HT 14: REDUCE “RED TAPE” FOR ASBESTOS REMOVAL

Rules of the City of New York
Proposal developed by the Construction Practices Committee

Summary

Issue:
Products containing encased asbestos, such as vinyl tile or window putty, can be safely removed using simpler procedures than those required for the removal of crumbly asbestos products. While New York State allows the use of such simplified procedures, the New York City Department of Environmental Protection (NYCDEP) requires contractors to obtain a variance in order to do so.

Recommendation:
NYCDEP should allow projects removing encased asbestos products to utilize approved, simpler procedures without a variance. This proposal was incorporated into DEP Rules prior to the issuance of this report.

Proposed Legislation, Rule, or Study

Rules of the City of New York, Title 15, Chapter 1

NYCDEP should revise its filing procedures to allow the removal of non-friable asbestos materials via currently approved procedures without the necessity of applying for a variance. The standard procedures should allow the abatement of the three major categories of non-friable asbestos materials—vinyl asbestos tile; flat roofing materials; and other exterior ACM, including shingles, siding, putty, and caulking—without the administrative burden of a variance process. Note that there would be no change in the actual procedures required for the removal of products containing non-friable asbestos.

In response to a Task Force inquiry on this issue in fall 2008, NYCDEP agreed to modify its regulatory program to reflect the recommendations of the Task Force. DEP proposed the regulatory modifications in the City Record of September 11, 2009. They were finalized and became effective on November 13, 2009.

Supporting Information

Issue – Expanded
There is no additional explanation for this proposal.

Environmental & Health Benefits
This proposal was found to have no significant environmental impact.

This proposal was found to have no significant health impact.

Cost & Savings
As described in the Executive Summary, Bovis Lend Lease prepared cost estimates for each Task Force proposal in the context of well-defined construction projects in specific buildings. Where possible, members of the Technical Committees prepared savings estimates for some of these projects and buildings. These cost and savings estimates are presented in the February 1st draft version of Appendix A. The innate uncertainty in how construction and operation will vary from one building to another, the complexity of the Task Force proposals, and the wide range of applications in which the proposals may be realized mean these figures are truly estimates.

This proposal is not expected to have any significant impact on capital costs.

Precedents
NY State Department of Labor (NYSDOL) has modified its regulations to allow the abatement of non-friable asbestos via an analogous generic procedure that was incorporated into their regulations in 2007. The NYSDOL process has thereby become a one-step process as compared to the NYCDEP two-step process.
LEED
LEED for Existing Buildings directly addresses asbestos abatement in LEED EB-SS EQ prerequisite 3, Asbestos Removal or Encapsulation. Since this issue is a prerequisite, the proposal will have a strongly positive influence on attaining LEED certification.

The recommendations outlined in this proposal will make asbestos abatement more feasible under certain conditions, and will therefore assist in achieving credit for LEED NC-SS cr.3 Brownfield Redevelopment; LEED for Schools SS prerequisite 2 Environmental Site Assessment; LEED for Schools SS cr.3 Brownfield Redevelopment; LEED ND (pilot program)-SLL cr.1 Brownfields Redevelopment; and LEED CI-SS cr.1 Option A, Brownfield Redevelopment, provided that certain provisions are met as specified by LEED.

Other LEED pilot programs address asbestos in a similar manner.

Implementation & Market Availability
The removal of this regulatory impediment will allow abatement of the three major categories of non-friable asbestos materials to be accomplished by specific published protocols via a less onerous regulatory process, while saving two to three weeks of administrative time for the contractor. As a result of this procedural change NYCDEP will be able to reassign staff to conduct higher priority work.

Notes
Under most conditions, NYCDEP does not treat vinyl asbestos tiles and asbestos shingles as friable. However, under extreme environmental conditions or standard drilling, sawing, sanding, etc. they would be considered friable asbestos material in which the release of asbestos fibers may easily result.¹

ENDNOTES:

¹ CITY OF NEW YORK EPA, REGULATORY INTERPRETATION MEMORANDUM TO THE BUREAU OF AIR RESOURCES ASBESTOS CONTROL PROGRAM, 1-87 (May 14, 1987).