disturbed.

5. Is there a regulatory distinction in the NESHAP regarding painting asbestos-containing material?

Answer: Yes. There is only a distinction if the material is RACM and the amount disturbed is equal to or greater than the NESHAP threshold.

This Regulatory Clarification preempts any previous clarification/guidance/policy letters on this subject and remains in effect until superseded in writing by the Texas Department of State Health Services. Attributed use or reproduction of this information is freely granted.