



To: All Interested Parties
From: R. Radhakrishnan, P.E. *R. Radhakrishnan*
Director, Asbestos Control Program
Date: June 23, 2010
Re: Regulatory Interpretation Memorandum

Caswell F. Holloway
Commissioner

59-17 Junction Boulevard
Flushing, NY 11373

Carter H. Strickland Jr.
Deputy Commissioner for
Sustainability

Michael Gilsonan
Assistant Commissioner
Environmental Compliance

R. Radhakrishnan P.E.
Director
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As part of the revised DEP Asbestos Rules which went into effect on October 13, 2009, the list of exempt activities in 15 RCNY 1-23(a) was deleted and replaced by a new provision stating that work would be considered exempt if either (1) there was no physical work performed or (2) no "building materials" (as defined in the Rules) would be disturbed by the proposed work.

The effect of these changes was to render many activities which were previously exempt subject to the requirement to have asbestos sampling performed. Since these changes took effect, DEP has conducted a review of the practical difficulties caused by this requirement of sampling where no sampling had previously been required. This review has included discussions with other regulatory agencies at the city, state, and federal levels. Additionally, a citywide sampling program was conducted to determine whether there was any possibility that certain types of building materials contained asbestos.

Based on this review, it is hereby determined that, effective as of the date of this memorandum, the following activities are exempt from the requirement that an asbestos survey be performed prior to the issuance of a Buildings Department permit and the commencement of work:

- Awnings
- Cranes (not anchored to building/structure)
- Emergency power not involving hard wiring (e.g. battery packs)
- Exterior concrete work (e.g. sidewalks, curb cuts, traffic islands)
(except if waterproofing compound is present)
- Exterior Scaffolding (not anchored to building/structure)
- Exterior trenching & drainage
- Ground-mounted flagpoles
- New storefronts in existing masonry openings (no disturbance of existing building)
- Radio antennas (towers, free-standing)
- Relocating parking lot sheds (free-standing)
- Replacing rooftop air conditioning unit (no modification of ductwork or disturbance of building)

Roadway asphalt

Sealing unsafe or abandoned buildings with cinderblock/mortar

Sidewalk sheds, bridges, fences, elevators, hoists & café signs (no penetration of building materials)

Street furniture (e.g. candy or newsstands, bus shelters, Kiosks)

Installation of new outdoor swimming pool

Tents (free-standing)

Erection of temporary structures (e.g. trailers) with electric/water lines only

Applications with no physical work performed remain exempt from survey requirements.

These exceptions will be reinstated to the Rules as part of an upcoming revision.

In addition, the definition of “Building materials” in the current Rules is to be revised. Pending this revision, the term “Building materials” shall be interpreted to mean all materials listed as Presumed Asbestos Containing Materials (PACM) and Suspect Miscellaneous ACM in NYSDOL ICR 56, including but not limited to interior and exterior finishes, equipment, plaster, roofing, flooring, caulking, sealants, tiles, insulation, and mortar and refractory bricks used in the construction of boilers.