

United States Environmental Protection Agency
Region 5

IN THE MATTER OF:)
)
Pewaukee High School) FINDING OF VIOLATION
Pewaukee, Wisconsin)
) EPA-5-00-WI-23
)
Proceedings Pursuant to)
the Clean Air Act,)
42 U.S.C. §§ 7401 et seq.)

FINDING OF VIOLATION

The United States Environmental Protection Agency finds that Patrick J. Acker has violated Section 112 of the Clean Air Act, 42 U.S.C. § 7412. Specifically, Patrick J. Acker has violated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos at 40 C.F.R. Part 61, subpart M as follows:

Regulatory Authority

1. The NESHAP for asbestos (hereinafter, NESHAP), 40 C.F.R. Part 61, Subpart M, applies to, inter alia, a facility being renovated if the combined amount of regulated asbestos-containing material to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least 160 square feet on facility components other than pipes. 40 C.F.R. § 61.145(a)(4)(ii).
2. The NESHAP at 40 C.F.R. § 61.141 defines "facility" as any institutional, commercial, public, industrial, or residential structure, installation, or building.
3. The NESHAP at 40 C.F.R. § 61.141 defines "regulated asbestos-containing material" (RACM) as, inter alia, nonfriable asbestos-containing material containing more than one percent (%) asbestos that has a high probability of becoming or has become crumbled, pulverized or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.
4. The NESHAP at 40 C.F.R. § 61.141 defines "renovation" as altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.

5. The NESHAP at 40 C.F.R. § 61.141 defines "operator" as, inter alia, any person who operates, controls or supervises a facility being renovated, or any person who operates, controls or supervises the renovation operation, or both.

6. The NESHAP, at 40 C.F.R. § 61.145(a), requires the owner or operator of an asbestos demolition or renovation activity to thoroughly inspect the area for the presence of asbestos prior to commencing the demolition or renovation activity.

7. Pursuant to 40 C.F.R. § 61.145(b), the owner or operator of an asbestos renovation activity is required to provide the U.S. EPA with written notice of its intention to renovate at least ten (10) working days before asbestos stripping or removal work or any other activity begin. The owner or operator of a renovation activity in Wisconsin may satisfy this requirement by providing the Wisconsin Department of Natural Resources with written notice of intention to renovate.

8. Pursuant to 40 C.F.R. § 61.145(c)(6), the owner or operator of an asbestos demolition or renovation activity is required to adequately wet all regulated asbestos-containing materials and ensure that the material remains wet until collected and contained or treated in preparation for disposal.

9. Pursuant to 40 C.F.R. § 61.145(c)(8), no regulated asbestos-containing material shall be stripped, removed or otherwise handled or disturbed at a facility that is subject to the requirements of 40 C.F.R. § 61.145 unless at least one on-site representative (such as a foreman or management-level person or other authorized representative) who is properly trained in the provisions of the asbestos NESHAP and the means of complying with such provisions, is present.

10. Pursuant to 40 C.F.R. § 61.150(a)(1), the owner or operator of an asbestos demolition or renovation activity is required to seal the asbestos containing material in leak-tight containers while wet.

11. Pursuant to 40 C.F.R. § 61.150(b), the owner or operator of an asbestos demolition or renovation activity is required to deposit all asbestos containing waste material as soon as practical at an U.S. EPA approved disposal site.

Factual Background

7. Patrick J. Acker was the operator of a renovation activity at the Pewaukee High School site located at 510 Lake Street, Pewaukee, Wisconsin. Specifically, Patrick J. Acker, the Buildings and Grounds Director of the Pewaukee High School, ordered two Pewaukee High School employees to remove approximately 2000 square feet of floor tile and mastic associated with the floor tile from the balcony of the high school gymnasium. Most of the floor tile (1,916 square feet) consisted of gray floor tile, while a smaller (84 square feet), triangular-shaped area of the balcony reportedly used for the playing of shuffle-board games consisted of red floor tile. The employees removed the floor tiles manually with scrapers, and removed the mastic by "dry sanding" it down to the cement floor of the gymnasium balcony. The "dry sanding" activity reduced the mastic to powder, and resulted in visible emissions in the area of the gymnasium balcony and throughout the gymnasium below. There was no containment of the area set up during the work, and the resulting debris was disposed of as "normal" waste. Laboratory analysis of samples taken from the floor tiles and mastic indicated that 84 square feet of red floor tile contained 4% chrysotile asbestos, 84 square feet of black mastic associated with the red floor tile contained 5% chrysotile asbestos, and the mastic associated with the 1,916 square feet of gray floor tile contained 2% chrysotile asbestos.

Applicability

8. Patrick J. Acker's renovation activity at the Pewaukee High School site is subject to the requirements at 40 C.F.R. §§ 61.145 and 61.150. Pursuant to 40 C.F.R. § 61.145(a), the asbestos NESHAP applies to each "owner or operator" of a "demolition or renovation activity" at a "facility", as those terms are defined at 40 C.F.R. § 61.141. Specifically, if the combined amount of RACM in a facility being renovated or demolished is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components or at least 1 cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously, the procedures for emission control set forth at 40 C.F.R. § 61.145 and the waste disposal standard set forth at 40 C.F.R. § 61.150 shall apply.

9. The renovation activity took place in the Pewaukee High School, a public school building; hence, the renovation activity took place in a "facility" within the meaning of the NESHAP. The renovation activity at the Pewaukee High School consisted of the

removal of approximately 2,000 square feet of regulated asbestos-containing material (the 84 square feet of red floor tile and the 2000 square feet of mastic containing more than 1% asbestos). Patrick J. Acker ordered two Pewaukee High School employees to perform this renovation activity, and was therefore an operator of the renovation activity. Therefore, Patrick J. Acker, as the operator of the renovation activity at the Pewaukee High School, is subject to the NESHAP.

Violations

10. Patrick J. Acker is in violation of 40 C.F.R. §§ 61.145(a), 61.145(b), 61.145(c)(6), 61.145(c)(8), 61.150(a)(1), and 61.150(b) as follows:

Patrick J. Acker, the operator of an asbestos renovation activity at Pewaukee High School, failed to thoroughly inspect the site for the presence of asbestos prior to commencing the renovation activity. This is in direct violation of regulation 40 C.F.R. § 61.145(a).

Patrick J. Acker, the operator of an asbestos renovation activity at Pewaukee High School, failed to provide the U.S. EPA or the Wisconsin Department of Natural Resources with written notice of his intention to renovate at least ten (10) working days before asbestos stripping or removal work or any other activity begin. This is in direct violation of regulation 40 C.F.R. § 61.145(b).

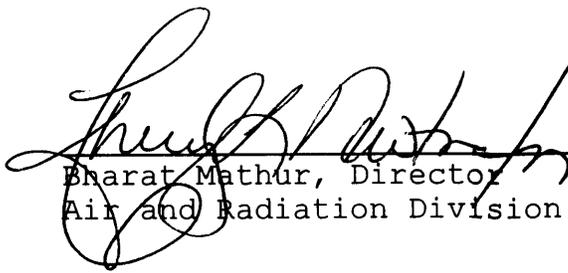
Patrick J. Acker, the operator of an asbestos renovation activity at Pewaukee High School failed to adequately wet all regulated asbestos-containing materials and ensure that the material remain wet until collected and contained or treated in preparation for disposal. This is in direct violation of regulation 40 C.F.R. § 61.145(c)(6).

Patrick J. Acker, the operator of an asbestos renovation activity at Pewaukee High School, failed to ensure that no regulated asbestos-containing material shall be stripped, removed or otherwise handled or disturbed at a facility that is subject to the requirements of 40 C.F.R. § 61.145 unless at least one on-site representative (such as a foreman or management-level person or other authorized representative) who is properly trained in the provisions of the asbestos NESHAP and the means of complying with such provisions, is present. This is in direct violation of regulation 40 C.F.R. § 61.145(c)(8).

Patrick J. Acker, the operator of an asbestos renovation activity at Pewaukee High School, failed to seal the asbestos containing material in leak-tight containers while wet. This is in direct violation of regulation 40 C.F.R. § 61.150(a).

Patrick J. Acker, the operator of an asbestos renovation activity at Pewaukee High School, failed to deposit all asbestos containing waste material as soon as practical at an U.S. EPA approved disposal site. This is in direct violation of regulation 40 C.F.R. § 61.150(b).

9/26/00
Date


Bharat Mathur, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent a Finding of Violation, No. EPA-5-00-WI-23, by Certified Mail, Return Receipt Requested, to:

Mr. Patrick J. Acker
314 Park Avenue
Pewaukee, Wisconsin 53072

Mr. Patrick J. Acker
Pewaukee High School
510 Lake Street
Pewaukee, Wisconsin 53072

I also certify that I sent copies of the Finding of Violation by first class mail to:

Lloyd Eagan, Director
Bureau of Air Management
Wisconsin Department of Natural Resources
101 South Webster
P.O. Box 7921
Madison, Wisconsin 53707

Lakshmi Sridharan
Wisconsin Department of Natural Resources
Southeast Regional Office
2300 North Martin Luther King Drive
P.O. Box 12436
Milwaukee, Wisconsin 53212

Jane Cronan
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
123 West Washington Avenue
Madison, Wisconsin 53707-7857

on the 27 day of September, 2000.


Shanee Rucker, Secretary
AECAS, (MI/WI)
(312) 886-6086

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9592 0474