

Explanation of:  
**Asbestos / NESHAP Emergency**

The asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) governs the removal and handling of asbestos containing material (ACM), which is categorized as a Hazardous Air Pollutant. The following will explain the NESHAP's definition of an "Emergency" and set forth the elements which must be fulfilled to qualify as an Emergency.

**40 CFR 61.145(b)(3)(iii)**

- "For emergency renovations . . . [provide] the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden."

**40 CFR 61.145(b)(3)(iii)**

- Postmark or deliver notice "as early as possible before, but not later than the following working day if . . . the operation is a[n] [emergency] renovation . . ."

**Plain English:**

- To qualify as a NESHAP emergency, a sudden and unexpected event must occur which requires the need for ACM abatement. This event must endanger public health and safety, threaten equipment damage, or cause an unreasonable financial burden. If this occurs, notice and explanation of the emergency must be submitted to the District as soon as possible, but no later than one working day after the emergency occurred.

**Checklist:**

- 1 – Make justification in WRITING, on letterhead of building owner/operator.
- 2 – Justification to include:
  - A – Date and hour of emergency
  - B – \*Description of sudden and unexpected event\* → Key Element.
  - C – Explanation stating how event causes:
    - i – Endangers public health and safety,
    - ii – Damage to equipment, or
    - iii – Unreasonable financial burden.
- 3 – Submit Notification to District
  - A – ASAP, but
  - B – No later than 1 working day after emergency.

**Emergency Clarification:**

The goal of the District's asbestos program is to abate ACM before or take precautions not to disturb ACM during demolition or renovation projects (DRP). Situations will arise that necessitate exemptions from procedural aspects of the NESHAP. HOWEVER, emergencies

never excuse the use of reasonable precautions. The one NESHAP requirement exempt during emergency situations is the timing when notification must be submitted.

NESHAP emergencies allow for notification of an asbestos abatement to be made less than 10 days before the beginning of the project. Emergencies may also allow notification after the abatement occurs. However, it should be noted that neither the NESHAP, EPA policy or guidance, nor the District regulations allow for the granting of a “waiver” of the 10 - day notification requirement. In other words, a project wishing to begin during the 10 - day notification period MUST qualify as an emergency because no other avenue exists for granting a waiver of the notification period.

**The defining element of a NESHAP Emergency is that it be caused by a sudden and/or unexpected event.** Planned but unscheduled maintenance or renovations are NOT emergencies. Likewise, if a demolition/renovation project adds new work activities or new areas, an emergency has not occurred if additional ACM is encountered. True Emergencies are unexpected events that cannot be predicted and are caused by disruption of important operations or by unsafe conditions.

Therefore, the NESHAP defines an Emergency as “a demolition/renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden.”

### **Examples:**

1. A school is replacing a large amount of ACM floor tile on its campus, and has obtained a permit to do so. After the school has completed its abatement of the notified floor tile, it adds additional areas to its original renovation floor tile replacement plan. After beginning the additional floor removal, the school then discovers the additional floor tile contains asbestos. This is NOT an emergency. The school should have sampled the additional tile for asbestos before beginning the removal.

2. Consider an apartment building that employs a boiler for the purpose of heating and supplying hot water. The boiler is insulated in ACM. The boiler suddenly malfunctions. It is winter, and the apartment building is without heat and hot water until the boiler is repaired. This would qualify as an emergency because it creates an adverse effect to health and safety by not having heat during the winter.