ADEQ Regulation

Comments for Public Hearing - September 30, 2013

Submitted by Phyllis Moore

The staff is to be complimented for the changes that have been made to Reg 21. There is a higher level of consistency between sections, correction of references including the use of RACM rather than ACM when appropriate. The Regulation is much improved. Furthermore, I wish to thank the staff for the open discussion of issues when different parties could sit across the table and each party could justify both pro and con positions. Some of my comments relate to a) policy issues and b) only a few address language in the regulation c) and flooring clarification. .

Comments on the current draft of Regulation 21:

1. 21.201 ©): 40 CFR 61, and to establish standards for response actions as provided by ... ASHARA ... should be changed to establish educational training standards as established by ASHARA. Reason being that ASHARA does not contain any response standards as are found in AHERA.

2. The definition of Asbestos Contractor and Asbestos Consultant are identical in both the law and Reg 21. and the license fees and insurance requirements are the same. Yet based on Agency policy the licensed activities are different. The Asbestos Contractor should be limited to conducting abatement only and the Asbestos Consultant should be limited to services such as inspections, designs, etc. It is not fair for contractors to be able to abate and consult while consultants can only consult since the definitions are the same.

The could be addressed in 21.503 (B - inspections), C- management plans), (D-designing) by stating that these activities must be conducted by a trained, licensed Consultant.

3. Definition of RACM: I appreciate and support the proposed Agency clarification document regarding activities by which floor tile would become RACM. This statement regarding floor tile should be included in the Regulation. Change RACM (E) to include the language in the clarification document: "ACM resilient floor coveering or the mastic used to attach it to the floor surface will be regulated as RACM if it is removed by scraping, ...or reduced to powder".

4. The Regulation section 9 regarding final clearance air samples gives a standard for both the acceptable laboratory and the analytical method required. Likewise Reg 21 should contain a standard for laboratory accreditation and analytical method for analysis of bulk samples. This could be accomplished by replacing the last sentence of 21.501: "The Department requires that all bulk samples collected from a school or public and commercial buildings be analyzed by a laboratory accredited under the NVLAP program of NIST".

EPA 1994 clarification document states that the best method for bulk analysis of flooring is TEM. The document addresses this issue as it applies to AHERA and to NESHAP. AHERA for schools is a program with focus on ACM management in place and EPA did not require schools to re-inspect and re-analyze flooring with TEM.

However, the 1994 document also pertains to NESHAP which has a focus on renovation/demolition and EPA states that "thorough inspection" is required which includes using the best analytical method which is TEM for flooring.

5. 21.1808 (F) should be deleted. The requirement calls for the training certificate to contain a statement that items listed in 21.1907 were taught.. This is a duplication of the same requirement in Section 14 regarding initial training license and in Section 18 regarding course content and for each course listed in Section 19 I cannot understand what benefit this would serve, but the cost would be borne by the trainer. I paid a printing company to develop the "film" and then print the certificates for 5 different disciplines. This is costly. Currently my certificates contain all the information listed in 21.1808 except a statement that section 21.1907 was taught. For me, this means paying the printer to modify the "film" and then print copies of certificates for five different disciplines just to add this statement. This will be costly and serve no purpose.

6. The OSHA 29 CFR 1926.1101 used in the glovebag definition is correct. However, for accuracy OSHA reference in 21.1902 (I)(4) and 21.1903 (L) and 21.1904 (H) and 21.1905©) and 21.1905 (S) should read 1926.1101.

Comments regarding the proposed "floor tile" clarification document.

Regarding the clarification memo (2013-03), I sincerely appreciate the effort made by the staff to develop these very description activities that would cause floor tile to become RACM.. Specifically, thanks for the statement beginning "ACM resilient floor covering .....removed by scraping, sanding, etc". I do recognize the research effort and documentation in the decision making process to remove the term "breaking" and I support removing this term. With the decision made, the many quotes regarding breaking of floor tile should be removed from the clarification document.

I also support the remaining language on page 1 of the document with the exception of the sentence "...determination of whether floor tile is RACM is largely dependent on a case-by-case basis." This statement is causing a great deal of confusion and should be removed.

This document originated as a justification for removing the word breaking from the definition of RACM and the various quotes from EPA personnel were given as a basis for that decision The phrase "case-by-case" determination specifically applies to the quotes regarding the extent of "breakage" of flooring. Now that the term "breaking" will be removed from the regulatory language the lengthy quotes regarding "breakage" of floor tile are no longer relevant and should be removed from the clarification document. Likewise the reference to case-by-case determination should be removed.

With inclusion of 5 to 6 quotes from EPA generated documents regarding <u>extensively damaged</u>, of flooring, the impression is given that each of the removal methods - scraping, sanding, chipping, grinding, etc. - must be evaluated on a case-by-case basis as to the degree of damage before that activity results in the floor tile becoming RACM.. I don't think that this was the Agency's intent.

These EPA quotes applied specifically to the degree of breakage of flooring, not other activities such as sanding. However, determination of RACM is now interpreted as applying to the degree of damage of each action such as sanding, grinding, etc. In other words sanding would only cause flooring to become regulated if the damage was extensive; cutting would not cause flooring to become regulated if there was only minimum damage. For activities listed as resulting flooring to become regulated (sanding, grinding, etc) should be considered as regulated activities without the application of a case-by-case basis.

If all these quotes are to remain, then equal space should be given supporting the use of the terms drilling, cutting, chipping: NESHAP preamble p. 48412 includes reference to "resilient floor covering containing ACM that will be has been removed by sanding, grinding, or abrading (including, drilling, cutting, chipping)". Also, from NESHAP Common Questions (1990) p. 11 "Also if you sand, grind, abrade, drill, cut or chip any non-friable materials, including category I materials, you must treat the material as friable".

The quotes related to breakage of flooring should be deleted from p.2, 3, 4. Likewise the non-regulated removal methods such as heat, dry ice, etc. are listed on page one paragraph four and should be removed from p.3.

Policy Issues:

1. The determination of whether or not containment was built often is the determining factor in performing final clearance. I appreciate the definition of "Containment", but it is so vague that there is no consistency regarding the nature of the structure: Is plastic over the criticals sufficient? Must there be negative air? Is two feet of plastic on the walls (up from floor) sufficient? Review of the clarification memo 2013-01 is not helpful in describing a containment.

I realize that a definition of containment that would apply to every abatement job (roof vs pipes vs floors, etc.) is difficult. The request is for consistency among the ADEQ inspectors as they visit job sites and as they provide information so that all contractors and consultants can bid apples to apples on a given job.

2. Section 6 regards NOI submission. As policy the Agency needs to clarify the NOI requirement regarding projects in which RACM is removed (renovation) and then the building is demolished. Often there are two different contractors. If both activities are listed on the same NOI which contractor should sign the document and what fee is required: renovation fee or demolition fee, or both?

3. 21.1501 "Certification" requires that persons seeking initial certification shall submit a photo of themselves. I have no problem with this. The concept is that the Agency could then use that photo for placement on the initial certificate and for renewal certificates. The practice has been to use the photo initially, not in the following years. Why?