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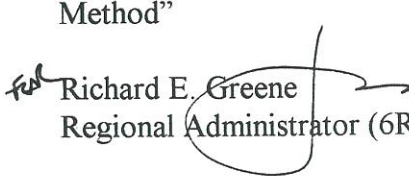
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

APR 20 2004

MEMORANDUM

SUBJECT: Update of Activities Related to Inspector General's Report "Significant Modifications Needed To Ensure Success of Fort Worth Asbestos Demolition Method"

FROM:  Richard E. Greene
Regional Administrator (6RA)

TO: Kwai-Chung Chan
Assistant Inspector General for Program Evaluation (2460T)

EPA Region 6, on behalf of the Office of Research and Development (ORD), Office of Air and Radiation (OAR), Office of Enforcement and Compliance Assurance (OECA), and the Office of Policy, Economics, and Innovation (OPEI), has prepared this memorandum in response to your Evaluation Report entitled: "Significant Modifications Needed to Ensure Success of Fort Worth Asbestos Demolition Method". As was stated in the response to the draft report of December 2, 2003, Fort Worth and the Agency are committed to an open and transparent process that provides an opportunity for public comment and peer review, and we welcome your comments on the project. OECA has prepared an addendum which discusses their specific comments in more detail.

While your report references EPA's XL process, please note that we have decided not to continue this project in the XL process. Rather, OECA will determine whether to exercise its enforcement discretion regarding the project. The decision about whether to grant enforcement discretion will be based on whether the project is fully protective of human health and the environment. To that end, as stated in the letter from J. P. Suarez, Assistant Administrator for OECA, dated January 26, 2004, "EPA will assist the City in revising its Method document and Quality Assurance Project Plan (QAPP) to ensure that the work performed during Phase 2 will be protective of public health and the environment during its implementation." We will ensure that nearby residents are aware of the nature of the pilot demolitions. Although the project continues to move forward, a number of steps which were referenced in our earlier response will soon take place. Some of these steps are conditions for granting enforcement discretion to the City. You will find the steps in the updated chart that is attached to this memo. An example of one of these steps is that the project documents will be externally peer reviewed, consistent with the Agency's peer review policy, by a group of technical experts.

Thank you for your efforts to address some of our issues with your draft report. Moving the Recent Developments section to the beginning of the report assists in showing that the process you were reporting on was still in an early stage of development. We have attached a chart that shows the responses to your recommendations and the current status of activities.

If you have any questions, please contact Mark Hansen or David Bond of my staff. Mark may be reached at (214) 665-7548 or via email at hansen.mark@epa.gov. David may be reached at (214) 665-6431 or via email at bond.david@epa.gov.

Attachments

cc: Jeffrey R. Holmstead (6101-A)
Thomas Skinner (2201-A)
J. Paul Gilman (8101-R)
Jessica L. Furey (1804-A)

**Final Report and Status of Actions in Response to Office of Inspector General's Report
"Significant Modifications Needed To Ensure Success of Fort Worth Asbestos Demolition Method"**

Recommendation #	IG's Recommendation	Action	Status
2-1	Agency officials assist Fort Worth in modifying the Fort Worth Method to produce a single, finalized technical specification proposal, including the demolition strategy and associated QAPP that: a. identifies and adequately describes how each type of RACM that may be encountered during demolition will be addressed; b. better defines the wetting requirements; c. is documented in sufficient detail to allow for independent assessment; and, d. is evaluated based on an appropriate air monitoring standard and monitoring that is representative	EPA has communicated these recommendations to the City of Fort Worth and they have attempted to incorporate them in to their revised documents. The Agency has already specified that revising the method and QAPP, and peer review of the documents, are prerequisites for moving with the phase 2 test.	The City produced revised documents based on comments from EPA. These documents are being reviewed by the EPA team as well as EPA asbestos experts. Currently the documents are being externally peer reviewed. At the request of ORD, the External Peer Review will be managed by an EPA Region 6 Work Assignment Manager. The external peer review will be completed in April 2004.
2-2	Agency officials assist Fort Worth in fully describing the air monitoring that will take place, and to determine whether the air monitoring contractor would be independent from the demolition contractor.	See above	See above
2-3	Agency officials require that the Fort Worth Method is adequately peer reviewed prior to implementation.	See above	The documents are currently being peer reviewed by a group of external experts.

2-4	Agency officials outline criteria that determines the volume of RACM necessary to ensure a representative comparison to the NESHAP, and assist the city in locating a structure that meets these criteria.	See above	The Cowtown Inn is one of several buildings in Ft. Worth that may be demolished using the Fort Worth Method in the event that the demolition of the Cowtown Inn structure is successful. We will work with the City to develop the appropriate criteria to ensure a representative comparison to the asbestos NESHAP as we go forward with Phase 2.
3-1	We recommend that the Assistant Administrator for Air and Radiation, the Assistant Administrator for Enforcement and Compliance Assurance, the Associate Administrator for Policy, Economics, and Innovation, and the Regional Administrator for Region 6 ensure that Agency officials work with the City of Fort Worth to develop a Final Project Agreement that adequately addresses key project XL Criteria for the entire proposed project (Phase II and Phase III), including: • determining whether the project can achieve superior environmental performance; • verifying a mechanism for regulatory flexibility; • obtaining adequate stakeholder involvement; • sufficiently documenting the method so that it can be properly transferred to other communities with similar results; and • ensuring that all Project XL team concerns are adequately addressed.	The Phase 2 Demonstration Project is not proceeding under the Project XL process. However, EPA is working to ensure a transparent process to provide opportunity for public involvement, information sharing, and incorporation of community concerns into the final project. In addition, the Method and associated documents are being revised to incorporate comments from internal and external subject matter experts to ensure that the project is protective of public health and the environment and collects scientifically valid information to evaluate the Method's environmental performance.	The City has scheduled two public meetings in the Handley community. Material for the public was prepared by the City and Region with comments from our scientists and public policy experts from ORD. Region 6 will continue to provide support for stakeholder involvement to ensure that accurate information is communicated to local residents. The next public meeting is scheduled in April 2004.

4-1	Ensure that Agency officials work with the City of Fort Worth to design a demonstration project that can be used to reach complete, reliable, and valid conclusions.	EPA concurs with recommendations 4.1.	EPA has and is working with the City to design a project that will produce valid data with which to draw conclusions as to the future use of the method. The latest versions of the project documents have been reviewed by internal EPA experts and are currently being peer reviewed by an external group of experts.
4-2	Work with the City to ensure that the structures chosen for the Phase II demolition contain sufficient asbestos to provide a representative test and is sited in a remote location.	EPA concurs with recommendation 4-2 recognizing that there are obvious limitations on which structures are available for the City to demolish. If the Cowtown Inn demonstration is successful, preference will be placed on selecting structures that are in more remote locations for future demonstrations.	There will be a number of tests (the total number has not yet been determined) on different structures if the Cowtown Inn Demonstration Project is deemed successful. Each structure will be assessed prior to use in the project. As we go forward with any additional Phase 2 demolitions, we will ensure that the City selects buildings in accordance with the criteria developed in response to recommendation 2-4.
4-3	Ensure that Agency officials address the key conditions of the Conditional Project Approval letter, including equivalency and FPA development.	Phase 2 Demonstration of this project will not be in the formal Project XL process.	Although an XL Final Project Agreement is not being developed, the Region is conducting an internal and external peer review in order to develop final project plans that will be protective of human health and the environment.

4-4	Ensure that Agency officials specify which legal mechanism will be used and which technical and process criteria will govern the Fort Worth Method project in the future, specify how human health will be protected to at least a level equivalent to the current Asbestos NESHAP, and publish the proposal in the Federal Register to solicit nationwide input on the technical merits and enforceability of the proposal.	Internal and External peer review in conjunction with EPA and Texas Department of Health oversight will help ensure that these recommendations are incorporated into the project.	EPA is planning to undertake the Phase 2 demonstration project with enforcement discretion using carefully designed and peer reviewed protocols. No Federal Register notice is planned for Phase 2, rather Fort Worth is conducting significant local community involvement. A Federal Register Notice would be required for Phase 3 if a regulatory change/equivalency determination is ultimately pursued.
4-5	Agency officials develop a single guidance document for all proposals submitted under the Agency Innovations Strategy that provides fundamental criteria and is published in the Federal Register.	EPA's Innovation Strategy is currently being developed outside of this project. As this project moves forward, we will work with the appropriate offices to ensure consistency with the Agency's Innovative Strategy.	Although the XL criteria are not in place, the Region is conducting both an internal and external peer review so that technical issues can be addressed and the project will be protective of human health and the environment.

OECA Addendum:

OECA, as the office that will determine whether to grant enforcement discretion for the project, submits these supplemental comments to explain the factors that we will consider, pursuant to J.P. Suarez's January 26, 2004 letter. OECA believes that each of the recommendations made by the OIG, coupled with those of the Asbestos Coordination Team (ACT), including individual member's recommendations and concerns, must be specifically addressed if the Method and QAPP are to satisfy the clearly stated condition precedents to OECA's grant of enforcement discretion in this matter. Although it is OECA that will determine if the conditions precedent to the grant of enforcement discretion are satisfied, the office is relying on other EPA offices and experts with responsibilities in the areas of science, technology, and public involvement to work with Region 6 to ensure that each of the recommendations and comments directed to the Method and QAPP ensure protection of the public. These offices and experts include: the Office of Air and Radiation, the Office of Research and Development, the Office of Policy, Economics and Innovation, the Office of Solid Waste and Emergency Response, and the Asbestos Coordination Team.