


Division of Air Pollution Control

**Response to Comments
Draft Rule Language Comment Period**

Rule: 3745-20-01

Agency Contact for this Package

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Ohio EPA provided a 30 day comment period (plus 1-week extension) which ended on March 20th 2013. This document summarizes the comments and questions received at the public hearing and/or during the associated comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

General/Overall Concerns

Comment 1: **Strong support for Ohio’s adoption of the revised definition, recognizing the wording change back to the original asbestos rule removes misunderstanding regarding multiple demolitions (submitted by the City of Akron, Ohio).**

Response 1: Thank you. That clarification was the intent of the change, and the clarity regarding the definition will be preserved in the rule revision.

Rule 3745-20-01 “Definitions”

Comment 2: **Comments were received concerning the potentially serious health consequences of asbestos exposure. Steps should be taken to minimize exposure to the public from asbestos (submitted by NIH/NIEHS).**

Response 2: Ohio EPA requested comments on the change in the rule 3745-20-01 (B)(18), the definition of “Facility”. As part of

those changes, Ohio EPA changed the wording of paragraph (B)(18) clarify its meaning; however, subsequent review showed that the new definition may depart from the strict meaning of the federal asbestos NESHAPS and could interfere with the ability of municipalities and land banks to address urban blight through publicly funded demolition programs. Therefore, Ohio EPA is reverting the language of the definition back to its previous wording prior to the 2012 rulemaking, which is the same as the federal asbestos NESHAP. We also are removing 3745-20-01 (B)(45), Definition of "Residential Exempt Structure" because the removal of the language in paragraph (B)(18), makes the definition of "Residential Exempt Structure" unnecessary as it was only used as part of the definition for facility.

As such, we agree with the commenter that care must be taken to minimize asbestos dust exposure where legally possible.

Comment 3: **Comments were received concerning demolition of asbestos containing buildings of less than four dwelling units, and the public health impact from the potential resultant environmental contamination (submitted by Univ. of Cincinnati).**

Response 3: Ohio EPA agrees that care must be taken to minimize asbestos dust exposure where legally possible. The definition of "residential exemption" appears in the definition of "facility," which is found in the definition section of the asbestos NESHAP regulations: "any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but *excluding residential buildings having four or fewer dwelling units*)." 40 CFR 61.141 (emphasis added).

As per the U.S. EPA asbestos NESHAP, residential buildings having four or fewer dwelling units are exempt from the requirements of the rule. Ohio EPA is returning to the long-standing federal definition as part of the residential exemption. Any concerns with the proposed rule change already are present under the identical federal rule.

Comment 4: There could be public health consequences of uncontrolled individual home demolitions with the likelihood of widespread contamination of residential properties (submitted by Univ. of Cincinnati).

Response 4: Ohio EPA agrees that care must be taken to minimize asbestos dust exposure where legally possible. Any environment contamination caused by use of the “residential exemption” is already allowed under the NESHAP. U.S. EPA has repeatedly supported the concept that any such exposures would be minimal. The National Academy of Sciences has determined that because single family residential structures contain only a small amount of asbestos insulation, the “amount of fibers released by demolition of a single residence is unlikely to cause appreciable exposure to the surrounding areas.” *Asbestos NESHAP Clarification of Intent*, 60 FR 38725. Ohio EPA does not dispute determinations of U.S. EPA regarding their repeated and consistent use of the residential exemption.

Comment 5: U.S. EPA expressed concern about the intent behind Ohio EPA’s proposed rule change. The U.S. EPA is concerned that statements in the Business Impact Analysis could be construed as an intent to exempt multi-structure projects from emission control and reporting requirements, and questions whether the statements in the Business Impact Analysis are intended to conflict with U.S. EPA’s prior interpretations of the asbestos NESHAP (submitted by U.S. EPA).

Response 5: Please see Response 2 (above). Ohio EPA follows the use of the “residential exemption” as prescribed by federal law. Any weaknesses in the definition remain within the NESHAP and are by necessity incorporated in Ohio EPA’s proposed rule change. Ohio EPA’s rules are no less strict than the federal rules regarding the residential exemption.

Comment 6: A district office of Ohio EPA expressed concern over interpretation of 3745-20-01 (18) residential exemption and the negative impacts this definition had on a recent court case. The courts interpreted the definition in a way contrary to the intent of the definition. Can this error in interpretation be corrected in this rule? (submitted by the Canton City Health Department)

Response 6: See Response 2 (above). Ohio EPA follows the use of the “residential exemption” as prescribed by federal law. Any weaknesses in the definition remain within the NESHAP and are by necessity incorporated in Ohio EPA’s proposed rule change. Ohio EPA does not intend to address a court’s interpretation of the asbestos rules in this rulemaking.

End of Response to Comments