

Safety Meeting Topic

Regulatory Asbestos Issues

March, 2009

In August, 2006, an outside flooring contractor and his sub-contractor made a few on-the-job decisions during a carpet replacement project, in the Memorial Union Building, which ultimately resulted in hefty regulatory penalties being levied against ASU for asbestos violations.

ASU was not consulted during the decision-making process on this project and was left unaware that the outcome of these decisions would result in asbestos-containing floor tile and mastic being removed using procedures which violated numerous Maricopa County Air Quality Department regulations.

Yet ASU bore the brunt of the penalties. To the tune of \$86,000. The general contractor was fined \$20,000 and the sub-contractor was fined \$3,000, which was equal to the amount of the costs they had each bid on the project.

In 2008, ASU negotiated a settlement agreement which lowered the amount of the funds paid directly to the County to \$45,000 with the stipulation that ASU would provide five asbestos awareness seminars, free to the general public, at an additional ASU-borne cost of \$51,000.

So why was ASU so heavily fined for the decisions made by non-ASU personnel during a routine, or, rather, what should have been routine, carpet replacement project? ASU was fined because, by regulations, as the “Building Owner,” ASU has the ultimate responsibility for the manner in which all construction-related projects are conducted in ASUs buildings.

This regulatory mandate is included in all asbestos regulations. It’s in the Federal OSHA regulations (29 CFR 1910.1001 and 29 CFR 1926.1101), Federal EPA regulations (40 CFR 61 Subpart M), and in Maricopa County air quality regulations (Rule 370). In this case, an ASU MU employee, who coordinated the project, gave the contractor a directive to only remove the carpeting. Later, when it was discovered that floor tile was being disturbed during the carpet removal, rather than stopping the project, the contractor took it upon himself to make the decision to remove the floor tile without consulting ASU.

The emergency response to this situation, once the disturbance to asbestos-containing floor tile was discovered, was exemplary. The building was evacuated, air handlers immediately shut down and asbestos consultants and contractors were called in to conduct remedial clean-up and building-wide air monitoring. None of this mattered, however, during the regulatory enforcement process.

It is Maricopa County’s position that, per regulations, as the “Building Owner” ASU *should* have known what was happening in ASU building. Therefore, the heavy fines were levied against ASU rather than the contractors.

“ASU Hosts Asbestos-Safety Seminars To Resolve Violations”

The State Press

“Asbestos-Awareness Seminars Offered In Settlement”

The Arizona Republic

ASU Fined \$96,000 For Asbestos Mishandling”

The Arizona Republic

“ASU To Pay \$96K For Violating Asbestos Rules”

The East Valley Tribune

“ASU Pursues Asbestos Safety After 2006 Incident”

The Arizona Republic

“Workers Cite ASU Building Safety Hazards”

The East Valley Tribune

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Under OSHA Regulation 29 CFR 1926.1101 (k) “Communication of Hazards” The Building Owner is a “Statutory Employer and must notify persons of ACM before it is disturbed. Prior to disturbance, the owner must notify: Contractors, In-House Maintenance, Adjacent Contractors on Multi-Employer Worksites and Tenants. **Any ASU personnel scheduling renovation work in an ASU building using outside contractors take on the role of a “Building Owner,” which then involves the institution as a whole.**

Maricopa County Rule 370, Section 301.8 a.(4) requires a “Building Owner” to thoroughly inspect the facility (or affected portions of the facility) within **12 months** of commencement of demolition or renovation activities *regardless of the age of the building*.

All ASU employees should be advised that, should you or your department directly contract with an outside contractor, you would be taking on the role of a regulatory “Building Owner.” This could have severe implications for the University.

There is an asbestos-related permit procedure in place through the Capital Projects Management Group (CPMG) for building renovations. All materials suspected of containing asbestos which will be disturbed during renovations or maintenance activities are to be sampled to determine asbestos content. If asbestos is detected in regulatory amounts (greater than 1%) in any of the materials, a licensed asbestos contractor and asbestos consultant are retained by CPMG to remove the materials prior to construction. In this way, ASU attempts to minimize any asbestos exposure both to ASU employees and to hired contractors.

When major modifications are made to a building the CPMG permitting system ensures compliance and prevents inadvertent disturbance of asbestos containing materials. For very minor modifications such as running new wiring or cutting small openings in walls, the permitting process is not as obvious. There is no simple procedure in place for small-scale hardware-mounting type operations where screws or nails need to be used to install shelving or pictures in buildings constructed prior to 1985. This makes it challenging to complete these activities in older buildings when these activities are not done through CPMG or Facilities Management (FM). CPMG and FM have an internal process for checking for asbestos.

Currently, the asbestos policy is: if the building has been constructed prior to 1985, materials or surfaces, where nails or screws will be used, need to be checked for asbestos-containing materials before being disturbed. The CPMG Asbestos Program Manager takes such requests and will perform the evaluation of the area for asbestos-containing materials.

If you have questions about what types of activities can be routinely completed in a building you work in or if you have questions about your building in particular please contact EH&S at EHS@asu.edu or (480) 965-1823.

Additional Information and Guidance

ASU EH&S Department: 480-965-1823 or <http://www.asu.edu/uagc/EHS/asbestosmanagement.htm>

ASU CPMG Policy No. 301-05: <http://www.asu.edu/aad/manuals/cpm/cpm301-05.html>