



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 11 2019

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Becky W. Keogh
Director
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

RE: Arkansas Department of Environmental Quality Request for a No Action Assurance

Dear Ms. Keogh:

I am in receipt of your June 10, 2019, letter in which you request a No Action Assurance (NAA) for limited provisions of the asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Part 61, Subpart M. In your letter, you highlight the catastrophic effects from the record flooding in Arkansas that began in May 2019. You note that there are fifteen counties addressed in the President's Emergency Declaration and Major Disaster Declaration, issued on May 30, 2019, and June 8, 2019, respectively. I want to acknowledge the extraordinary circumstances facing the State and local communities. The U.S. Environmental Protection Agency (EPA) appreciates the efforts of the Arkansas Department of Environmental Quality (ADEQ) to expedite renovation and demolition activities while ensuring the protection of public health and the environment. We think that it is appropriate to proceed cautiously. The EPA has been working with ADEQ to consider the issues associated with the asbestos NESHAP that you have raised.

In your letter, you are seeking relief from two very limited provisions of the asbestos NESHAP: 1) the ten-day notification requirement for demolitions and renovations (40 C.F.R. § 61.145(b)(3)(i) and (ii)) and; 2) the thorough inspection requirement for renovations and demolition of structures that have been declared structurally unsound and in danger of imminent collapse and ordered by a government agency to be demolished (*Id.* § 61.145(a)).

With regard to the ten-day notification requirement, the regulations already afford flexibility for emergency renovation operations (as defined in 40 C.F.R. § 61.141) and for demolitions of covered facilities occurring under an order of a State or local government agency issued because the facility is structurally unsound and in danger of imminent collapse. *See id.* § 61.145(b)(3)(iii). For both of these situations, notice need only be provided as early as possible before, but not later than the working day following, the renovation or demolition. *See id.* § 61.145(b)(3)(iii). This provision, however, does not apply to other types of renovations or demolitions. Today, I am exercising my enforcement discretion and granting a No Action Assurance (NAA), that allows this flexibility regarding notification to be applied to all renovations and demolitions of facilities damaged by the storms and flooding in counties covered by an emergency and/or disaster declaration made by the President of the United States, as per your request. This NAA applies on the condition that all other applicable asbestos NESHAP

requirements are met, with the exception of the thorough inspection requirement for renovations discussed below.

With regard to the inspection requirement for renovations, the regulations require the owner or operator to thoroughly inspect the affected facility or that part of the affected facility where the renovation operation will occur prior to the commencement of renovation work for the presence of asbestos. *See id.* § 61.145(a). ADEQ seeks to allow owners and operators to forgo the required inspection in the context of renovations, provided that all material is treated as if it were in fact, asbestos-containing, and is removed prior to any activity that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. ADEQ would require all material to be handled, transported, and disposed of in accordance with the asbestos NESHAP regulations applicable to regulated asbestos-containing material. Today, I am exercising my enforcement discretion and granting an NAA to allow the requested inspection flexibility, and associated conditions, to apply to all renovations of structures damaged by the storms and flooding in Arkansas counties covered under an emergency and/or disaster declaration made by the President of the United States. This NAA applies on the condition that all other applicable asbestos NESHAP requirements are met, with the exception of the notification requirement for renovations discussed above.

Your letter also requests that inspections be waived for covered facilities demolished under an order of a State or local government agency, where such facilities are structurally unsound and in danger of imminent collapse. We do not believe an NAA is necessary for this because an inspection is not required for these types of facilities under 40 C.F.R. § 61.145(a)(3).

Today's NAA applies to owners or operators of renovations or demolitions of structures damaged by the recent flooding in Arkansas counties covered under an emergency and/or disaster declaration made by the President of the United States. This NAA is in effect commencing today, and terminates on September 11, 2019, at 11:59 PM (CDT). The issuance of an NAA for this period of time is in the public interest. Through today's NAA, the EPA is continuing its commitment to address the very difficult circumstances caused by the flooding in the State of Arkansas.

This NAA does not apply to any other federal requirements that may apply to demolition or renovation activities (other than the asbestos NESHAP provisions specifically discussed herein). The EPA reserves the right to revoke or modify this NAA.

The EPA is committed to continuing to work with ADEQ in addressing the difficult circumstances caused by the recent floods. If you have any questions, please contact Rick Duffy at 202-564-5014 or duffy.rick@epa.gov, or Cheryl Seager at 214-665-3114 or seager.cheryl@epa.gov.

Sincerely,


Susan Parker Bodine

cc: Stuart Spencer, Associate Director, Office of Air Quality, ADEQ
David W. Gray, Acting Regional Administrator, Region 6
Cheryl Seager, Director, Enforcement and Compliance Assurance Division, Region 6