



ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

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June 14, 2019

EPA and ADEQ Issue No Action Assurances Regarding Asbestos Requirements for Flooded Counties

NORTH LITTLE ROCK—On June 11, 2019, the United States Environmental Protection Agency (EPA) issued a No Action Assurance (NAA) letter to the Arkansas Department of Environmental Quality (ADEQ) in response to the request that was tendered by ADEQ to EPA on June 10, 2019. The EPA letter addressed enforcement discretion and regulatory flexibility regarding two federal asbestos requirements. ADEQ Director Becky W. Keogh subsequently approved a NAA memo on June 12, 2019, regarding the same asbestos requirements adopted in state regulations. The NAA documents will allow state and local officials regulatory flexibility in managing damaged structures that may contain asbestos in those counties impacted by the historic flooding of the Arkansas River.

EPA NAA letters are issued only in extremely unusual situations. In this instance, the EPA NAA allows for two specific accommodations for EPA enforcement discretion regarding federal asbestos regulations due to the flooding. First, the NAA provides the discretion to shorten the federal 10-day notice requirement for demolitions and renovations of facilities damaged by the storms and flooding. Under the enforcement discretion granted by EPA, this notice may be provided as early as possible before, but not later than, the working day following the renovation or demolition. Second, the NAA provides flexibility for the demolition of entire structures without first conducting an inspection or removing asbestos. The flexibility to forgo the pre-demolition or pre-renovation inspection saves both considerable time and expense. Post-demolition or post-renovation, the structure must be managed as if it contains asbestos. Both accommodations are in effect for structures in counties covered by the recent emergency and disaster declarations made by President Trump.

To implement the flexibility provided by EPA's NAA in state asbestos regulations, ADEQ Director Keogh approved an NAA memo allowing for state-level enforcement discretion regarding notice and pre-demolition and pre-inspection requirements.

Both the EPA NAA letter and the ADEQ NAA memo are currently in effect and will terminate on September 11, 2019. Other than the two provisions of the asbestos regulations addressed by EPA and ADEQ in the NAA documents, all other state and federal asbestos requirements are in full effect and will continue to apply to owners or operators of the affected damaged structures.

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