

State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids WI 54494

Scott Walker, Governor  
Cathy Stepp, Secretary  
Telephone 608-266-2621  
Toll Free 1-888-936-7463  
TTY Access via relay - 711



March 22, 2016

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. Wallace Scoggins III  
Brazo's Urethane, Inc.  
1031 6<sup>th</sup> Street North  
Texas City, TX 77590

2016-WCEE-023  
Asbestos – Adams County

Subj: **NOTICE OF VIOLATION AND ENFORCEMENT CONFERENCE**

Dear Mr. Scoggins:

The Department of Natural Resources has reason to believe that Brazo's Urethane, Inc. (Brazo's) is in violation of state air pollution control laws s. NR 447.07, NR 447.08(6) and s. NR 447.13(1), Wis. Adm. Code for operations conducted at the Oxford Federal Correctional Institute (OFCI) located at the intersection of County Highway G and Elk Avenue, Township of New Chester, Adams County, Wisconsin. The alleged violations are based on documentation provided by the Oxford Federal Correctional Institute, the Occupational Safety and Health Association, and statements made during and enforcement conference conducted on November 16, 2015 with representatives of Brazo's. These violations are specific to activities conducted at the removal site and are not associated with the previous enforcement actions. The department alleges the following violations:

1. NR 447.07, Wis. Administrative Code. Failure to notify the department 10 working days before asbestos stripping or removal work or any other activity begins in a facility. Brazo's failed to notify the department of the removal of over 150 cubic yards of asbestos contaminated roofing material from OFCI. A notice was only provided to the Wisconsin Department of Health Services for the removal of 80,000 square feet of non-friable roofing material.
2. NR 447.08(6), Wis. Administrative Code. Control of Asbestos Emissions. For all Regulated Asbestos Containing Material (RACM), including material that has been removed or stripped:  
(a) Adequately wet the material and ensure that it remains wet until collected and contained. Information obtained from OFCI and OSHA indicates that there were no wetting operations and the material was dry when removed with axes, then scooped up with shovels into open wheelbarrows.
3. NR 447.13(1), Wis. Administrative Code. Control of Asbestos Emissions. Each owner or operator shall discharge no visible emission to the outside air during the collection, processing, packaging or transporting of any asbestos-containing waste material generated by the source. Emission controls were not used when asbestos containing roofing material was thrown down an open roofing chute in a dry state and a leaf-blower was utilized to assist in final cleaning of the roof.

Although the roofing layers were clearly identified in the initial sampling as to which did and did not contain asbestos, it was evident from the samples collected at the 863 Elk Avenue address and from the photographs that a clean separation of those layers was not achieved. EPA Policy letter dated January 9, 1991 on roof material states that "...if the non-friable ACM is subjected to sanding, grinding,

abrading or burning as part of the demolition or renovation, then the non-friable ACM must be handled in accordance with the Asbestos NESHAP. A copy of that policy letter is attached.

We have scheduled the following Enforcement Conference to discuss this matter in more detail:

Date: April 6, 2016  
Time: 10:00 a.m.  
Location: Wisconsin Department of Natural Resources  
Wisconsin Rapids Service Center  
473 Griffith Avenue  
Wisconsin Rapids, WI 54494

We request you attend the Enforcement Conference as it is an important opportunity to discuss the circumstances surrounding the alleged violations and to learn your perspective on this matter. Please note that in an effort to encourage a candid and productive conversation, attendance is limited to you, your legal counsel and others with the technical expertise necessary to understand, evaluate and correct the violation.

In preparation for the enforcement conference, please be prepared to discuss the specifics of the roofing project, removal of the materials, contract specifics, etc. The Department's enforcement decision will be based upon available information if you do not attend the Enforcement Conference.

Please be advised that violations of ch. 289, Wis. Stats., may be referred to the Department of Justice to obtain court ordered compliance and penalties up to \$5,000 per day of violation. Violations of ch. 285, Wis. Stats., may be referred to the Department of Justice to obtain court ordered compliance and penalties up to \$25,000 per day of violation. In addition, the Department has the authority to issue citation for certain violations dependent on the details of the case.

If you have questions or need to reschedule the conference, please contact me at 715/421-7809 or through e-mail at [deb.dix@wisconsin.gov](mailto:deb.dix@wisconsin.gov).

Sincerely,



Deborah S. Dix  
Environmental Enforcement Specialist

Enc.: What is an enforcement conference information sheet  
EPA Policy letter dated January 9, 1991

c. Mark Chamberlain, Oshkosh  
Mark Davis, Milwaukee  
Bill Baumann, AM/7  
Mike Szabo, LS/8



## U.S. Environmental Protection Agency Applicability Determination Index

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**Control Number: C84**

**Category:** Asbestos  
**EPA Office:** SSCD  
**Date:** 01/09/1991  
**Title:** Asbestos Roofing Material  
**Recipient:** Martino, Thomas  
**Author:** Rasnic, John B.

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**Subparts:** Part 61, M, Asbestos

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**References:** 61.141  
61.145(a)  
61.145(c)

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**Abstract:**

The removal of regulated asbestos roofing material that is subject to the NESHAP must be supervised by an individual trained in the provisions of the NESHAP. Asbestos roofing material must be removed before demolition only if it is friable; if nonfriable roofing material is sanded, ground, abraded, or burned, then it must be handled according to the NESHAP. Neither air monitoring nor inspection by an accredited inspector is required by the NESHAP.

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**Letter:**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF AIR AND RADIATION

Thomas A. Martino, President  
American Interply Corporation  
West Road Industrial Park  
BOX 1500  
Pleasant Valley, New Jersey 12569

Dear Mr. Martino:

This is in response to your October 30, 1990 letter in which you requested information on asbestos containing roofing materials. Your specific questions are addressed below.



1. Do you have to be EPA certified to remove asbestos containing roofing material?

As stated in the recently promulgated Asbestos NESHAP Revision, effective 1 year after promulgation (November 20, 1991) no regulated asbestos containing material 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 two years, the trained on-site individual must receive refresher training on the provisions of this regulation. Evidence of the training must be posted and made available for inspection at the demolition or renovation site. Additionally, many states require that all workers be accredited before they remove asbestos from any facility. A list of training courses approved by the EPA is published quarterly in the Federal Register and is available through the Toxic Substances Control Act (TSCA) Hotline at (202) 554-1404.

2. Is the asbestos "safe" in a sealed roofing condition?

In a February 23, 1990 memorandum, EPA clarified the requirements of the Asbestos NESHAP regarding normally nonfriable asbestos containing material (ACM) including roofing material. In that memorandum EPA stated that normally nonfriable roofing material must be inspected before demolition to determine if the ACM is in poor condition, indicated by peeling, cracking, or crumbling of the material. If the normally nonfriable material is in poor condition, the material must be tested for friability. If the ACM is friable, that is it can be crumbled, pulverized or reduced to powder by hand pressure, it must be handled in accordance with the NESHAP. Normally nonfriable ACM, including roofing material, should be removed before demolition only if it is in poor condition and can be crumbled pulverized or reduced to powder by hand pressure.

In addition, if the nonfriable ACM is subjected to sanding, grinding, abrading or burning as part of the demolition or renovation, then the nonfriable ACM must be handled in accordance with the Asbestos NESHAP.

3 & 4. What instrument is used to monitor the air during removal and where can it be purchased?

The Asbestos NESHAP does not require air monitoring during the removal of ACM. However, OSHA regulations do require air monitoring during the removal of ACM (see 29 CFR Parts 1910 and 1926).

5 & 6. Is there such a thing as an EPA certified inspector and/or monitor and where is inspector and/or monitor and where is inspector training held?

EPA requires that a facility be inspected for asbestos prior to demolition or renovation and report to EPA information on the asbestos material present, the nature of the demolition or renovation, and measures that will be taken to control emissions of asbestos. EPA presently does not require an "accredited" or "certified" inspector to conduct the inspection, however, using an accredited inspector and following the Asbestos Hazard Emergency Response Act (AHERA) requirements for asbestos inspections of buildings would help ensure a thorough inspection as required by the asbestos NESHAP. A schedule of AHERA courses can be obtained by calling the TSCA Hotline.

As discussed above in the response to questions 3 & 4, EPA does not require the use of an air monitor during the removal of ACM.

7. There are presently millions of square feet of roof area still in place composed of asbestos felts, and most all roofing materials of the 1960's were of asbestos contents, including the cements/coatings and

flashings. What is EPA's stand on this situation?

As discussed above in the response to question 2, EPA does not require roofing material (including the cements, coating and flashings) to be removed prior to demolition or renovation if they are in good condition and are not sanded, ground, burned or abraded during the demolition or renovation process. EPA believes that when these materials are in good condition they will not be damaged by conventional demolition operations such that they will be crumbled, pulverized or reduced to powder by hand pressure.

This response has been coordinated with EPA's Emission Standards Division. If you have any further questions, please contact Scott Throwe of my staff at (703) 308-8699.

Sincerely,

John B. Rasnic, Acting Director  
Stationary Source Compliance Division  
Office of Air Quality Planning and Standards





## Environmental Enforcement Conference

An Enforcement Conference (EC) is a meeting between Department of Natural Resources (Department) staff and representatives of a person or business that the Department believes has violated an environmental law. The Department issues a Notice of Violation (NOV) when it has reason to believe that a violation of a permit condition, administrative rule or statutory requirement has occurred. The NOV either offers or schedules an EC.

### **Why Should I Attend?**

The EC is an important opportunity to discuss the Department's basis for the alleged violation(s) and learn more about what happened, why it may have happened, and any factors you believe the Department should consider, such as steps that have been or will be taken to stop the violation, correct any effects of the violation, and prevent violations from occurring in the future. It is also your opportunity to explain why you might disagree with the factual and legal conclusions underlying the NOV.

Historic data shows that most violations are resolved at the EC level, without the need for court ordered compliance and/or penalties. In situations where the significance of the violation warrants further enforcement action, your cooperative efforts to resolve the violation and prevent future violations will help minimize your legal and financial liability.

### **Who Should Attend the EC?**

Department staff involved in the EC typically consists of an Environmental Enforcement Specialist and regulatory staff that are familiar with the issues identified in the NOV.

While not required, you may seek representation by legal counsel or the assistance of an environmental consultant to prepare for and/or attend the EC. The EC is most productive when all involved are well-prepared to discuss the allegations and any corrective actions that may be necessary.

To ensure a productive candid discussion, participation in the EC is limited to the person or business involved and others with the legal or technical expertise necessary to understand, evaluate, mitigate and correct the violation. The EC is not an open meeting under state law and the Department will limit participation to those directly involved in the resolution of the matter.

### **What Happens if I don't Attend the EC?**

If a party is unable to attend the EC, they should immediately contact the Environmental Enforcement Specialist at the phone number in the NOV to reschedule. When a party refuses to attend the EC and provides no further information to the Department, the Department's enforcement decision will be based upon available information.

### **What Happens Following the EC?**

The EC is part of the Department's stepped enforcement process. At the EC, Department staff will explain the process and options available to address the alleged violation. Generally, the options range from closing the matter with no further action to referral to the Wisconsin Department of Justice (DOJ) or to U.S. EPA, for further enforcement action. In limited circumstances, the Department can issue citations, which are handled in local court similar to traffic offenses. If a case is referred to DOJ, the DOJ may initiate an action in court on behalf of the State. The State typically asks the Court to impose financial penalties and order completion of any necessary corrective actions. In most of the Department's cases, a cooperative return to compliance with any necessary restoration results in close out of the case. At close out, the Department will send a letter advising of no further enforcement action.

