

ARCHIVE: Archived due to the 2014 rule revision. Revision was necessary to update rule citations within the TGC. Refer to VA30000.14.001 for the updated document.

TITLE: Asbestos Remediation under the Voluntary Action Program

DATE EFFECTIVE: January 2004

HISTORY: Update of VA30000.04.001 - Revision was necessary to reflect changes in the rule citations that became effective in March 2009.

KEYWORDS: Asbestos, hazardous substances, remedial activities, remedy, voluntary action.

RULE/ AUTHORITY: OAC Chapter 3745-20; OAC 3745-300-01, 3745-300-06, 3745-300-07, 3745-300-08(D)(3)(b), and 3745-300-09; ORC Chapter 3746

QUESTION: How is asbestos remediation addressed under the Voluntary Action Program (VAP)?

ANSWER: Due to the broad definition of “remedy” (see OAC 3745-300-01), asbestos abatement conducted in accordance with OAC Chapter 3745-20 may be considered a remedy under the VAP. Ohio EPA has adopted, in OAC Chapter 3745-20, the **National Emission Standards for Hazardous Air Pollutants (NESHAP)** for asbestos¹. In addition, ORC 3746.10(D) requires voluntary actions be conducted in accordance with all applicable laws and rules. This applies to the abatement of asbestos that is required pursuant to OAC Chapter 3745-20 for “facility”² “renovation or demolition”³. It is the Volunteer’s

¹ The asbestos NESHAPs are within 40 CFR 61.140 - 61.157, but a few NESHAP provisions were not delegated to the states. The Ohio rules revised effective November 18, 2002 are consistent with the (delegated) federal regulations.

² “Facility” includes any institutional, commercial, public, industrial or residential structure, installation or building, does not include residential buildings of four or fewer dwelling units, and any active or inactive waste disposal site. OAC 3745-20-01(B)(18).

decision whether the abatement activity is a component of the voluntary action or a separate activity conducted outside of the voluntary action. In addition, because asbestos is a hazardous substance, the Volunteer still needs to evaluate under the Phase I Property Assessment (Phase I) the potential for releases of asbestos to environmental media.

For asbestos releases to environmental media (i.e., soil, sediment, surface water, or ground water), VAP applicable standards may be determined in accordance with OAC 3745-300-09 procedures or based on a background evaluation in accordance with OAC 3745-300-07(H). Also, a generic numerical potable use standard for asbestos in ground water has been promulgated. (See OAC 3745-300-08(D)(3)(b)). Compliance with applicable standards for asbestos in environmental media is determined in accordance with OAC 3745-300-07(I) similar to any other hazardous substance, and if applicable standards are exceeded, a remedy in accordance with OAC 3745-300-11 is required for properties undergoing a voluntary action.

³ **Demolition** means the wrecking, or taking of any load-supporting structural member of a facility together with any related handling operations, or intentional facility burning. **Renovation** means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. (Wrecking or taking out load-supporting structural members is a demolition.) OAC 3745-20-01(B)(13) and (B)(43).

BACKGROUND: Applicability of OAC Chapter 3745-20: In general, OAC Chapter 3745-20 requirements apply to “regulated asbestos-containing material” (RACM)⁴ if the RACM totals (a) at least 260 linear feet on pipes or 160 square feet on other facility components or (b) at least 35 cubic feet stripped off facility components where the amount could not be measured before removal. For lesser RACM amounts at facilities undergoing demolition, only notification requirements apply; for emergency demolitions, limited notification and control requirements apply. (Refer to OAC 3745-20-02(B)(1)-(4) for applicability details.)

⁴ **“Regulated asbestos-containing material”** (RACM) means “(a) friable asbestos material; (b) “Category 1 non-friable asbestos-containing material that has become friable; (c) Category I non-friable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting or abrading; or (d) Category II non-friable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of the regulated renovation or demolition operations regulated by [OAC Chapter 3745-20].” OAC 3745-20-01(B)(41) (effective 11/18/02). “Category 1 non-friable asbestos-containing material” includes resilient floor covering, packing, gaskets containing more than 1% asbestos. “Category II non-friable asbestos-containing material” includes any material (except for Category I) containing more than 1% asbestos, that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure. See OAC 3745-20-01(B)(9) - (10).

OAC Chapter 3745-20 sets forth the requirements for “owners or operators,”⁵ both of the demolition or renovation and the facility. In general, the owner or operator is required to (1) arrange for an Ohio Department of Health (ODH)-certified “asbestos hazard evaluation specialist” to conduct a thorough inspection of the facility area where the demolition or renovation operation will occur, (2) notify Ohio EPA’s Division of Air Pollution Control (DAPC) in writing of the intent to demolish or renovate, and (3) to comply with the applicable asbestos emission control, waste handling and disposal procedures of OAC Chapter 3745-20. (See OAC 3745-20-02 to -05.)

OAC Chapter 3745-20 - Prior Notification: The standard for Ohio EPA notification requires submission of a written notice to the Ohio EPA DAPC field office (district office or local air agency) at least 10 working days *prior to* the start date of the demolition or renovation activities. In general, if the start date is delayed, the owner or operator is to provide a written notice of the new start date as soon as possible but before at least 10 working days prior to the new start date (and before the original start date). (See OAC 3745-20-03.) Notification is important, as it allows Ohio EPA to inspect the facility before or during the renovation or demolition.

OAC Chapter 3745-20 - Asbestos Removal and Handling: Under most circumstances, the owner or operator must remove all RACM prior to the demolition or renovation. The required controls for removal of facility components covered with, coated with or containing RACM include *adequately wetting* all exposed RACM and *careful lowering* of the removed material to the floor and ground level. Total containment under negative air pressure, in most cases, is also required. RACM stripped from facility components must be adequately wetted, unless wetting would cause unavoidable damage to equipment or cause an unreasonable safety hazard (prior Ohio EPA permission is needed for alternate methods). (See OAC 3745-20-04(A)(1)-(3).)

Each owner or operator of a demolition or renovation operation “shall discharge *no visible emissions to the outside air*” during the collection, processing, packaging, transporting, or deposition of any asbestos-containing material. (See OAC 3745-20-05(B).) As defined, “visible emissions” means, in part, “any emissions that are visibly detectable

⁵ “Owner or operator” includes, in general, (a) any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated, (b) any person who owns, leases, operates, controls or supervises the demolition or renovation, or (c) both. OAC 3745-20-01(B)(38).

without the aid of instruments...” and “outside air” means, in part, “the air outside buildings and structures...” *Disposal of all asbestos-containing waste material must occur as soon as practical* by the waste generator at an active waste disposal site or a site that converts the material into non-asbestos material. (See OAC 3745-20-05(A), -06, -13.)

Addressing Asbestos under the VAP: To address asbestos under the VAP, it must first be determined in accordance with OAC 3745-300-06 whether a “release” of asbestos has or may have occurred “on, underlying or is emanating from the property.” “Release” is broadly defined to include “escaping” and “emitting” (See ORC 3746.01(M) and OAC 3745-300-01). However, the use of “into the environment,” as given in the definition and the phrase “on, underlying or emanating from the property” in VAP rules, presumes a release to *environmental media* at a property, as opposed to within a facility.

Asbestos remediation in accordance with OAC Chapter 3745-20 may be performed to prevent a release to environmental media. As long as asbestos remediation is conducted in accordance with OAC Chapter 3745-20 requirements, the voluntary action for the asbestos may conclude with the Phase I Property Assessment (Phase I) on the basis that no release of asbestos has occurred (Refer to OAC 3745-300-06(H), 3745-300-07(A)). To stop at the Phase I, there must be no reason to believe a release of asbestos to environmental media (i.e., soil, sediment, surface water, or ground water) has or may have occurred at the property. The basis for determining that a release of asbestos has not occurred must be documented in the Phase I report in accordance with OAC 3745-300-06, which includes documenting compliance with OAC Chapter 3745-20.

Demonstrating No Release: The Volunteer can demonstrate that asbestos remediation was conducted in compliance with all applicable laws and rules (to support that no release of asbestos occurred to environmental media) by providing, in the Phase I report, a written report of the completed asbestos activities, including documentation of the prior notice and the controls performed in accordance with OAC 3745-20-03 through -05. The asbestos report must support the Volunteer’s conclusion, pursuant to OAC 3745-300-06(H)(2), regarding “whether there is any reason to believe that any releases of hazardous substances or petroleum have or may have occurred on, underlying or are emanating from the property.” Assuming the Volunteer is able to conclude and document compliance with the OAC Chapter 3745-20 requirements (and that there is otherwise no reason

to believe an asbestos release occurred), the voluntary action need not include a Phase II Property Assessment (Phase II) for the asbestos.

Triggering Phase II Property Assessment: If a known or suspected asbestos release to environmental media has occurred, a Phase II would be triggered pursuant to OAC 3745-300-07 to investigate the environmental media. For example, a known or suspected release of asbestos may be expected to have occurred where a building with asbestos-containing materials (ACM) collapses due to fire or otherwise deteriorates due to non-use. This is especially true when the ACM debris comes in contact with exposed soil. In addition, it may be reasonable to suspect a release of asbestos to environmental media where compliance with OAC Chapter 3745-20 cannot be documented. VAP applicable standards for asbestos releases to environmental media may be determined in accordance with OAC 3745-300-09 procedures or based on a background evaluation, in accordance with OAC 3745-300-07(H). Also, Ohio EPA has promulgated a generic numerical potable use standard for asbestos in ground water (See OAC 3745-300-08(D)(3)(b)).

Addressing non-compliance with OAC Chapter 3745-20: The Phase I should evaluate whether noncompliance with OAC Chapter 3745-20 requirements could have resulted in asbestos impacting environmental media, e.g., soil. In general, unless there is adequate justification for why asbestos could not have impacted environmental media on the property, noncompliance with OAC Chapter 3745-20 requirements would indicate a suspected release to environmental media. Therefore, a Phase II would be triggered to investigate the suspected release of asbestos to environmental media. In addition, any noncompliance with OAC Chapter 3745-20 may have to be resolved with DAPC or the appropriate local air agency in order to address the noncompliance with OAC Chapter 3745-20 prior to issuance of the NFA Letter.

Use of Analytical Data: To document the lack of an asbestos release during a building renovation or demolition, the volunteer may need to perform asbestos analysis, e.g., of debris or air samples, for the purposes of demonstrating compliance with OAC Chapter 3745-20 requirements. Samples collected to meet requirements of OAC Chapter 3745-20 do not need to be analyzed by a VAP certified laboratory unless the samples are of environmental media being investigated as part of a VAP Phase II Property Assessment. Therefore, soil samples, as appropriate, may need to be collected for

analysis by a VAP certified laboratory to assess a known or suspected release to soil. Soil sampling also makes sense where noncompliance with OAC Chapter 3745-20 gives reason to believe a release has or may have occurred.

Asbestos Remediation and Property Tax Exemption: The abatement of RACM in accordance with OAC Chapter 3745-20 may be considered a “remedial activity” given the broad definition under ORC 3746.01 and OAC 3745-300-01. In the case of asbestos remediation within a building, where no release of asbestos has occurred nor is anticipated to occur to environmental media, the volunteer performs the remedial activity outside of OAC 3745-300-11 (as a standard had not been exceeded for a release). Conversely, remediation of asbestos in environmental media would be addressed through OAC 3745-300-11, in connection with a Phase II. Therefore, whether the remedial activity is conducted under ORC Chapter 3746 or through OAC 3745-300-11, the property receives a tax exemption pursuant to ORC 5709.87 because a remedial activity was conducted.

Asbestos Removal vs. Left-in-Place: OAC Chapter 3745-20 requirements do *not* encompass ACM remaining in use at a facility, e.g., when no renovation or demolition is needed, or a renovation can occur without affecting any ACM at the facility. Accordingly, the VAP does not encompass requirements for ACM left in place at a facility (and not resulting in a release to environmental media). Therefore, the ACM left in place and any potential future releases due to the ACM are not included in the release of liability provided by a covenant not to sue from Ohio EPA.

**OHIO EPA
CONTACT:**

For any questions concerning this issue, please contact the VAP central office at (614) 644-2924.