



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.  
Secretary  
Louisiana Department of Environmental Quality  
P. O. Box 4301  
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

This letter is in response to a January 24, 2006 electronic mail message from Cheryl Nolan of your staff transmitting a draft Protocol from the Louisiana Department of Environmental Quality (LDEQ) developed to provide guidance on compliance with applicable asbestos standards during the demolition of houses and disposal of resulting debris in response to Hurricane Katrina and Hurricane Rita. Staff from EPA Headquarters and EPA Region 6 have had a number of conversations with LDEQ staff in the past week, and EPA understands that LDEQ wishes to explore potential flexibility to facilitate the parts of the Protocol that contemplate 1) the grinding of debris containing potentially regulated asbestos containing material to reduce its volume and 2) treating certain homes (e.g., those built after 1980) as not containing regulated asbestos. The purpose of this letter is to explain how EPA would like to proceed to resolve these issues and to provide some interim flexibility with respect to federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements that will allow additional demolition to go forward as we continue to work on these issues.

During recent phone calls with EPA regional and headquarters staff, LDEQ identified several issues that are adversely affecting the speed of demolition and debris disposal and which it seeks to address in its Protocol. These issues include limited landfill space that can accept asbestos contaminated material, the sheer volume of debris which must be transported and placed in the landfills, and the number of houses that must be demolished and which are subject to the Clean Air Act NESHAP asbestos inspection requirements and/or the emission control and disposal requirements.

EPA recognizes the tremendous challenge to demolish homes severely damaged by the hurricanes and dispose of the huge amounts of debris as expeditiously as possible. On my recent visit to the New Orleans area, which members of LDEQ staff and management graciously hosted, I saw the actual level of Hurricane Katrina's devastation, and it brought home the need to work closely with Louisiana to explore options that will provide a reasonable path forward on demolition and disposal activities that will also be protective of the public and the environment. EPA appreciates that LDEQ has already agreed in the past week to several modifications to the approach laid out in the draft Protocol to address the Agency's concerns regarding the consistency of the Protocol with federal and state requirements. EPA is committed to continuing to work closely with LDEQ to try to resolve the "grinding" issue expeditiously and discuss the "post-1980" and other debris management issues soon after that.

As EPA staff has discussed with LDEQ staff over the past week, EPA needs to receive and evaluate additional information to make decisions as to whether to grant a No Action Assurance for these

options. LDEQ has agreed to provide additional information on landfill capacity and data on grinding activities, e.g., air monitoring data from sites where grinding debris from completely destroyed areas (on the ground debris) has taken place. EPA applauds the efforts that LDEQ and the U.S. Army Corps of Engineers have made to develop such data and will expedite its review and evaluation of the data, in consultation with LDEQ, once the Agency receives the information.

As EPA and LDEQ work to address grinding and other issues, we understand from Region 6 that LDEQ has requested flexibility to expedite the demolition of certain structures. The first part of LDEQ's request is to allow certain residences subject to a government demolition order to be treated as though they have been determined to be structurally unsound and in danger of imminent collapse. The asbestos NESHAP exempts structures being demolished under a government demolition order, issued because the structure is unsound and in danger of imminent collapse, from the 10 day notification requirement and from the requirement to inspect and remove asbestos provided specific emission control procedures (e.g., trained supervisor, asbestos NESHAP demolition work practices) are followed. See 40 CFR § 61.145(a)(3). The NESHAP transport and disposal requirements also apply to the debris from these demolitions.

In light of the widespread destruction from the hurricanes, EPA understands that demolition orders may be issued for a variety of reasons. Such circumstances include houses found to be structurally unsound and in danger of imminent collapse, houses found to be structurally unsound, houses moved off their foundations (but which may not have been inspected by a structural engineer), houses found to be uninhabitable (but structurally sound), or houses facing repair costs higher than the structure's replacement cost. Such decisions are and remain the responsibility of state or local governments.

Given the unprecedented situation faced by the State, EPA is granting a No Action Assurance for the asbestos NESHAP, 40 CFR Part 61, Subpart M, to allow residences that are subject to a government issued demolition order based on the residence being 1) structurally unsound but not necessarily in danger of imminent collapse, or 2) moved off of its foundation, to be treated as though the demolition order is based on a determination that the house is structurally unsound and in danger of imminent collapse. This No Action Assurance will allow such houses to be demolished without inspection and removal of asbestos prior to demolition but will ensure adequate protections through the requirements of the asbestos NESHAP. These requirements include notification, handling, transportation and disposal procedures (e.g., thorough wetting of the material from before the demolition process through disposal). Although not a requirement, EPA recommends thoroughly wetting the interior to the extent possible through window or door openings and/or through openings made into the attic spaces from the exterior prior to the demolition. This No Action Assurance does not apply to structurally sound residences that are being demolished due to the house being uninhabitable or due to the cost of repair being greater than the replacement cost.

The second part of LDEQ's request seeks flexibility regarding government issued demolition orders which are based on broad determinations for groups of houses. EPA agrees that, given the severe and widespread devastation, it may not be practical for state or local officials to make an individual determination for every residential structure regarding whether the house is structurally unsound and in danger of imminent collapse. LDEQ staff have stated that significant delays would result from a requirement to conduct individual structural assessments for every affected residence. In light of these valid concerns and the need to proceed with the recovery effort in a timely manner, EPA is granting LDEQ a No Action Assurance for the asbestos NESHAP to treat a government issued demolition order based on a determination made by the state or local government for groups of residences, e.g., a block, a subdivision,

or other appropriate geographic area, the same as an order based on an individual determination for each of the residences in the group.

These No Action Assurances will be in effect for twelve months from the date of this letter and apply only to the demolition of those houses in Louisiana that were damaged by Hurricane Katrina or Hurricane Rita and which are subject to a government issued demolition order. Consistent with the NESHAP, the No Action Assurances apply only to residences that have four or fewer units. The No Action Assurances apply to LDEQ and persons operating at LDEQ's direction, and the U.S. Army Corps of Engineers and persons operating at the Corps' direction. EPA reserves the right to revoke or modify these No Action Assurances if the Agency believes that such action is necessary to protect the environment or public health.

EPA recognizes that the State faces extraordinarily difficult circumstances in cleaning up the huge quantity of debris generated by Hurricanes Katrina and Rita. EPA will continue to work with LDEQ to address the "grinding" and "post-1980" issues and to identify and address other instances where regulatory flexibility may be appropriate. If you have any questions, please call me at 202-564-2440, or have your staff call Randy Hill of my staff at 202-564-2220 or John Blevins of EPA Region 6 at 214-665-2210.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator

cc: J. I. Palmer, Jr., Regional Administrator, Region 6  
Richard Greene, Regional Administrator, Region 4  
Hal Leggett, LDEQ  
Chuck Carr Brown, LDEQ  
Cheryl Nolan, LDEQ  
BG Robert Crear, U.S. Army Corps of Engineers  
Charles Chisolm, Executive Director, MDEQ