

AIR POLLUTION

CLEAN AIR ACT (CAA)

DEFINITIONS

Operator

42 U.S.C. § 7413(h) 3

Person

42 U.S.C. § 7602(e); 42 U.S.C. § 7413(h) 4

Stationary Source

42 U.S.C. § 7602(z); 42 U.S.C. § 7411(a)(3) 5

OFFENSES

Falsification, Reporting, and Tampering Violations

42 U.S.C. § 7413(c)(2) 6

Knowing Endangerment

42 U.S.C. § 7413(c)(5) 7

Consent Defense

42 U.S.C. § 7413(c)(5)(C) 8

General Defenses

42 U.S.C. § 7413(c)(5)(D) 9

Knowledge

42 U.S.C. § 7413(c)(5)(B) 10

Organization

42 U.S.C. § 7413 11

Serious Bodily Injury

42 U.S.C. § 7413(c)(5)(F) 12

Knowing Violations

42 U.S.C. § 7413(c)(1) 13

Negligent Endangerment

42 U.S.C. § 7413(c)(4) 14

ASBESTOS DEMOLITION AND RENOVATION

Definition

Owner or Operator

42 U.S.C. § 7412(a)(9); 40 C.F.R. § 61.141 15

Demolition and Renovation Standard

40 C.F.R. § 61.145 16

Waste Disposal Standard

40 C.F.R. § 61.150 19

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

CRIMINAL PENALTIES

Willful Violations

29 U.S.C. § 666(e) 22

OPERATOR

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(h) Operator.—For purposes of the provisions of this section and [42 U.S.C. § 7420] of this chapter, the term “operator”, as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term “a person” shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term “a person” shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

PERSON

42 U.S.C. § 7602. DEFINITIONS

...

(e) The term “person” includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(h) Operator.—For purposes of the provisions of this section and [42 U.S.C. § 7420] of this chapter, the term “operator”, as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term “a person” shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term “a person” shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

STATIONARY SOURCE

42 U.S.C. § 7602. DEFINITIONS

...

(z) **Stationary source.** The term “stationary source” means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in [42 U.S.C. § 7550].

42 U.S.C. § 7411. STANDARDS FOR PERFORMANCE FOR NEW STATIONARY SOURCES

(a) **Definitions.** For purposes of this section:

...

(3) The term “stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

FALSIFICATION, REPORTING, AND TAMPERING VIOLATIONS

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(c) Criminal penalties.

...

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter

shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

KNOWING ENDANGERMENT

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(c) Criminal penalties.

...

(5) (A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to [42 U.S.C. § 7412] or any extremely hazardous substance listed pursuant to [42 U.S.C. § 11002(a)(2)] that is not listed in [42 U.S.C. § 7412], and who **knows** at the time that he thereby places another person in imminent **danger** of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18, or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under 42 U.S.C. §§ 7661 et seq., a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

CONSENT DEFENSE

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(c) Criminal penalties.

...

(5)(C) It is an affirmative **defense** to a prosecution that the conduct charged was freely **consented** to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

GENERAL DEFENSES

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(c) Criminal penalties.

...

(5)(D) All **general defenses**, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

KNOWLEDGE

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(c) Criminal penalties.

...

(5)(B) In determining whether a defendant who is an individual **knew** that the violation placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed;
and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

ORGANIZATION

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(c) Criminal penalties.

...

(5)(E) The term “organization” means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

SERIOUS BODILY INJURY

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(c) Criminal penalties.

...

(5)(F) The term “serious bodily injury” means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

KNOWING VIOLATIONS

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(c) Criminal penalties.

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of [42 U.S.C. § 7411(e)] (relating to new source performance standards), [42 U.S.C. §§ 7412, 7414] (relating to inspections, etc.), [42 U.S.C. § 7429] (relating to solid waste combustion), [42 U.S.C. § 7475(a)] (relating to preconstruction requirements), an order under [42 U.S.C. § 7477] (relating to preconstruction requirements), an order under [42 U.S.C. § 7603] (relating to emergency orders), [42 U.S.C. § 7661a(a) or § 7661(c)] (relating to permits), or any requirement or prohibition of [42 U.S.C. §§ 7651 et seq.] (relating to acid deposition control), or [42 U.S.C. §§ 7671 et seq.] (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than [42 U.S.C. §§ 7671 et seq.]) shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

NEGLIGENT ENDANGERMENT

42 U.S.C. § 7413. FEDERAL ENFORCEMENT

...

(c) Criminal penalties.

...

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to [42 U.S.C. § 7412] or any extremely hazardous substance listed pursuant to [42 U.S.C. § 11002(a)(2)] that is not listed in [42 U.S.C. § 7412], and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 of the United States Code, or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

OWNER OR OPERATOR

42 U.S.C. § 7412. HAZARDOUS AIR POLLUTANTS

(a) Definitions.

...

(9) **Owner or operator.** The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

40 C.F.R. § 61.141. DEFINITIONS

...

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

DEMOLITION AND RENOVATION STANDARD

40 C.F.R. § 61.145. STANDARD FOR DEMOLITION AND RENOVATION

(a) Applicability. To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a **demolition or renovation** activity and prior to the commencement of the **demolition or renovation**, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a **demolition or renovation** activity, including the removal of RACM as follows:

...

(b) Notification requirements. Each owner or operator of a **demolition or renovation** activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to **demolish or renovate**. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

...

(c) Procedures for asbestos emission control. Each owner or operator of a **demolition or renovation** activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being **demolished or renovated** before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before **demolition** if:

(i) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(ii) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during **demolition**; or

(iii) It was not accessible for testing and was, therefore, not discovered until after **demolition** began and, as a result of the **demolition**, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during **demolition**.

(2) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(i) Adequately wet all RACM exposed during cutting or disjoining operations; and

(ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

(3) When RACM is stripped from a facility component while it remains in place in the

facility, adequately wet the RACM during the stripping operation.

(i) In renovation operations, wetting is not required if:

(A) The owner or operator has obtained prior written approval from the Administrator based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and

(B) The owner or operator uses one of the following emission control methods:

(1) A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(2) A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

(3) Leak-tight wrapping to contain all RACM prior to dismantlement.

(ii) In renovation operations where wetting would result in equipment damage or a safety hazard, and the methods allowed in paragraph (c)(3)(i) of this section cannot be used, another method may be used after obtaining written approval from the Administrator based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph (c)(3)(i) of this section.

(iii) A copy of the Administrator's written approval shall be kept at the worksite and made available for inspection.

(4) After a facility component covered with, coated with, or containing RACM has been taken out of the facility as a unit or in sections pursuant to paragraph (c)(2) of this section, it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (c)(5) of this section. If stripped, either:

(i) Adequately wet the RACM during stripping; or

(ii) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs (c)(2), (3), and (4) of this section), the RACM is not required to be stripped if the following requirements are met:

(i) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the RACM.

(ii) The component is encased in a leak-tight wrapping.

(iii) The leak-tight wrapping is labeled according to § 61.149(d)(1)(i), (ii), and (iii) during all loading and unloading operations and during storage.

(6) For all RACM, including material that has been removed or stripped:

(i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150; and

(ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(3) of this section need not be wetted.

(7) When the temperature at the point of wetting is below 0 [degrees] C (32 [degrees] F):

(i) The owner or operator need not comply with paragraph (c)(2)(i) and the wetting provisions of paragraph (c)(3) of this section.

(ii) The owner or operator shall remove facility components containing, coated with, or covered with RACM as units or in sections to the maximum extent possible.

(iii) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records available for inspection by the Administrator during normal business hours at the **demolition or renovation** site. The owner or operator shall retain the temperature records for at least 2 years.

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. Every 2 years, the trained on-site individual shall receive refresher training in the provisions of this regulation. The required training shall include as a minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the **demolition or renovation** site.

(9) For facilities described in paragraph (a)(3) of this section, adequately wet the portion of the facility that contains RACM during the wrecking operation.

(10) If a facility is **demolished** by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

WASTE DISPOSAL STANDARD

40 C.F.R. § 61.150. STANDARD FOR WASTE DISPOSAL FOR MANUFACTURING, FABRICATING, DEMOLITION, RENOVATION, AND SPRAYING OPERATIONS.

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a) (1) through (4) of this section.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(4) or 1926.1101(k)(8). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) For facilities demolished where the RACM is not removed prior to demolition according to §§ 61.145(c)(1) (i), (ii), (iii), and (iv) or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(4) Use an alternative emission control and waste treatment method that has received

prior approval by the Administrator according to the procedure described in § 61.149(c)(2).

(5) As applied to demolition and renovation, the requirements of paragraph (a) of this section do not apply to Category I nonfriable ACM waste and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of § 61.154, or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of § 61.155.

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

(c) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must conform to the requirements of §§ 61.149(d)(1) (i), (ii), and (iii).

(d) For all asbestos-containing waste material transported off the facility site:

(1) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name and address of the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program.

(iii) The approximate quantity in cubic meters (cubic yards).

(iv) The name and telephone number of the disposal site operator.

(v) The name and physical site location of the disposal site.

(vi) The date transported.

(vii) The name, address, and telephone number of the transporter(s).

(viii) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record, described in paragraph (d)(1) of this section, to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site.

(3) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(4) Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(i) A copy of the waste shipment record for which a confirmation of delivery was not received, and

- (ii) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.
- (5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.
- (e) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

WILLFUL VIOLATIONS

29 U.S.C. § 666. CIVIL AND CRIMINAL PENALTIES

...

(e) **Willful violation** causing death to employee. Any employer who **willfully violates** any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.