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

DEC 26 2007

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mike D. McDaniel, Ph.D.
Secretary
Louisiana Department of Environmental Quality
P.O. Box 4301
Baton Rouge, Louisiana 70821-4301

Dear Dr. McDaniel:

We are in receipt of Assistant Secretary Harold Leggett's letter of December 11, 2007 (Enclosure 1), in which he requests on behalf of the Louisiana Department of Environmental Quality (LDEQ) that the United States Environmental Protection Agency (EPA) extend the February 3 and 24, 2006, and the February 2 and September 28, 2007 No Action Assurance letters (hereinafter collectively referred to as the NAAs) (Enclosures 2, 3, 4 and 5). These NAAs provide flexibility for certain provisions of the National Emission Standard for Asbestos (asbestos NESHAP), 40 CFR Part 61, Subpart M, for demolition activities necessitated by Hurricanes Katrina and Rita, and expire on December 31, 2007.

EPA recognizes the ongoing challenge to complete the demolition of homes damaged by the hurricanes and we are committed to working with LDEQ to find a reasonable path forward to address these challenges, while both ensuring protection of public health and the environment and working towards compliance with the asbestos NESHAP.

The flexibility provided under the NAAs always has been conditioned upon increased oversight activities by EPA Region 6. FEMA, through an Interagency Agreement (IAA) with Region 6, provided funding for many of the Region 6 oversight activities. EPA understands that FEMA has extended the IAA with Region 6 through February 29, 2008. In light of both FEMA's decision and the information provided by LDEQ in recent conversations between our staffs, and in Dr. Leggett's December 11, 2007 letter, most notably the significant volume of remaining homes that still require expeditious demolition, today EPA is exercising its enforcement discretion and extending the NAAs through February 29, 2008.

NAA Oversight

Both LDEQ and Region 6 have done an outstanding job of overseeing the demolition activities under the NAAs and should be commended. Such oversight activities are critical to ensuring protection of public health and the environment, and these ongoing efforts must continue under the extension granted today.

LDEQ is committed to providing the necessary resources to perform the demolition oversight needed to restore the State of Louisiana. Accordingly, both LDEQ and EPA will continue to follow up on any instances of possible noncompliance with the NAAs and the asbestos NESHAP and Louisiana Emissions Standards for Hazardous Air Pollutants with the appropriate enforcement actions. For the duration of this NAA extension, LDEQ will continue to commit the resources necessary for demolition oversight as utilized in 2007. In turn, EPA Region 6 will continue to support LDEQ field activity based on the funding approved by FEMA under the existing IAA.

In addition to these oversight activities, EPA Region 6's Compliance Assurance and Enforcement Division (CAED) will conduct on-site visits at demolition sites with LDEQ to jointly verify compliance. Through these on-site visits, CAED will observe the demolition practices and procedures being utilized in order to ensure compliance with the previous NAAs hereby extended and the asbestos NESHAP requirements that are not impacted by the NAAs. CAED also will review any field reports generated from inspection activities.

EPA Region 6 and LDEQ will continue to meet on a regular basis to discuss demolition activities covered under any NAA extension. Such meetings will continue to include discussions of EPA's observations and oversight activities in addition to available monitoring data. These meetings will continue to include staff discussions regarding technical issues related to demolition activities. EPA Region 6 and LDEQ will continue to use these meetings to allow concerns to be identified and addressed.

Limitations

Today's NAA extension applies only to those persons and activities identified in the NAAs with the following additional restrictions and/or conditions:

1. The NAA applies only to the extent identified persons are operating in, and such activities are taking place in, the Orleans, Plaquemines, St. Tammany, St. Bernard, and Jefferson Parishes, which are covered under an LDEQ, Amended Declaration and Administrative Order.

2. Today's NAA extension will only apply to those identified persons doing demolition activities in the parishes covered by this extension, provided they notify LDEQ in writing that they wish to be subject to the NAA in advance of such demolition activities. Such notice is required only once upon issuance of this NAA extension, except that notifications submitted pursuant to the previous NAAs do not need to be

resubmitted. With respect to such persons, those responsible for maintaining copies of employee asbestos exposure monitoring information as required by OSHA must provide copies of such information to LDEQ by the first and the fifteenth of the month after they receive the monitoring results.. The employee exposure monitoring information includes the Initial Exposure Assessment (both eight hour TWA and 30 minute short term exposure), Periodic Monitoring (daily results within Class II work), and the final test results that allow the employer to terminate monitoring pursuant to OSHA requirements, if applicable. If, for some reason, permissible exposure limit (PEL) and excursion limit monitoring are no longer required under OSHA, the persons who would have been responsible for maintaining copies of the monitoring information must notify LDEQ that monitoring has ceased.

If monitoring is not required under OSHA, notification is still necessary and must be provided to LDEQ prior to the beginning of demolition activities. This condition is not intended in any way to affect or modify any existing OSHA requirements. LDEQ will review the employee exposure data to determine if there are conditions developing that may have a significant impact on human health or the environment.

We understand that perimeter monitoring is being performed by the contractors at the of demolition sites. This data must also be submitted to LDEQ and reviewed as part of its oversight activities. The monitoring data and any issues regarding exposure will be discussed with EPA Region 6 during the regular LDEQ/EPA Region 6 oversight calls, or sooner if the data indicate a potential negative impact on human health or the environment.

3. In addition, as is the case with the NAAs that are being extended in this letter, this NAA extension does not apply to any other federal requirements that may apply to residential demolition and disposal activities (other than the asbestos NESHAP provisions specifically discussed in the NAAs and herein).

This extension is conditioned on continuation of the oversight activities described above, as well as all the other conditions specified in the NAAs. LDEQ must immediately notify EPA Region 6 if it becomes aware of any information indicating that it is not advisable for EPA to continue to allow the flexibility provided in today's NAA extension. EPA reserves the right to revoke or modify the NAAs that are extended by way of this letter, as well as the extension itself, if the Agency believes that such action is necessary to protect public health and the environment.

Through today's extension of the NAAs, EPA is continuing its commitment to work with LDEQ in addressing the very difficult circumstances caused by Hurricanes

Katrina and Rita. If you have any questions, please call me at (202) 564-2440, or have your staff call Randy Hill of my staff at (202) 564-2220 or John Blevins of EPA Region 6 at (214) 665-2210.

Sincerely,

Granta Y. Nakayama
Assistant Administrator

Enclosures

cc: Richard Greene, Regional Administrator, Region 6
Dr. Harold Leggett, LDEQ
Dr. Chuck Carr Brown, LDEQ
Cheryl Nolan, LDEQ