refinery equipment; Manufacture of synthesized pharmaceutical products; Mmanufacture of pneumatic rubber tires; Automobile and light duty truck manufacturing; Fire truck and emergency response vehicle manufacturing; Manufacture of high-density polyethylene, polypropylene, and polystyrene resins, a.k.a. polymer manufacturing; Leaks from synthetic organic chemical and polymer manufacturing equipment; Air oxidation processes at synthetic organic chemical manufacturing industries; and Equipment leaks from natural gas/gasoline processing plants. These negative declarations are approved into the Wisconsin ozone SIP.

(B) On June 30, 1994, Wisconsin submitted a list of facilities subject to the post-enactment source categories listed in Appendix E to the General Preamble. 57 FR 18070, 18077 (April 28, 1992). The list included facilities covered by the source categories cleanup solvents, offset lithography, plastic parts coating, and wood furniture coating. This list is approved into the Wisconsin ozone SIP.

[FR Doc. 95–18523 Filed 7–27–95; 8:45 am]

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40 CFR Part 61

[FRL–5266–2]

Asbestos NESHAP Clarification of Intent

AGENCY: Environmental Protection Agency.

ACTION: Notice of clarification.

SUMMARY: On November 20, 1990, the **Federal Register** published the Environmental Protection Agency's (the Agency's) revision of the National Emission Standard for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M. 55 FR 48406. Since the publication of this revision, EPA has received several inquiries from municipalities regarding whether the ''residential building exemption'' from the asbestos NESHAP applies to the demolition or renovation of isolated residential buildings with four or fewer dwelling units (''small residential buildings'') that have been declared safety hazards or public nuisances by local governments. EPA is publishing this notice to clarify that, in EPA's opinion, the demolition or renovation of an isolated small residential building by any entity is not covered by the asbestos NESHAP. This notice does not affect EPA's policy regarding demolition by fire. However, EPA also believes that the demolition or renovation of multiple (more than one) small residential buildings on the same site by the same owner or operator (or owner or operator under common control) is covered by the asbestos NESHAP.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Ripp, United States Environmental Protection Agency (2223A), 401 M Street, SW., Washington, DC 20460, telephone (202) 564–7003.

SUPPLEMENTARY INFORMATION: This clarification does not supersede, alter, or in any way replace the existing Asbestos NESHAP. This notice is intended solely as guidance and does not represent an action subject to judicial review under section 307(b) of the Clean Air Act or section 704 of the Administrative Procedure Act.

I. The Asbestos NESHAP and the ''Residential Building Exemption''

On April 6, 1973, the Agency published its initial NESHAP for asbestos (38 FR 8820) after determining that asbestos was associated with asbestosis and certain cancers. The initial asbestos NESHAP covered ''any institutional, commercial and industrial building (including apartment buildings having more than four dwelling units), structure, facility, installation or portion thereof * * *'' 38 FR 8829 (codified at 40 CFR 61.22(d) (1973)). The NESHAP did not cover individual residential buildings containing four or fewer dwelling units. EPA based this ''residential building exemption'' on a National Academy of Sciences' Report which stated ''[i]n general, single-family residential structures contain only small amounts of asbestos insulation.'' EPA stated that apartment houses with four or fewer dwelling units were considered to be equivalent to single-family residential structures. 38 FR 8821.

Since that time, EPA has revised the asbestos NESHAP on several occasions. EPA has not substantially revised the exemption for small residential buildings. However, EPA has stated that residential buildings demolished or renovated as part of larger projects, for instance, highway construction projects, were not exempt from the NESHAP. *See* Letter from John S. Seitz, Director, Stationary Source Compliance Division, U.S. EPA to Thomas S. Hadden, Supervisor, Division of Air Pollution Control, Ohio EPA, dated March 15, 1989; letter from Ann Pontius, U.S. EPA Region 5 to Thomas Hadden, dated September 28, 1988; letter from David Kee, Air Section, U.S. EPA to Richard Larson, Minneapolis Housing and Redevelopment Authority, dated May 16, 1973.

II. The 1990 Revisions to the Asbestos NESHAP

On November 20, 1990, EPA published a revision to the asbestos NESHAP. 55 FR 48406. The purpose of the revision was ''to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls.'' *Id.* The revisions revised and added several definitions in order to clarify the requirements of the NESHAP. The preamble accompanying the revisions also contained clarifying information.

In particular, the 1990 revisions clarified the definition of ''facility'' to include:

> Any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units) * * *

Id. at 48415 (codified at 40 CFR 61.141). The 1990 amendments also added a definition of ''installation'' that stated:

> Installation means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

Id. (codified at 40 CFR 61.141). In responding to comments regarding the ''residential building exemption,'' the preamble noted that:

> EPA does not consider residential structures that are demolished as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development would be subject to the NESHAP. * * * The owner of a home that renovates his house or demolishes it to construct another house is not to be subject to the NESHAP.

Id. at 48412.[1] Further, in response to a comment asking whether a group of residential buildings at one location would be covered by the rule, the preamble stated:

> A group of residential buildings under the control of the same owner or operator is considered an installation according to the definition of ''installation'' and is therefore covered by the rule.

[1] EPA considers demolitions planned at the same time or as part of the same planning or scheduling period to be part of the same project. In the case of municipalities, a scheduling period is often a calendar year or fiscal year or the term of a contract.

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Id.

III. Programs to Demolish or Renovate Residential Buildings

Since the publication of the 1990 revisions to the asbestos NESHAP, certain questions have arisen regarding whether demolitions or renovations of residential homes that are demolished or renovated by municipalities for reasons of public health, welfare or safety (''nuisance abatement demolitions'') are covered by the asbestos NESHAP.[2] Several municipalities have stated that they believe such demolitions or renovations to be excluded from the NESHAP under the residential building exemption. Municipalities have also stated that EPA officials have been inconsistent in their determinations of this issue. In particular, officials from several municipalities in Florida have asked EPA to issue a notice clarifying EPA's interpretation of the asbestos NESHAP with regard to this issue. In addition, the House of Representatives Report accompanying H.R. 4624 (House Report 103–555, reported by the House Appropriations Committee), also noted these allegedly inconsistent interpretations and directed EPA to issue a notice of clarification that a nuisance abatement demolition or renovation does not subject an otherwise exempt structure to the asbestos NESHAP regulations. In an effort to clarify this issue for the regulated community, EPA is presenting this notice giving its interpretation of the NESHAP with regard to this issue.

IV. EPA Interpretation

EPA believes that individual small residential buildings that are demolished or renovated are not covered by the asbestos NESHAP. This is true whether the demolition or renovation is performed by agents of the owner of the property or whether the demolition or renovation is performed by agents of the municipality. EPA believes that the residential building exemption applies equally to an individual small residential building regardless of whether a municipality is an ''owner or operator'' for the purposes of the demolition or renovation. EPA believes that the exemption is based on the type of building being demolished or renovated and the type of demolition or renovation project that is being undertaken, not the entity performing or controlling the demolition or renovation.

However, EPA believes that the residential building exemption does not apply where multiple (more than one) small residential buildings on the same site[3] are demolished or renovated by the same owner or operator as part of the same project or where a single residential building is demolished or renovated as part of a larger project that includes demolition or renovation of non-residential buildings. The definition of facility specifically includes ''any residential structure, installation or building'' but excludes only ''residential *buildings* having four or fewer dwelling units'' [emphasis added]. *Id.* at 48415. Specifically not excluded from the definition of facility were residential *installations.* EPA believes that the fact that the residential building exemption is limited to residential *buildings,* and does not include residential *installations,* shows that the residential building exemption was not designed to exempt from the NESHAP demolitions or renovations of multiple buildings at a single site by the same owner or operator. Moreover, to the extent the regulations are ambiguous, EPA believes the language of the preamble to the 1990 regulations quoted above makes clear that the Agency interpreted the residential building exemption not to include the demolition of a group of residential buildings on the same site under the control of the same owner or operator. The preamble also notes that demolitions of residential buildings as a part of larger demolition projects (e.g. construction of a shopping mall) are not excluded from the NESHAP. EPA believes that this interpretation is consistent with the original purpose of the residential building exemption, which was to exempt demolitions or renovations involving small amounts of asbestos. EPA does not believe the residential building exemption was designed to exempt larger demolitions or renovations on a particular site, even where small residential buildings are involved.[4]

While this notice clarifies EPA's belief that certain demolitions or renovations performed by municipalities are not subject to the asbestos NESHAP, EPA encourages municipalities (and other owners and operators) to perform such demolitions or renovations in a manner that provides appropriate consideration for any potential adverse health impacts to the public. This notice applies only to the Federal asbestos NESHAP. Other Federal, State or local agency regulations may apply.

Dated: July 17, 1995.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

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[2] Demolition of such homes typically occur after a municipality orders a building condemned for public health or safety reasons (e.g. condemnation of a building that is abandoned and/or in danger of collapse). This type of demolition does not include demolitions of buildings for the purpose of building public facilities like highways or sports arenas.

[3] The term ''site'' is not defined in the regulations and EPA does not intend to provide any determination of the boundaries of a ''site'' in today's clarification. However, to provide guidance, EPA notes that a ''site'' should be a relatively compact area. In EPA's view, an entire municipality, or even a neighborhood in a municipality, should not be considered a single site. Where an area is made up of multiple parcels of land owned and operated by various parties, EPA believes that parcels on the same city block may be considered as a single site. (Where a site can not be easily defined as a city block, the site should be a comparably compact site. In any event, the local government should use common sense when applying this guide.) Obviously, EPA believes that if a demolition project involves the demolition of several contiguous city blocks, the entire area could be considered a site. However, EPA believes that demolition of two individual residences separated by several city blocks should not be considered a demolition on a single site. In EPA's view, the area of a site may be larger where the area is owned and operated as a unitary area by a single owner/operator (e.g. a shopping mall or amusement park).

[4] EPA notes that 40 CFR 61.19 forbids owners and operators from attempting to circumvent any NESHAPs by carrying out an operation in a piecemeal fashion to avoid coverage by a standard that applies only to operations larger than a specified size.

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40 CFR Part 81

[UT22–1–6925a; FRL–5265–5]

Designation of Area for Air Quality Planning Purposes; Utah; Designation of Ogden City PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this notice, EPA is revising the PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) National Ambient Air Quality Standards (NAAQS) designation for Ogden City, a portion of Weber County, Utah. Previously, consistent with section 107(d)(3)(A) of the Act, EPA notified the Governor of Utah that Weber County, Utah should be redesignated from unclassifiable to nonattainment for PM_{10}. The redesignation is based upon violations of the PM_{10} NAAQS which were monitored between January 1991 and January 1993.

DATES: This final rule will become effective on September 26, 1995 unless adverse comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.