



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

SEP 28 2007

ASSISTANT ADMINISTRATOR
FOR 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:

We are in receipt of Assistant Secretary Harold Leggett's letter of July 26, 2007, in which he requests on behalf of the Louisiana Department of Environmental Quality (LDEQ) that the United States Environmental Protection Agency (EPA) extend the February 3 and 24, 2006, and February 2, 2007 No Action Assurance letters (hereinafter collectively referred to as the NAAs) (Enclosure 1) through June 30, 2008. These NAAs, which currently are due to expire on September 30, 2007, provide flexibility for certain provisions of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, for demolition activities necessitated by Hurricanes Katrina and Rita.

In Dr. Leggett's letter, he notes that, although much has been accomplished, the Federal Emergency Management Agency (FEMA) estimates that there are still approximately 15,000 homes requiring demolition. The letter goes on to assert that the flexibility afforded by the NAAs has allowed the demolition mission to proceed in about half the time and at about half the cost per demolition than otherwise would be the case under the asbestos NESHAP, while still ensuring protection of public health and the environment. The letter further acknowledges that demolitions have been delayed for a number of reasons, including local laws on condemnation, decisions by local governing bodies, and the lack of clear title to many residences.

EPA recognizes the tremendous challenge to demolish the extraordinary number of homes damaged by the hurricanes and we are committed to work with LDEQ to find a reasonable path forward to address these challenges and ensure protection of public health and the environment. Monitoring data for the current practices have not raised any concerns.

The flexibility provided under the NAAs has always been conditioned upon increased oversight activities by EPA Region 6. FEMA, through an Interagency Agreement (IAA) with Region 6, provided funding for many of the Region 6 oversight

activities. However, EPA understands that FEMA will be extending the IAA with Region 6 only through December 31, 2007. (See Enclosure 2, August 30, 2007 Letter from Jim Stark, Director, Louisiana Transitional Recovery Office to Colonel Thomas Kirkpatrick, State Coordinating Officer, State of Louisiana). In light of both FEMA's decision and the information provided by LDEQ, today EPA is exercising its enforcement discretion and extending the NAAs through December 31, 2007.

NAA Oversight

Both LDEQ and Region 6 have done an outstanding job of overseeing the demolition activities under the NAAs and should be commended. Such oversight activities are critical to ensuring protection of public health and the environment and these ongoing efforts must continue under the extension granted today. Accordingly, for the duration of this NAA extension, LDEQ is required to continue to commit at least the same level of resources necessary for demolition oversight as utilized under the prior NAAs. In turn, EPA Region 6 will continue to support LDEQ field activity to at least the same level as it had under the prior NAAs. Both LDEQ and EPA agree to continue to follow up on any instances of possible noncompliance with the NAAs, the asbestos NESHAP, and the Louisiana Emissions Standards for Hazardous Air Pollutants, where appropriate, with enforcement action.

We understand that the United States Army Corps of Engineers (USACE) is phasing out its activities and will not be conducting any demolitions after September 30, 2007. The USACE has been instrumental in providing monitoring data from their contractors, both worker monitoring required under the Occupational Safety and Health Administration (OSHA) program and demolition site perimeter monitoring. Since this monitoring will no longer be available through the USACE, we are establishing new requirements to ensure this important information continues to be provided to LDEQ for review and consideration as part of their ongoing oversight efforts. If the number of contractors performing demolition work under today's NAA extension reaches ten or more, LDEQ must contact EPA so that EPA can reconsider the approach used in obtaining the monitoring data.

Limitations

Today's NAA extension applies only to those persons and activities identified in the February 3 and 24, 2006 and February 2, 2007 NAAs with the following additional restrictions and/or conditions:

1. After September 30, 2007, the NAA does not apply to the USACE or its contractors since the USACE no longer will be performing residential demolition activities in Louisiana after that date.
2. The NAA applies only to the extent that identified persons are operating and such activities are taking place in the following parishes, which are covered under the State of Louisiana, Department of Environmental Quality, Eleventh Amended Declaration and

Administrative Order, dated July 13, 2007: Orleans, Plaquemines, St. Tammany, St. Bernard and Jefferson.

3. Today's NAA extension will only apply to those identified persons doing demolition activities in the parishes covered by this extension, provided they notify LDEQ in writing that they wish to be subject to the NAA in advance of such demolition activities. Such notice is only required once. With respect to such persons, those responsible for maintaining copies of employee asbestos exposure monitoring information as required by OSHA must provide copies of such information to LDEQ. The employee exposure monitoring information includes the Initial Exposure Assessment (both 8 hour TWA and 30 minute short term exposure), Periodic Monitoring (daily results within Class II work), and the final test results that allow the employer to terminate monitoring pursuant to OSHA requirements, if applicable. If, for some reason, permissible exposure limit (PEL) and excursion limit monitoring are no longer required under OSHA, the persons who would have been responsible for maintaining copies of the monitoring information must notify LDEQ that monitoring has ceased.

Persons responsible for maintaining copies of employee exposure monitoring data must submit any such data to LDEQ by the first and fifteenth of the month after they receive the monitoring results. If monitoring is not required under OSHA, notification is still necessary and must be provided to LDEQ prior to the beginning of demolition activities. This condition is not intended in any way to affect or modify any existing OSHA requirements. LDEQ will review the employee exposure data to determine if there are conditions developing that may have a negative impact on human health or the environment.

We understand that perimeter monitoring is being performed at the majority of demolition sites. This data must also be submitted to LDEQ and reviewed as part of its oversight activities. The monitoring data and any issues regarding exposure will be discussed with EPA Region 6 during the monthly LDEQ/EPA Region 6 oversight calls, or sooner if the data indicate a potential negative impact on human health or the environment.

4. In addition, as is the case with the NAAs that are being extended by this letter, this NAA extension does not apply to any other federal requirements that may apply to residential demolition and disposal activities (other than the asbestos NESHAP provisions specifically discussed in the February 3 and 24, 2006 and February 2, 2007 NAAs and herein).

This extension is conditioned on the oversight activities described above, as well as all the other conditions specified in the February 3 and 24, 2006 and February 2, 2007 NAAs. LDEQ must immediately notify EPA Region 6 if it becomes aware of any information that indicates it is not advisable to continue to allow the flexibility provided in today's NAA extension. EPA continues to reserve the right to revoke or modify the NAAs that are extended by way of this letter, as well as the extension itself, if the

Agency believes that such action is necessary to protect public health and the environment.

Through today's extension of the prior NAAs, EPA is continuing its commitment to work with LDEQ in addressing the very difficult circumstances caused by Hurricanes Katrina and Rita. If you have any questions, please give me a call 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

Enclosures

Cc: Richard Greene, Regional Administrator, Region 6
Dr. Harold Leggett, LDEQ
Dr. Chuck Carr Brown, LDEQ
Cheryl Nolan, LDEQ