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IN THE UNITED STATES OF APPEALS
FOR THE FIFTH CIRCUIT

MAX EUBANK ROOFING COMPANY, INC. and THE
NATIONAL ROOFING CONTRACTORS ASSOCIATION,

Petitioners,

v.

No. 94-40793

THE UNITED STATES THE DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,

Respondent.

BELDON ROOFING AND REMODELING CO.,

Petitioner,

v.

No. 94-40794

THE UNITED STATES DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,

Respondent.

BRUTON/GOMEZ & COMPANY, INC.,

Petitioner,

v.

No. 94-40795

THE UNITED STATES DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,

Respondent.

LYDICK-HOOKS ROOFING OF LUBBOCK, INC.,

Petitioner,

v.

No. 94-40796

THE UNITED STATES DEPARTMENT OF LABOR,

OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,

Respondent.

JOHNSON ROOFING COMPANY, INC.,

Petitioner,

v.

No. 94-41039

THE UNITED STATES DEPARTMENT OF LABOR,

OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,

Respondent.

SETTLEMENT AGREEMENT

The Petitioners in the above-captioned cases have sought judicial review of a revised asbestos standard for construction work issued by the Occupational Safety and Health Administration (OSHA) on August 10, 1994. 59 Fed. Reg. 40964, to be codified at 29 C.F.R. 1926.1101. In addition, the National Roofing Contractors Association (NRCA), on behalf of its members, has filed an application with OSHA asking that the agency reconsider certain aspects of the revised standard insofar as that standard applies to roofing work. NRCA's application represents the interests of all of the petitioners in these cases.

OSHA has reevaluated the rulemaking record and has determined that certain provisions of the revised standard should be changed and that other provisions should be clarified. Accordingly, in order to resolve the issues raised by these petitions and by NRCA's application for reconsideration, the parties to these cases hereby agree to the following terms and conditions.

1. A new paragraph 1101(g)(11) will be added to the standard to read as follows:

(11) - Alternative methods of compliance for installation, removal, repair, and maintenance of certain roofing materials. Notwithstanding any other provision of this section, an employer who complies with all provisions of this paragraph (g)(11) when installing, removing, repairing, or maintaining intact roof cements, mastics, coatings, or flashings which contain asbestos fibers encapsulated or coated by bituminous or resinous compounds shall be deemed to be in compliance with this section. If an employer does not comply with all provisions of this paragraph, or if during the course of the job the material does not remain intact, the provisions of paragraph (g)(8) apply instead of this paragraph.

(i) Before work begins and as needed during the job, a competent person who is capable of identifying asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, and who has the authority to take prompt corrective measures to eliminate such hazards, shall conduct an inspection of the worksite and determine that the roofing material is intact and will likely remain intact.

(ii) All employees performing work covered by this paragraph (g)(11) shall be trained in a training program that meets the requirements of paragraph (k)(8)(vi) of this section.

(iii) The material shall not be sanded, abraded, or ground. Manual methods which do not render the material non-intact shall be used.

(iv) Material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered, dust-tight chute, crane or hoist. All such material shall be removed from the roof as soon as is practicable, but in any event no later than the end of the work shift.

(v) Where roofing products which have been labeled as containing asbestos pursuant to paragraph (k)(7) of this section are installed on non-residential roofs during operations covered by this paragraph (g)(11), the employer shall notify the building owner of the presence and location of such materials no later than the end of the job.

2. Paragraph 1101(g)(8)(ii)(E) will be amended to read as follows:

Asbestos-containing material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered, dust-tight chute, crane or hoist:

(1) Any ACM that is not intact shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift. While the material remains on the roof it shall either be kept wet, placed in an impermeable waste bag, or wrapped in plastic sheeting.

(2) Intact ACM shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift.

3. Paragraph 1101(g)(8)(ii)(D) will be amended to read as follows:

When removing built-up roofs with asbestos-containing roofing felts and an aggregate surface using a power roof cutter, all dust resulting from the cutting operation shall be collected by a HEPA dust collector, or shall be HEPA vacuumed by vacuuming along the cut line. When removing built-up roofs with asbestos-containing roofing felts and a smooth surface using a power roof cutter, the dust resulting from the cutting operation shall be collected either by a HEPA dust collector or HEPA vacuuming along the cut line, or by gently sweeping and then carefully and completely wiping up the still-wet dust and debris left along the cut line. The dust and debris shall be immediately bagged or placed in covered containers.

4. In order to comply with the requirement of paragraph 1101(g)(1)(i) for HEPA vacuuming, employers shall collect dust and debris using a HEPA vacuum where the source of the dust and debris is accessible and non-intact ACM. The accumulation of dust and debris on a built-up roof does not require HEPA vacuuming under paragraph 1101(g)(1)(i) in the absence of any indication that non-intact ACM is the source of the dust and debris. Similarly, the prohibition against dry clean-up of dust and debris containing ACM and PACM in paragraph 1101(g)(3)(iii) only applies when the source of the dust and debris is accessible and non-intact ACM.

5. Paragraph 1101(g)(1)(i) will be amended to read as follows:

Vacuum cleaners equipped with HEPA filters to collect all debris and dust containing ACM and PACM, except as provided in paragraph (g)(8)(ii) of this section in the case of roofing material.

6. The requirement of paragraph 1101(g)(8)(ii)(B) that wet methods be used where feasible does not require ACM on sloped roofs to be wetted when the competent person determines that wetting the shingles would create slipping and falling hazards.

7. Paragraph 1101(h)(1)(iii) will be amended to read as follows.

During all Class II and III work which is not performed using wet methods, provided, however, that respirators need not be worn during removal of ACM from sloped roofs when a negative exposure assessment has been made and the ACM is removed in an intact state.

8. A new paragraph 1101(g)(8)(ii)(H) reading as follows will be added:

Notwithstanding any other provision of this section, removal or repair of sections of intact roofing less than 25 square feet in area does not require use of wet methods or HEPA vacuuming as long as manual methods which do not render the material non-intact are used to remove the material and no visible dust is created by the removal method used. In determining whether a job involves less than 25 square feet, the employer shall include all removal and repair work performed on the same roof on the same day.

9. Paragraph 1101(f)(2)(ii) will be amended to read as follows:

Basis of Initial Exposure Assessment: Unless a negative exposure assessment has been made pursuant to paragraph (f)(2)(iii) of this section, the initial exposure assessment shall, if feasible, be based on monitoring conducted pursuant to paragraph (f)(1)(iii) of this section. The assessment shall take into consideration both the monitoring results and all observations, information or calculations which indicate employee exposure to asbestos, including any previous monitoring conducted in the workplace, or of the operations of the employer which indicate the levels of airborne asbestos likely to be encountered on the job. For Class I asbestos work, until the employer conducts exposure monitoring and documents that employees on that job will not be exposed in excess of the PELs, or otherwise makes a negative exposure assessment pursuant to paragraph (f)(2)(iii) of this section, the employer shall presume that employees are exposed in excess of the TWA and excursion limit.

10. Paragraph 1101(g)(8)(ii)(B) will be amended to read as follows:

Wet methods shall be used to remove roofing materials that are not intact, or that will be rendered not intact during removal, unless such wet methods are not feasible or will create safety hazards.

11. Paragraph 1101(g)(1)(ii) will be amended to read as follows:

Wet methods, or wetting agents, to control employee exposures during asbestos handling, mixing, removal, cutting, application, and cleanup, except where employers demonstrate that the use of wet methods is infeasible due to, for example, the creation of electrical hazards, equipment malfunction and, in roofing, except as provided in paragraph (g)(8)(ii) of this section; and

12. Paragraph 1101(g)(1)(iii) will be amended to read as follows:

Prompt clean-up and disposal of waste and debris contaminated with asbestos in leak-tight containers, except in roofing operations, where the procedures

specified in paragraph (g)(8)(ii) apply.

13. The introductory sentence of paragraph 1101(g)(8)(iii) will be amended to read as follows:

When removing cementitious asbestos-containing siding and shingles or transite panels containing ACM on building exteriors (other than roofs, where paragraph (g)(8)(ii) of this section applies) the employer shall ensure that the following work practices are followed:

14. Paragraph 1101(k)(8)(vi) will be amended to read as follows:

The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by provisions in paragraphs (k)(8)(iii)-(v) where applicable, the employer shall ensure that each employee is informed of the following:

15. Paragraph 1101(k)(6)(ii) will be amended to read as follows:

The warning signs required by (k)(6) of this section shall bear the following information.

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

In addition, where the use of respirators and protective clothing is required in the regulated area under this section, the warning signs shall include the following.

RESPIRATORS AND PROTECTIVE
CLOTHING ARE REQUIRED IN THIS AREA

16. **Negative Exposure Assessment:** The asbestos rulemaking record contains many personal breathing zone and area samples collected pursuant to OSHA's 1986 asbestos standard showing worker exposures during removal from roofs of built-up roofing (BUR) containing asbestos felts, asbestos-cement (A/C) shingles, and asbestos-containing transite panels. Some of these data are summarized in a document entitled "'Objective Data' Demonstration for Certain Roofing Materials and Operations Under OSHA's 1994 Asbestos standard," submitted by NRCA on December 14, 1994 (hereinafter referred to as the "NRCA Objective Data Demonstration"). The data also are representative of other roofing materials, such as asbestos-containing asphalt shingles and asphalt felt underlayments. These data consistently show exposures below the TWA and excursion limits specified in the revised standard. The data were collected by a number of different roofing contractors and represent a range of variables that can affect exposure levels during roof removals, including asbestos content of the material, the climatic conditions to which the material was exposed over its lifetime, and the age of the material. Moreover, because the 1986 standard did not mandate that roofing removal work be conducted in accord with specific work practices intended to minimize the concentration of airborne asbestos, the monitoring data collected under that standard should generally reflect higher asbestos exposures than are likely to occur when the work practices required under the revised standard are followed.

OSHA concludes that the monitoring data in the rulemaking record, including the data summarized in the NRCA Objective Data Demonstration, show that employee exposures during roof removal work will consistently be below the TWA and excursion limit when proper work practices are followed during removal of intact asbestos-containing roofing material. Accordingly, without determining whether the data meet the criteria for "objective data" in paragraph 1101(f)(2)(iii)(A), OSHA concludes that employers may rely on the data in the rulemaking record to make negative exposure assessments for roof removal, repair, and maintenance operations when: (1) the removal practices strictly adhere to the work practices required by the provisions of 1101(g)(8)(ii), as amended and interpreted by this agreement; (2) all workers engaged in the removal are trained in accordance with the provisions of 1101(k)(8); and (3) before removal begins, a competent person assesses the job and determines that the roofing material is "intact" within the meaning of 1101(b) (see Appendix A, Section 6 of this Agreement).

An OSHA compliance officer may determine that a negative exposure assessment is not justified if the required work practices are not being followed or if the employees performing the removal work are not trained in accordance with the standard. Moreover, if OSHA field data or other information, weighed against the data in the rulemaking record, show that exposures during particular roof removal operations in which the required work practices are used are likely to exceed the TWA or excursion limit, OSHA reserves the right to reconsider, after providing NRCA an opportunity to comment on such field data or other information, whether roofing contractors can continue to make negative exposure assessments for such particular roof removal operations based solely on the data in the rulemaking record.

17. Paragraph 1101(1)(2) will be amended to read as follows:

Waste disposal. Asbestos waste, scrap, debris, bags, containers, equipment, and contaminated clothing consigned for disposal shall be collected and disposed of in sealed, labeled, impermeable bags or other closed, labeled, impermeable containers, except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) apply.

18. The requirement of paragraph 1101(g)(7)(iii) that impermeable dropcloths be placed on surfaces beneath all removal activity does not apply to the removal of asbestos containing roofing material from a solid substrate underneath the material.

19. The reference in paragraph 1101(g)(7)(iv) to "paragraph (g)(3)(i) through (v)" will be corrected to read "paragraph (g)(1)(i) through (iii)," and the reference in paragraph 1101(o)(3) to "paragraph (p)(3)(i) and (ii)" will be corrected to read "paragraph (o)(3)(i)."

20. The amendments and additions to the language of the standard contained in this agreement shall be published in the Federal Register as soon as practicable as part of a document containing general corrections and clarifications to the standard. The amendments and additions shall become effective immediately upon publication in the Federal Register. Before publication, employers engaged in roofing work may rely on the provisions of this agreement as an expression of

OSHA's enforcement policy, and OSHA will not issue citations to any employer who is acting in accordance with this agreement.

21. The statements in Appendices A and B to this agreement accurately reflect the meaning of the standard insofar as roofing operations are concerned. The interpretations set forth in Appendix A shall be published in the preamble of the Federal Register notice described in paragraph 20 of this agreement. The interpretations described in Appendices A and B shall be published in an informational document describing how to comply with the OSHA asbestos standard in roofing operations involving asbestos-containing materials. Such informational document shall either be published by OSHA, or be published by NRCA after review by OSHA of the contents. The parties hereby agree to use their best efforts to ensure the publication of the informational document as soon as practicable, but in any event no later than August 10, 1995. Prior to publication as provided above, employers engaged in roofing work may rely on the interpretations set forth in this agreement, including Appendices A and B, as an expression of OSHA's enforcement policy, and OSHA will not issue citations to any employer acting in accordance with such interpretations

22. The date by which the employee training required by paragraph 1101(k)(8) must be completed for employees engaged in roofing work covered by the standard is extended to September 30, 1995.

23. Within ten days of the date the amendments and additions to the standard are published in the Federal Register pursuant to paragraph 20 of this agreement, the Petitioners in the above-captioned cases shall file motions with the Court to withdraw their petitions. Within ten days of the date of execution of this Agreement, the Petitioners will file a joint motion on behalf of the Petitioners and OSHA asking the Court to sever these cases from the cases in which other petitioners are challenging the asbestos standard and to hold briefing in these cases in abeyance until the Petitioners file motions to withdraw their petitions for review in accordance with this paragraph. Should the Court deny that motion and should any of the Petitioners file a brief challenging any aspect of the standard, this Agreement shall be null and void.

24. OSHA will not, in the Federal Register document referred to in paragraph 20 of this Agreement, change the language of the standard or announce any interpretation of the standard, so as to impose additional or more stringent requirements on installation, removal, repair, or maintenance of asbestos-containing roofing material without the consent of the Petitioners.

25. This Agreement does not affect NRCA's status as an Intervenor in the case involving a Petition by the Building and Construction Trades Department, AFL-CIO. Should any other party that has petitioned for review of the asbestos standard challenge the roofing provisions of the standard, or should any party petition for review of the amendments and additions to the standard promulgated pursuant to this agreement, OSHA will not oppose intervention by NRCA in that case.

26. In the event that any party seeks judicial review of any provision of the standard as it applies to roofing operations, including any of the amendments, additions, and interpretations published pursuant to this agreement, OSHA will not, in defending the standard against such a challenge, make any reference to this agreement or represent in any fashion that petitioners endorse the standard, or accept the need for, appropriateness or feasibility of any provision of the standard, including the amendments, additions, and interpretations published pursuant to this agreement. In the event a reviewing court overturns any such provision, amendment, addition, or interpretation, OSHA will keep such provision, amendment, addition, or interpretation in effect during any subsequent rulemaking or other administrative proceedings with respect to any such provision, amendment, addition, or interpretation, unless otherwise ordered by the reviewing court.

27. By entering into this Agreement, the parties do not concede the validity or invalidity of any claim or argument that any party could have raised in litigation. Nothing in this agreement constitutes an admission by petitioners, or by any member of petitioner NRCA, that a significant risk of material health impairment exists in roofing operations not in compliance with the provisions of the standard affecting such operations, including the amendments, additions, or interpretations adopted pursuant to this agreement, or that such provisions are feasible or reasonably necessary or appropriate to protect worker health.

28. This settlement agreement is intended for the benefit of and may be relied upon by (a) each of the parties to this agreement and their respective successors and assigns; and (b) every employer subject to federal OSHA jurisdiction (whether or not a party to this agreement) that installs, repairs, removes, or maintains asbestos-containing roofing materials.

29. Within 30 days of the date of execution of this Agreement, OSHA will provide copies of this Agreement to the Administrators of State Plans approved by OSHA under Section 18 of the Occupational Safety and Health Act, and will notify them that the additions, amendments, and interpretations of the standard set forth in this Agreement, including the provisions of paragraph 16 relating to the making of negative exposure assessments, constitute a Federal program change requiring such States to submit program change supplements pursuant to 29 C.F.R. 1953.20 and 1953.23(a). When it provides copies of this Agreement to State Plan Administrators, OSHA will inform them that any amendment to a State asbestos standard that permits employers to make negative exposure assessments in circumstances consistent with paragraph 16 of this Agreement, and that is otherwise consistent with the provisions of this Agreement, shall be deemed to be "at least as effective" as the Federal program change.

30. The Compliance Directive issued by OSHA relating to the standard shall include the substance of the following paragraphs of this Agreement: paragraph 1, 2, 3, 4, 6, 7, 8, and 16, and paragraph 3, 6, 7, and 9 of Appendix A. Nothing in the Compliance Directive shall be inconsistent with any of the provisions of this Agreement.

31. All parties shall bear their own costs and attorney fees.

32. The individuals signing this agreement on behalf of the parties hereby certify that they are authorized to bind the respective parties to the terms of this agreement.

Agreed, this **15th** day of March, 1995.

THE UNITED STATES DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

By -----

Joseph A. Dear, Assistant Secretary Occupational Safety and Health Administration

MAX EUBANK ROOFING COMPANY, INC., and THE NATIONAL ROOFING CONTRACTORS ASSOCIATION

By -----

Arthur F. Sampson, III, their Attorney

BELDON ROOFING AND REMODELING COMPANY

By -----

R. Gaines Griffin, its Attorney

BRUTON/GOMEZ & COMPANY, INC.

By -----

Richard J. Hatch, Jr., its Attorney

LYDICK-HOOKS ROOFING OF LUBBOCK, INC.

By -----

Don Graf, its Attorney

JOHNSON ROOFING COMPANY, INC.

By -----

Robert E. Holden, its Attorney

Appendix A
Interpretations to be Published in
the Federal Register Preamble and the
Roofing Industry Informational Document
Pursuant to Paragraph 21
of this Agreement

1. Employees working on jobs covered by new paragraph 1101(g)(11) and no other jobs that are covered by the asbestos standard are not subject to the special training requirements for Class II, III or IV work specified in paragraph 1101(k)(8)(iii)-(v). Workers on jobs covered by new paragraph 1101(g)(11) must be trained in the following topics:

- * Identification and Recognition of Asbestos-Containing Roofing Materials
- * identification of asbestos
- * Uses in roofing, past and present
- * Characteristics of asbestos
- * Potential Health Effects of Asbestos
- * Nature of asbestos related disease, including latency and medical tests for identifying asbestos diseases
- * Routes of exposure
- * Dose response relationships
- * Relationship between cigarette smoking and asbestos exposure and availability of smoking cessation programs
- * Federal OSHA Construction Asbestos Standard
- * Overview of standard
- * Discussion of alternative methods for handling intact asbestos roof coatings, mastics, cements, and flashings
- * Discussion of PEL and significant risk
- * Intact versus Non Intact Materials
- * Definitions
- * How to recognize non intact material
- * Procedures to be followed when material is found or becomes non intact
- * Appropriate Work Practices
- * Applying mastics, cements, coatings
- * Manual methods for removing materials
- * Clean up and waste disposal

2. Competent persons supervising jobs covered by new paragraph 1101(g)(11) and no other jobs that are covered by the asbestos standard are not subject to the special training requirements for Class II, III or IV work specified in paragraph 1101(o)(4). Competent persons on jobs covered by new paragraph 1101(g)(11) must be knowledgeable in the following topics in addition to the topics covered in worker training under paragraph I of this Appendix A:

- * Methods of Determining Presence of ACRM
- * Understanding and Interpreting Air Monitoring Data
- * Some states, building owners, etc. require air monitoring on all ACM projects
- * Understanding a negative exposure assessment
- * Notification Requirements - Commercial/Industrial Work Only

3. Under new paragraph 1101(g)(11)(iii), manual methods which "do not render the material non-intact" include (but are not limited to) the use of spud, spade, flat-blade or slicing tools, such as axes, mattocks, pry bars, spud bars, crow bars, shovels, flat-blade knives, and utility knives, to slice, cut, strip-off, shear-under, or pry-up the material.
4. The interpretations of paragraphs 1101(g)(1)(i), (g)(3)(iii), and 1101(g)(8)(ii)(B) of the standard, as set forth in paragraphs 4 and 6 of this agreement.
5. Work on jobs covered by new paragraph 1101(g)(11) is not Class I, II, or III work and is therefore not included under paragraph 1101(m)(1)(i) in the determination of which employees are covered by the medical surveillance provisions of the standard unless during such jobs employees are exposed at or above the TWA or excursion limit or wear negative pressure respirators.
6. Materials, such as roofing materials, which are separated into pieces in the process of removal or repair are not considered to be "non-intact" solely because the material has been cut, sliced, pried, or otherwise separated into smaller units for the purpose of removal. The condition of the smaller units or pieces of removed roofing (for example, a 2 foot by 2 foot section) must be evaluated against the definition of the term "intact" in paragraph 1101(b) of the standard in order to determine whether the roofing material has been rendered "non-intact" by a removal or repair operation. For example:
 - a. Built-up roofing (BUR) that has been cut into smaller sections (e.g., using a power roof cutter) and pried up from the roof is not deemed to be "non-intact" solely because it has been separated into pieces. If the pieces of removed BUR have "not crumbled, been pulverized, or otherwise deteriorated so that [they] are no longer likely to be bound with [their] matrix," then they are "intact" as defined in paragraph 1101(b) of the standard. On the other hand, the dust created by the destructive force of the cutting blade of a power roof cutter-would be considered "non-intact."
 - b. The same interpretation applies to other roofing materials which are typically removed by dividing them into smaller units. For example, roof mastics and cements are usually pried, chipped or scraped off; asphalt felt underlayments are sliced and rolled-up or sometimes scraped-off or chipped-off; and flashings are sliced into manageable units and then pried-up. The fact that roofing materials have been removed in this fashion does not by itself render them non-intact under the standard. Rather, the removed pieces of roofing must be evaluated to determine whether they are "intact" as defined in paragraph 1101(b) of the standard.
 - c. Likewise, although asbestos-cement (A/C) shingles are pried up by hand and removed as individual units of roofing, occasionally incidental breakage of the shingles will occur even during careful removal procedures. Such incidental breaking does not in and of itself render the material non-intact under the standard; the question is whether the shingles (whether broken or not) have been crumbled, pulverized, or otherwise are not likely to be bound with their cementitious matrix as a result of the removal operation. The same interpretation applies to incidental breakage of other asbestos-containing roofing materials during removal or subsequent handling.
7. When power roof cutters are used in the removal of intact built-up roofing containing asbestos felts, paragraph 1101(g)(8)(ii)(C) requires that the machine be continuously misted during use unless the competent person determines that misting substantially decreases worker safety. Paragraph (g)(8)(ii)(D), as revised by paragraph 3 of this agreement, specifies circumstances when the dust resulting from such cutting must be a HEPA dust collector or HEPA vacuuming. Except for these requirements, wet methods, HEPA vacuuming or HEPA dust collection, and leak-tight bagging or wrapping are not required when intact asbestos-containing roofing is removed by methods that do not render the material non-intact or create dust.
8. New paragraph 1101(g)(8)(ii)(H), although located in the section of the standard addressing methods of compliance for Class II work, also applies to Class III and Class IV roofing operations.
9. Paragraph 1101(g)(8)(ii)(G) requires isolation or shutdown only of air intakes in the regulated area, unless the competent person determines that existing conditions (e.g., wind speed, and proximity and orientation of the intakes to the air flow) warrants isolation or closure of some intakes outside the regulated area. OSHA intends that the competent person may choose from various forms of "isolation" to satisfy this provision of the standard, depending on the circumstances of each particular job, including the following: (i) the use of 20 foot "buffer zones," subject to the exercise of good judgment by the competent person based on site-specific conditions, as discussed in the August 10, 1994 preamble, 59 Fed. Reg. at 41006; (ii) the use of HEPA filters; (iii) the use of horizontal or vertical extensions that relocate the opening of the air intake outside or above the regulated area or away from or above a nearby upwind source of asbestos fiber emissions; or (iv) covering the intake with plastic sheeting or another kind of barrier.

Appendix B
Interpretations to be Published in
a Roofing Industry Informational Document
Pursuant to Paragraph 21
of this Settlement Agreement

1. Power roof cutters are not "high speed abrasive disc saws" under paragraph 1101(g)(3)(i).
2. The requirements of paragraph 1101(g)(2) apply only where the PELs are exceeded or are expected to be exceeded.
3. Roof re-covering work not involving the removal or disturbance of ACM does not constitute "encapsulation" or "renovation" work subject to the standard.
4. Roofing materials are not "surfacing material" as defined in paragraph 1101(b) or otherwise subject to the requirements of the standard governing Class I

ACM.

5. The same methodology is used to determine whether a material contains more than one percent asbestos and is therefore "ACM" as defined in paragraph 1101(b) of the OSHA asbestos standard as is used under the EPA Asbestos NESHAP, 40 C.F.R. 61.141.

6. Under paragraph 1101(e)(2), the regulated area need not encompass the entire roof, and "demarcation" methods other than warning tape can satisfy the standard, including, for example, posting warning signs on roofs with only one or a few points of access (provided, of course, the competent person supervises access as required).

7. The negative exposure assessment determination in paragraph 16 of this agreement.

8. The interpretation of paragraph 1101(g)(7)(iii) of the standard as set forth in paragraph 18 of this agreement.

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UNITED STATES DEPARTMENT OF LABOR

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