

**THINK YOU
DON'T NEED A
SURVEY?
THINK AGAIN!**

Russell C. Vent
Rochester, NY



AGENDA

- Background
- Asbestos Basics
- Linda Reinstein & ADAO
- EPA
- OSHA
- Moving Forward



ABOUT ME

Russell Vent, Vice President of Paul Davis Restoration

- Co-Owner of Paul Davis of Greater Rochester & Buffalo NY
One of the top 20 largest Paul Davis locations with over 80 employees
- Vice President of the Professional Abatement Contractors of New York (PACNY)
- NYS/AHERA Licensed Asbestos Inspector
- NYS Licensed Asbestos Abatement Contractor
- CMRS – Council Certified Microbial Remediation Supervisor
- NYS Mold Remediator/ Restoration Professional for 10+ Years
- IICRC Certified; MFR (Master Fire Restorer) TCST, WRT/ASD and HST
- Environmental Consulting & Leadership Training



WHAT?

Asbestos is a naturally occurring mineral made up of thin, fibrous crystals. It was used heavily in construction for decades because it's:

- **Fire-resistant**
- **Strong and durable**
- **A good insulator (thermal and acoustic)**
- **Resistant to chemicals and electricity**

When asbestos fibers are disturbed and become airborne, they can be inhaled. Over time, this can lead to serious health problems, including:

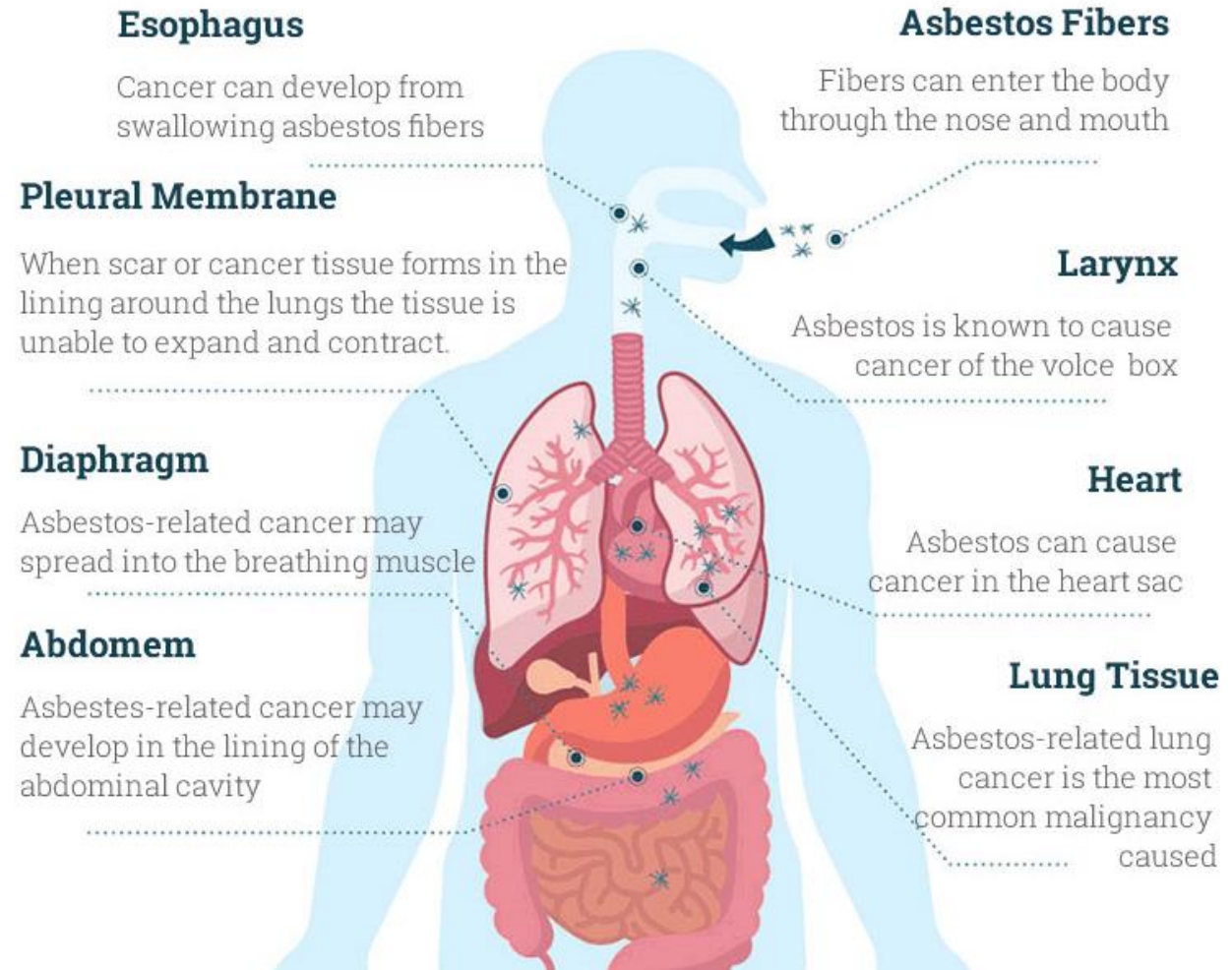
- **Asbestosis (lung scarring)**
- **Mesothelioma (a cancer)**
- **Lung cancer**



THE HAZARD

Asbestos

- When asbestos fibers are disturbed and become airborne, they can be inhaled. Over time, this can lead to serious health problems, including:
- Asbestosis (lung scarring)
- Mesothelioma (a rare cancer)
- Lung cancer





What date do you use for asbestos testing?

Pre-1978

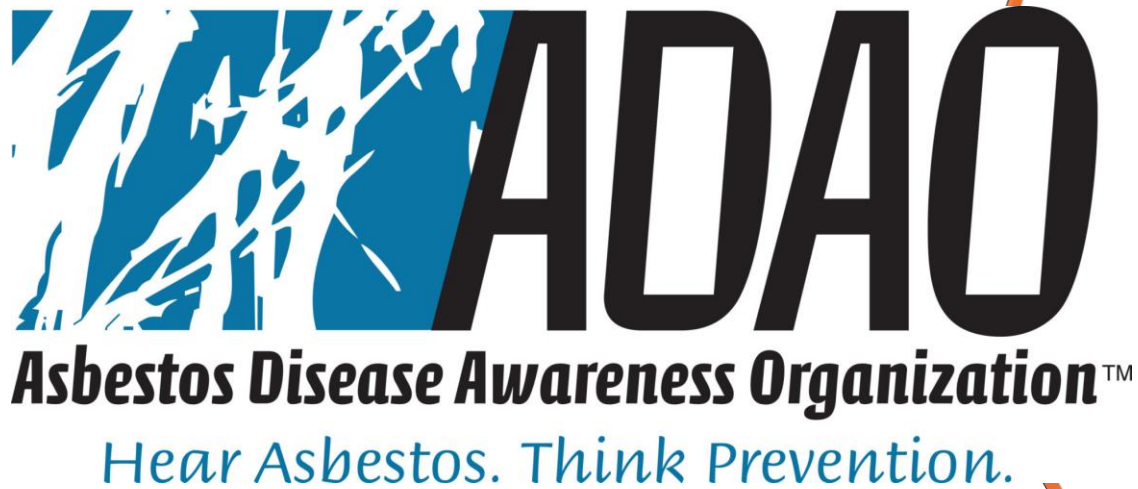
1974

1980

1990

ADAO Video Intro

Linda Reinstein
Co-Founder of ADAO



WHERE?

- Drywall
- Joint Compound/ Spackle
- Sheet Vinyl Flooring
- Ceiling Tiles
- Vermiculite Insulation
- Dust & Debris
- Duct Wrap
- Fibrous Wire Insulation
- Chalkboards
- Felts & Vapor Barriers
- Skim Coats & Textured Surfacing
- Finish/Decorative Plaster
- Vinyl Plank Flooring
- VCT
- Floor Leveler
- Caulks
- Textured Paint
- Vinyl Cove Base
- Adhesives (Mastics and Glues)
- Asphalt Roofing Shingles
- Roofing felt and underlayment
- Bituminous flashing and sealants
- Asbestos-cement siding shingles or panels
- Caulking and glazing
- Cementitious
- Materials and Grout
- And more! (When in Doubt, TEST!)

PURPOSE

My Story & Article

- Early in my career, no definitive answer
Everyone had a different date – was frustrating
- Discovery – through involvement with PACNY and other industry peers, and outreach.
- Decision to test 100%, Test Ourselves, and Enter into abatement
- Pushback, slowly educating everyone in area
- Misconceptions continued
- Wanted to create an article/ resource to help those in the shoes I was in - one place for an answer!



CONTAMINATION RESTORATION & REMEDIATION

The Asbestos Testing Cut-Off Date Myth, Part 1

Debunking the Asbestos Testing Cut-Off Date Myth – What You Need to Know

By Russell C. Vent, Kevin Hutton



Photo: Daria Nipot / iStock / Getty Images Plus via Getty Images

November 8, 2024



What date do you use in your organization to decide if there is a need for [asbestos testing](#) before a renovation or restoration project? 1980? 1979? The truth is that there is no "cut off" date relieving the need for asbestos testing prior to any renovation, reconstruction, or demolition activity for all commercial buildings and residential use properties (This includes single-family homes!) I hope to

CONFUSION, CHAOS!

Gregg [redacted]
Not asbestos if from 85, looks like cellulose. Confirm with test.

[redacted] · Follow
[redacted] (present) · 1y · +

Related **How can you tell if your home has asbestos? Is it worth having an inspection done on an older home that doesn't have any noticeable issues with asbestos yet?**
If your home was built before 1990, there's a possibility of asbestos in some of the building

[redacted]
More than 35 years as an asbestos, IAQ & Mold consultant · 2y

Related **How can you tell if your home has asbestos in it without hiring a professional?**
Based on sampling thousands of buildings, if your home was built before 1985, it has asbestos in it. Period.

[redacted] · low
Architectural specifier for large projects at Multiple Large Firms · 2y

Related **How can you find out if there is asbestos in your house before starting a remodel/home renovation project?**
If your house is in the US and was built after 1981, there won't be asbestos in it. Asbestos was outlawed in 1978 but firms were allowed to sell existing stock not any later than 1980. I gave

[redacted] · 3y ago

Assuming you are in the US asbestos was banned in most building materials 1989.

Asbestos Alert

If the structure was built prior to 1981 and demolition is necessary, you will need to contact Accuserve to make arrangements for possible Asbestos Containing Materials to be tested.

[redacted] · Follow
82 and older for asbestos
78 and older for lead
1y Like Reply

[redacted]
1978
1y Like Reply

[redacted]
October 20, 2023 · 🌐

We're running into a lot of homes that we're recommending asbestos testing prior to doing any demo. Curious what the year cut off others are using (preferably in Texas) when it comes to requiring testing prior to starting any demo

2 42 comments

Like Comment Send

Most relevant ▾

[redacted]
No asbestos testing required for residential

6 DIFFERENT
DATES IN 1
HOUR OF
GOOGLING



MY SURVEY – HOME BUILT IN 1990

How Many Would Have Caught This?

Mastic – 22% Chrysotile



EXCUSES & STATEMENTS

Hmmm 🤔 ...

- Asbestos isn't in homes after XXXX Date
- That's only in Northern States
- My State isn't as Strict/ Federal Law Doesn't apply!
- OSHA Says 1980!
- Asbestos Testing Doesn't Matter During Hurricanes/Cat Work
- We don't pay for asbestos testing
- That was JUST installed this year!
- We just renovated



EPA



EPA NESHAP

EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP)

The Asbestos NESHAP is a federal regulation that governs how asbestos-containing materials (ACMs) are managed during demolition, renovation, and waste disposal of certain buildings to prevent airborne asbestos emissions.

The Asbestos NESHAP regulation (40 CFR Part 61, Subpart M) sets federal standards for inspecting, handling, removing, and disposing of asbestos during demolition and renovation.



EPA NESHAP

NESHAP Covers:



- **Commercial buildings**
Offices, stores, restaurants, etc.
- **Industrial buildings**
Factories, warehouses, plants, etc.
- **Institutional buildings**
Schools, hospitals, churches, government buildings
- **Public buildings**
Libraries, municipal buildings, transit centers
- **Residential buildings with more than 4 dwelling units**
Apartment complexes

Any residential structure involved in:



- **Commercial or public use** (e.g., a house converted into an office)
- **Larger project demolitions** (e.g., 10 houses cleared for highway expansion or commercial development)

Excluded:



- **Single Family Homes**
- **Duplexes, and 3- or 4-unit dwellings** (*unless part of a larger project or demolition*)



EPA NESHAP

EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP)

NESHAP SAYS:

"All facilities... must be thoroughly inspected for the presence of asbestos prior to the commencement of demolition or renovation."

(40 CFR §61.145(a))

The inspection must:

- Cover all areas of the facility affected by the work
- Be conducted by properly trained and accredited personnel

Notice the clear absence of date

NOVA LETTER One Example of Many:



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC 20460

AUG 15 2016

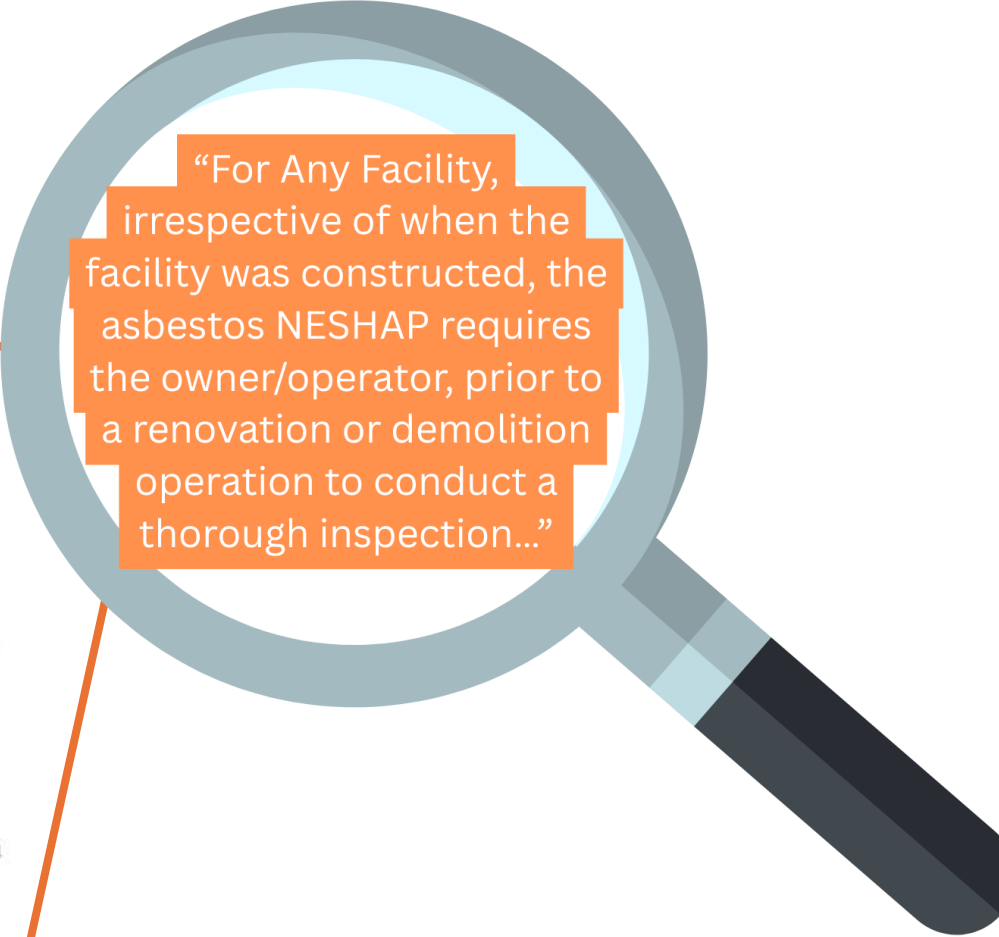
OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Kary S. Amin
Vice-President
NOVA Environmental, Inc.
5300 Plymouth Road
Ann Arbor, MI 48105

Dear Mr. Amin:

This letter provides a response to your January 14, 2016, letter to the U.S. Environmental Protection Agency (EPA) seeking clarification on the type of documentation required to identify building materials as non-asbestos containing material (non-ACM), in accordance with the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Part 61, Subpart M.

For any facility, irrespective of the date when the facility was constructed¹, the Asbestos NESHAP requires the owner/operator, prior to a renovation or demolition operation, to conduct a thorough inspection either of the whole facility or the portion of the facility that will be affected by the renovation or demolition operation. See 40 C.F.R. §61.145(a). The definitions for owner/operator, facility, renovation and demolition can be found at 40 C.F.R. §61.141.



"For Any Facility, irrespective of when the facility was constructed, the asbestos NESHAP requires the owner/operator, prior to a renovation or demolition operation to conduct a thorough inspection..."



**NOVA LETTER
QR CODE**

EPA CAT WORK

Guidance for Catastrophic Situations Regarding Asbestos

EPA DOCUMENT ISSUED 12/23/2009:

Meant to address the handling of NESHAP in situations like hurricanes and large-scale flooding

“There are no statutory or regulatory provisions that stay the applicability of the Asbestos NESHAP as a result of a catastrophic event.”

*“Prior to renovation or demolition, the owner or operator is required to:
1. Inspect for asbestos and determine amounts...”*



EPA CAT WORK

Guidance for Catastrophic Situations Regarding Asbestos

EPA DOCUMENT ISSUED 12/23/2009:

Meant to address the handling of NESHAP in situations like hurricanes and large-scale flooding



EPA SUMMARY

1. EPA Asbestos NESHAP Covers all Commercial and Residential Properties Restorers may be on down to 4 or fewer dwelling units
2. EPA is VERY clear about not recognizing a build by date
3. EPA doesn't provide relief in CAT situations



OSHA



OSHA

OSHA's Asbestos Standard protects workers from exposure to asbestos in general industry, construction, and shipyard work. The regulations are outlined primarily in:

29 CFR 1926.1101 – Construction

29 CFR 1910.1001 – General Industry

29 CFR 1915.1001 – Shipyards



OSHA & THE 1980 “PRESUMPTION RULE”

Here’s what OSHA says in the **construction standard (29 CFR 1926.1101(k))**:

"Building and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site."

"Employers shall identify all thermal system insulation and surfacing materials installed in buildings no later than 1980 as PACM."

And from **1926.1101(k)(2)**:

"Employers shall ensure that information concerning the presence, location, and quantity of ACM and/or PACM is conveyed to employers of employees who will perform work in areas containing such materials."



OSHA & THE 1980 “PRESUMPTION RULE”

OSHA’s “presumption rule” for asbestos is a regulatory assumption that certain building materials must be treated as asbestos-containing unless proven otherwise by proper testing.

OSHA presumes the following materials installed before 1981 are asbestos-containing materials (ACM):

- Thermal system insulation (TSI)
- Surfacing materials (e.g., spray-on fireproofing, acoustical plaster)
- Resilient flooring (like vinyl tile, sheet flooring, and associated mastic)

"Thermal system insulation and surfacing material found in buildings constructed no later than 1980 shall be presumed to contain asbestos." - 29 CFR 1926.1101(k)(1)





OSHA & Under 1%

“Materials containing less than 1.0 percent asbestos are not exempt from the standard” – Source: OSHA Compliance Directive CPL 02-02-063, Appendix F

- Even if a material tests <1% asbestos, OSHA still regulates it if work (e.g., cutting, grinding, demolition) may cause airborne fiber release above the PEL (0.1 f/cc).
- All work practices, engineering controls, PPE, and training requirements still apply when this risk exists.
- OSHA clearly expects identification of this hazard and leaves out mention of a date.

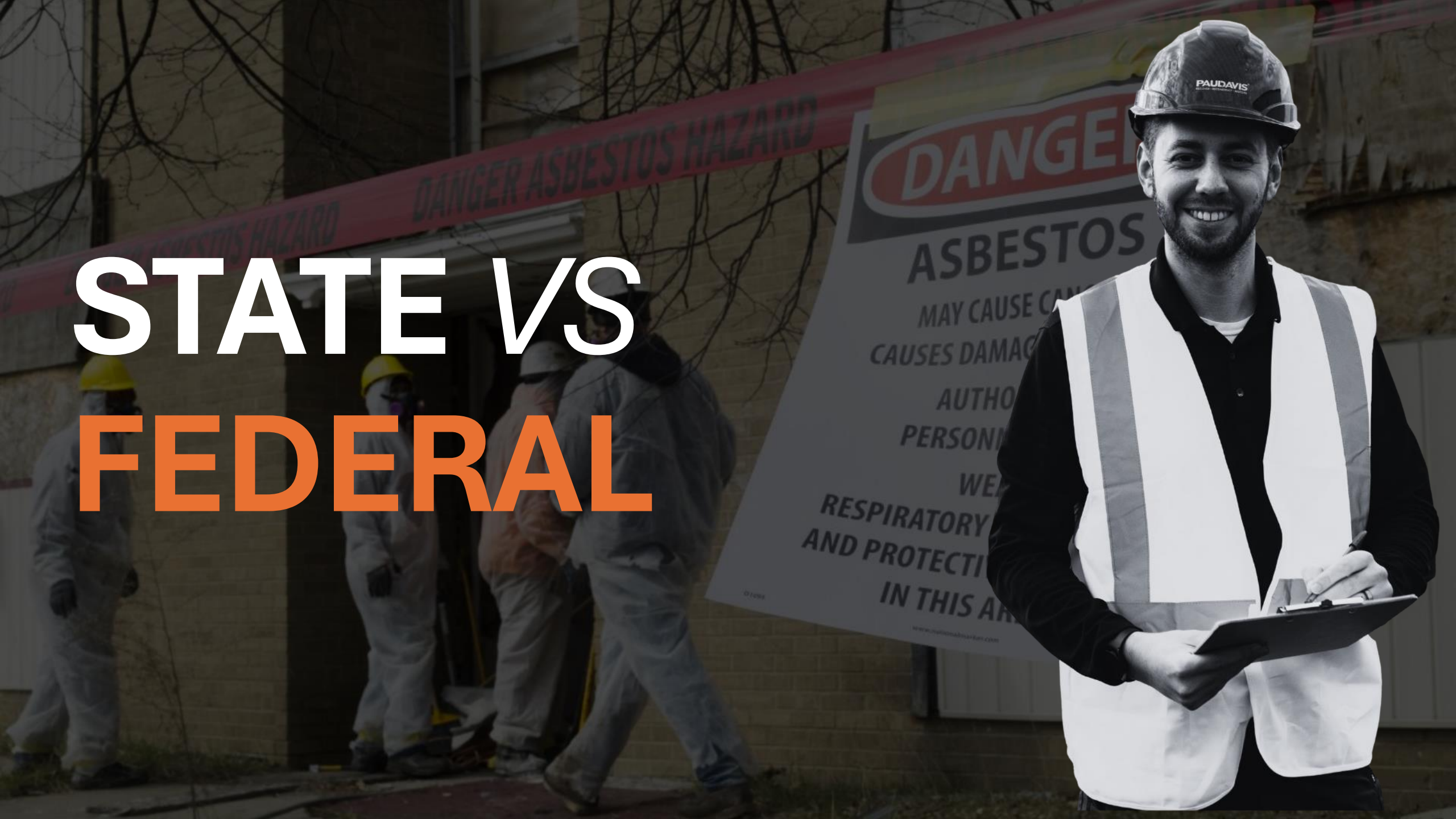
OSHA Preamble

August 10, 1994 Final Rule, FR #:59:40964-41162

*“...In this regard OSHA notes that the purpose of a cut-off is not to state a date after which it is certain that no asbestos-containing material has been installed in buildings. Rather, it is to designate when it becomes unlikely that asbestos-containing materials have been used in construction. OSHA believes that 1980 is a reasonable date for marking that probability. As noted above, **employers and building owners are still required to investigate materials installed after 1980 when they suspect they may be asbestos-containing.**”*



STATE VS FEDERAL



STATE DO NOT SUPERSEDE FEDERAL LAW

“That isn’t the case in [insert state name here]”

"No State may adopt or enforce any requirement that is less stringent than the corresponding Federal requirement."

– Clean Air Act, Section 116
(42 U.S.C. § 7416)

Under the Supremacy Clause of the U.S. Constitution (Article VI, Clause 2), federal law overrides conflicting state laws. This means that states cannot pass or enforce laws that are less protective than federally mandated environmental regulations, such as the EPA’s Asbestos NESHAP (40 CFR Part 61, Subpart M).

States may add more stringent laws but not less. For example, NYS ICR56

**HAVING THE
CONVERSATION/
CHANGING THE
INDUSTRY**



MOVING FORWARD

Resources and Recommendations

ADAO



Klark Brown (Restoration
Advisors)- WHITEPAPER



RUSS'S RECOMMENDATION

- **Build a “Justification Document” that explains these points, your state laws if add to the federal, and your internal stance and policy.**
- **I have one built that I would be happy to share and assist you with building your own**



THANK YOU
Questions?

DANGER

ASBESTOS
MAY CAUSE CANCER
CAUSES CANCER

