

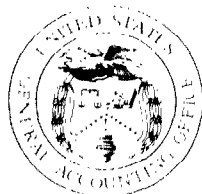
GAO

Report to the Honorable John J. LaFalce,  
House of Representatives

February 1992

# ASBESTOS REMOVAL AND DISPOSAL

## EPA Needs to Improve Compliance With Its Regulations



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**Resources, Community, and  
Economic Development Division**

B-246570

February 25, 1992

The Honorable John J. LaFalce  
House of Representatives

Dear Mr. LaFalce:

Asbestos fibers, if inhaled, can cause lung cancer and other major respiratory diseases. Before the health risks were recognized, hundreds of thousands of buildings nationwide were constructed with materials containing asbestos, which can be released into the air if the materials are disturbed. This report responds to your request that we examine the Environmental Protection Agency's (EPA) implementation of Clean Air Act regulations governing the removal and disposal of asbestos during renovation and demolition of public and commercial buildings. Specifically, we examined EPA's (1) monitoring of building owners' and contractors' compliance with the regulations and (2) enforcement of the regulations when violations are detected.

As it does with many of its programs, EPA has generally delegated day-to-day responsibility for implementing the regulations to state and local agencies. Program delegation is made at the request of a state or local government and after EPA determines that the responsible state or local agency is capable of carrying out the program. EPA then provides direction and technical assistance to the delegated agency and oversees its performance. EPA also provides financial assistance in the form of grants to help the agency pay for the program. In turn, the agency agrees to conduct certain activities, such as inspections of renovation and demolition projects, needed to monitor compliance and enforce the regulations.

Our examination included EPA Regions II, III, and V. New York and New Jersey, which make up Region II, have not requested delegation, and EPA is responsible for monitoring compliance and enforcing its regulations in these states. Both New York and New Jersey have their own asbestos regulations and conduct their own inspections to monitor compliance with them. Region III has delegated the program to its five states—Delaware, Maryland, Pennsylvania, Virginia, West Virginia—and to the District of Columbia as well as to Allegheny County and the city of Philadelphia within Pennsylvania. Region V has granted delegation to its six states: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. In total, our examination included 14 delegated agencies. As of September 1991, EPA

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had delegated the program to a total of 43 states and 70 local air pollution agencies.

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## Results in Brief

Several of the delegated agencies did not perform all of the activities specified in their grant agreements with EPA to monitor compliance with the regulations. For example, 5 of the 14 delegated agencies we reviewed performed fewer inspections of renovation and demolition projects than specified. Inspection efforts also varied substantially by delegated agency and region. The percentage of projects inspected by the agencies ranged from a low of 2 percent to a high of 93 percent. In total, the Region III agencies inspected an average of 41 percent of their projects, whereas the Region V agencies inspected 15 percent of their projects. EPA Region II, responsible for performing inspections in New York and New Jersey, inspected only 1 percent of the projects in these states. However, New York and New Jersey have regulations that, according to EPA officials, are at least as stringent as EPA's regulations. New York State, New York City, and New Jersey conducted more inspections in total than all the Regions III and V agencies combined.

In addition to conducting inspections, delegated agencies are to perform other compliance activities, including identifying contractors that fail to notify the agencies of projects in advance of renovation or demolition so that inspections can be conducted. We found, however, that 7 of the 14 agencies and Region II limited their efforts to identify these contractors to responding to tips and complaints. They did not use other techniques recommended by EPA, such as identifying contractors that advertise for removal and demolition work but do not submit notifications.

EPA's computerized data base—the National Asbestos Registry System—can be used to monitor the number of projects and contractors inspected by the delegated agencies and EPA regional offices. However, we found substantial inaccuracies, with the system either overstating or understating the number of projects and/or inspections. EPA headquarters officials believe that the differences occur because the delegated agencies or regional offices do not enter data in a timely and consistent manner. As a result, EPA may lack the information it needs to assess performance and develop appropriate compliance monitoring strategies.

Even when the delegated agencies identified violators, the agencies did not always take the appropriate enforcement action, such as imposing cash penalties high enough to deprive contractors of the economic benefit of

not complying with the regulations. Although EPA can take its own enforcement action when it believes that agencies assess penalties that are too low, EPA regional officials have not done so. According to regional officials, EPA's policy on when they should take enforcement action is ambiguous, and the federal civil judicial process for these cases is expensive and time-consuming. However, EPA is clarifying its enforcement policy, and the Clean Air Act Amendments of 1990 permit EPA to assess penalties administratively rather than pursue all cases through the judicial process. The delegated agencies are also taking action to strengthen their enforcement laws and policies.

EPA and the delegated agencies attributed their difficulties in implementing the asbestos program to a lack of resources because the program must compete for funding with the numerous other requirements of the Clean Air Act and other environmental legislation. Given the need to protect public health, even in a time of resource constraints, the critical questions for EPA are (1) what activities are essential and (2) what minimum levels of activity are necessary to ensure a viable program. The program requirements that EPA regional offices currently establish for delegated agencies vary considerably from region to region; in many cases, the requirements are based on available resources rather than on standards to ensure that the programs are viable. EPA could establish national standards for the program based on a determination of the minimum acceptable levels of activities needed to protect public health. Such standards could help EPA's regional offices balance the program activities that are desirable with those that the delegated agencies can realistically be expected to perform given the likely levels of funding.

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## Background

Asbestos is a generic term for a group of naturally occurring fibrous minerals. Because of its high strength and resistance to fire and corrosion, asbestos was extensively used as insulation in buildings and in other materials until the 1970s, when its use for these purposes was banned because of health concerns. Asbestos fibers can cause serious health problems. If inhaled, the fibers can cause lung cancer and other diseases that disrupt the lungs' normal functioning. For example, asbestosis, a fibrous scarring of the lungs, makes breathing progressively more difficult and can lead to death.

Section 112 of the Clean Air Act authorizes EPA to develop and enforce regulations to protect the public from exposure to hazardous airborne pollutants. EPA designated asbestos as a hazardous air pollutant and issued

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a National Emission Standards for Hazardous Air Pollutants (NESHAP) rule for asbestos in 1973. The regulations promulgated in this rule prescribe, among other things, specific emission control procedures or work practices that are intended to prevent or minimize the release of asbestos fibers into the air during major renovation or demolition of buildings. The regulations also require contractors and building owners to notify EPA and the delegated agencies in advance of beginning major renovation and demolition projects. In November 1990 EPA revised the regulations to, among other things, add recordkeeping requirements for asbestos waste disposal.

Monitoring compliance with the Clean Air Act's asbestos regulations primarily involves performing inspections of renovation and demolition projects to determine if contractors are following appropriate work practices when removing asbestos. Monitoring also includes (1) identifying contractors that do not notify EPA and the delegated agencies of projects so that inspections can be conducted and (2) inspecting asbestos waste disposal sites to determine if approved disposal methods are used and required recordkeeping is done.

EPA's key guidance for its regional offices and the delegated agencies is the Asbestos NESHAP Implementation Strategy. This national asbestos strategy is periodically updated to provide recommendations for implementing a compliance monitoring program. The strategy makes recommendations, for example, on how to implement the major requirements of the regulations, including alternatives for targeting available resources. Using the strategy, EPA's regional offices (1) decide how to monitor compliance in states that have not been delegated program responsibility and (2) annually negotiate agreements with the delegated agencies on the types and amounts of compliance monitoring the agencies will perform in exchange for grants to help fund these activities. In negotiating these agreements, the regional offices have considerable flexibility to take into account factors such as increases in the number of renovation and demolition projects and the differing levels of federal, state, and/or local resources that agencies have available to fulfill their functions.

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## Compliance Monitoring Is Limited by Inadequate Resources and Increased Program Responsibilities

The delegated state and local agencies that we reviewed varied substantially in their efforts to monitor compliance with the asbestos regulations, with 5 of the 14 agencies inspecting fewer renovation and demolition projects than called for by their grant agreements. Moreover, in the states of New York and New Jersey, EPA's Region II inspected a smaller

percentage of projects than agencies in delegated states did. Delegated agencies also did not follow recommendations in EPA's national asbestos strategy for annual inspection of all contractors submitting notifications, and an EPA data base that could be used to collect data on notifications and inspections appears to be inaccurate. Furthermore, few delegated agencies performed other compliance monitoring actions required by EPA to identify contractors that did not submit notifications and to determine whether required waste disposal records were being kept. Officials of EPA and the state agencies cited inadequate federal and state resources and competing requirements of the Clean Air Act and other environmental legislation as the primary reason why sufficient funding was not available for the asbestos program. EPA has recommended several alternative program options for agencies with resource limitations.

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### Number of Project Inspections Varied Substantially

EPA's agreements with the delegated agencies on compliance monitoring vary from region to region. For fiscal year 1990, EPA Region III's grant agreements with delegated agencies generally called for inspection of between 40 and 50 percent of all demolition and renovation projects, including inspection of all contractors at least once during the year. The 40- to 50-percent requirement reflected regional officials' views of a reasonable number of inspections, given program resources. The requirement to inspect each contractor at least once each year was recommended by the national asbestos strategy because, in general, resources were not available to inspect all project sites. Region V, on the other hand, required its agencies to conduct a "sufficient" number of inspections to maintain a regulatory presence. In establishing this requirement, Region V officials did not define what they considered a sufficient number of inspections. These regional officials also said that they did not have a specific number of inspections in mind when they evaluated the agencies' compliance with the requirement.

The requirements remained the same for fiscal year 1991, except for three state agencies in Region III and two state agencies in Region V that did not meet their 1990 commitments. The regional offices required each of these agencies to perform a specific number of inspections. For example, the number set for Region III agencies was less than the number the agencies would have conducted if they had met their 1990 requirements. According to regional officials, the requirements for 1991 were lowered from those of 1990 because the agencies did not have the resources to do more inspections.

The number of inspections and the percentage of projects inspected during the period of fiscal year 1990 and the first half of fiscal year 1991 varied substantially among the 14 delegated agencies in Regions III and V. In Region III, three agencies fell below the 40- to 50-percent requirement: Pennsylvania inspected 27 percent of its projects, Virginia inspected 22 percent, and West Virginia inspected only 9 percent. According to Region V officials, out of six states, two—Wisconsin and Minnesota—failed to conduct enough inspections in 1990 to establish a regulatory presence, as required by the regional office's agreements with these states. Minnesota increased the number of its inspections during the first half of 1991, but Michigan conducted fewer inspections during that period. Even though the remaining Region V agencies were inspecting enough projects to satisfy Region V's requirement, they generally inspected a much smaller percentage of their projects than did Region III agencies.

Because New York and New Jersey have chosen not to seek delegation for the asbestos program, EPA is responsible for ensuring compliance with the federal asbestos regulations in these two states. EPA Region II inspected a total of about 1 percent of the projects in these states, a smaller percentage than that inspected by any of the agencies in the delegated states. Region II officials said the reason they conduct so few inspections is that staff and funding are limited and New Jersey and New York have their own asbestos regulations and conduct their own inspections. We did not review these state programs, but EPA officials told us that the states' regulations are at least as stringent as EPA's regulations. New York and New Jersey maintain inspection information by calendar year, whereas the 14 delegated agencies we reviewed maintain such information by fiscal year. Both New York (2,957 inspections) and New Jersey (2,236 inspections) performed more inspections during calendar year 1990 than any of the 14 delegated agencies performed during fiscal year 1990. Moreover, an estimated 1,900 inspections were performed during calendar year 1990 by New York City, which has its own asbestos work practice regulations.

According to Region II officials, they have encouraged New Jersey and New York to accept delegation so that EPA will have better assurance that the public is protected from asbestos exposure resulting from building renovations and demolitions. However, EPA regional officials and the states could not reach agreement on the amount of financial assistance that EPA would provide under delegation. For example, New Jersey asked for about \$750,000 in assistance for full program delegation; Region II offered \$70,000. EPA headquarters officials told us that Region II is continuing to encourage the states to assume delegation but may also need to pursue



other options, such as an arrangement in which the states provide copies of their inspection reports to EPA. Copies of the reports would provide the region with better assurance that sufficient inspections are being conducted.

Table 1 shows the total number of inspections (some projects may be inspected more than once if problems are found) and the number and percentage of projects inspected by the delegated agencies and Region II during fiscal year 1990 and the first half of fiscal year 1991. The number of projects shown is based on the number of renovation or demolition notifications that the regional offices or state and local agencies received from contractors for buildings with materials containing asbestos.

**Table 1: Renovation and Demolition Projects and Inspections** (FY 1990 and First Half of FY 1991)

Region/agency	Number of projects	Number of inspections	Number of project sites inspected	Percentage of projects inspected
Region II	13,855	178	138	1
Region III				
Delaware	646	504	332	51
Maryland	2,064	1,180	1,095	53
Pennsylvania	1,753	634	481	27
Allegheny County	929	1,711	860	93
Philadelphia	1,115	2,828	885	79
Virginia	3,209	<sup>a</sup>	278	9
Washington, D.C.	1,142	1,185	690	60
West Virginia	908	231	201	22
Region V				
Illinois	7,254	1,646	1,646 <sup>b</sup>	23
Indiana	3,506	592	592 <sup>b</sup>	17
Michigan	2,997	266	231	8
Minnesota	2,057	121	118	6
Ohio	5,214	1,040	906	17
Wisconsin	2,772	85	59	2

<sup>a</sup>Information not available.

<sup>b</sup>Because the number of project sites inspected was not available, the numbers shown for these states are the total number of inspections conducted. Some projects may have been inspected more than once.

Source: GAO compilation of EPA regional data and state and local data.

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## EPA Strategy and Monitoring Data Base Is Not Effective in Ensuring Sufficient Inspections

EPA's national asbestos strategy—most recently revised in 1990—recognizes that delegated state and local agencies may have insufficient program resources to inspect all project sites and provides that the agencies inspect each year at least one project of all contractors submitting notifications. This recommendation is communicated to state and local agencies in Regions III and V but is specifically included only in Region III grant agreements. According to EPA headquarters officials, inspecting each contractor at least once enables the delegated agencies to target their resources and encourage compliance by making all contractors aware that inspections are being conducted.

Six of the 14 agencies in Regions III inspected fewer than 50 percent of the contractors in their jurisdictions. The six agencies were Pennsylvania, Virginia, and West Virginia in Region III and Michigan, Minnesota, and Wisconsin in Region V. As table 1 shows, these agencies also inspected the lowest percentage of projects among the agencies in their respective regions.

EPA has a data base that can monitor percentages of projects and contractors inspected, but it appears to be inaccurate. In 1988 EPA's Inspector General reported that some EPA regions conducted little oversight of delegated agencies and used inaccurate management information reports to monitor asbestos activity. In response to these findings, EPA developed the National Asbestos Registry System (NARS). However, we found substantial discrepancies between what was reported in the system and the data provided by EPA regional and state and local officials on the basis of their records. For example, the notification and/or inspection data in NARS for 11 of the state and local agencies and Region II varied by at least 15 percent from the data provided to us by the agencies or the region. The number of notifications listed in NARS for Region II, for instance, represented only 56 percent of the number of notifications that Region II reported to us. For the state of Virginia (in Region III), NARS reported almost twice as many notifications as the state reported to us. EPA regional and headquarters officials were not aware of the accuracy problems that we found. Headquarters officials told us that any inaccuracies probably resulted from regional or state officials not entering data in a timely and consistent manner. The officials also said that, in discussions with officials of Virginia after completion of our review, they learned that the number of project notifications shown in NARS for the state was overstated because the state included with its NESHAP notifications additional notifications received under the state's own asbestos

regulations. We did not perform a detailed review of the system to determine the cause of the inaccuracies.

EPA headquarters uses NARS data to prepare the national asbestos strategy and to oversee regional, state, and local performance in carrying out the asbestos program. System inaccuracies could make it difficult for EPA headquarters to develop appropriate compliance monitoring strategies and to assess regional, state, and local performance in implementing the strategies and carrying out an effective compliance program.

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### Few Agencies Perform Other Compliance Activities

EPA considers failure by contractors to notify authorities of demolition and renovation projects to be the most common and perhaps most serious violation of the asbestos regulations. According to EPA officials, contractors who violate the requirement are also more likely to violate work practice requirements. That is, these contractors may either not be aware of the requirements of the asbestos regulations or do not want to be inspected because they do not intend to follow the required work practices. EPA's national asbestos strategy recommends various techniques for identifying non-notifiers, including responding to tips and complaints, comparing waste shipment records with notifications, identifying contractors who advertise for work but do not submit notifications, and matching building permits with notifications.

Although Region III and V grant agreements require delegated agencies to implement programs to detect non-notifiers based on the national strategy, identifying these contractors is resource-intensive, and the delegated agencies generally gave priority to conducting inspections of renovation and demolition projects. Our review shows that 7 of the 14 delegated agencies in Region III and V largely limited their efforts to responding to tips and complaints, as did Region II. The other seven delegated agencies implemented, to varying degrees, the other identification techniques. For example, during the period of our review, the local air pollution agency of Philadelphia, a delegated agency in Region III, used some of the techniques to identify about three contractors each month who did not submit notifications.

In November 1990 EPA's asbestos regulations were revised to require contractors and disposal site operators to also keep records and report on asbestos waste disposal. To implement these new requirements, the national strategy was revised for fiscal year 1991 to recommend that a "baseline" inspection be conducted at every disposal site within 2 years

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from the date of the November 1990 rule. The strategy stresses the importance of timely inspections because initially they are part of an outreach effort to educate site operators on the new requirements. We found that only 2 of the 12 agencies in Regions III and V with asbestos disposal sites had begun such an inspection program.

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### Resource Limitations Are a Problem for the Delegated Agencies and for EPA

Officials from EPA and the delegated agencies attributed differences in compliance monitoring among the agencies and some agencies' difficulties in meeting their grant agreements to the amount of resources that they have available for asbestos activities. EPA contributes limited grant funds, and state and local governments generally provide few funds of their own. Meanwhile, responsibilities have increased with growth in the number of project notifications and the addition of new requirements to the regulations. Furthermore, other environmental program responsibilities bring competing priorities. As an example of limited resources, West Virginia—one of the states that did not meet the inspection requirement in its grant agreements—dedicated only one full-time inspector to the asbestos program during fiscal years 1990 and 1991. For these two fiscal years, the state received \$6,224 and \$4,199, respectively, in asbestos funding from EPA. Officials of several agencies said that budget and staff reductions at the state level are likely to continue to limit the monitoring they can do.

Because of funding difficulties, one state with delegated authority considered returning program responsibility to EPA. However, EPA has been reluctant to take back delegated authority because it does not have the staff and funding to operate the program on its own. Recognizing resource problems, Regions III and V have, in several cases, negotiated lower commitments in grant agreements and supplemented agencies' compliance monitoring activities. For example, Region V performed 200 supplemental inspections in fiscal year 1990. In Wisconsin, Region V hired a contractor to conduct 20 inspections in fiscal year 1991 because the state would not agree to conduct the minimum number of inspections the region considered necessary. The region plans to reduce the state's fiscal year 1992 Clean Air Act grant funds by about \$24,000 to pay for the contractor. This amount is a substantial portion of the funds likely to be available for the state's asbestos program. For example, Region V allocated to Wisconsin a total of \$116,320 in fiscal year 1991 Clean Air Act grant funds to be spent for NESHAP air compliance programs, of which asbestos is only one.

According to EPA, the additional requirements mandated by the Clean Air Act Amendments of 1990 will significantly increase the responsibilities of state and local governments. Specifically, EPA said the added costs of the provisions on attainment and maintenance of national ambient air quality standards and permitting requirements will place considerable financial strain on compliance and enforcement programs. According to one EPA official in Region III, some delegated agencies asked to renegotiate their fiscal year 1991 asbestos agreements as a direct result of the added requirements.

For agencies with resource problems, EPA recommends alternative program options. For example, Region III grant agreements state that lower inspection rates can be negotiated with the regional office if the state or local agencies have a contractor certification program in place. Under this program, contractors would have to be trained and certified by the state or local government to do building renovation and demolition work involving asbestos. The assumption is that contractors will be more likely to comply with the requirements if they receive training related to the requirements and are subject to decertification if they do not comply with these requirements.

EPA also suggests that agencies consider alternative funding sources, such as inspection or notification fees, to help the agencies support more aggressive programs. Six of the 14 delegated agencies included in our review charged fees for asbestos project notifications or permits. The fees collected, however, generally went to the general treasury rather than to the asbestos program. Twelve of the agencies have a contractor licensing program and generally charge a fee to support the program.

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## Penalties Are Unevenly Enforced by Delegated Agencies but Improvements Are Being Made

A strong enforcement program is needed to obtain the full benefits of compliance monitoring and to achieve effective implementation of the regulations. A key ingredient of enforcement is the assessment of penalties sufficient to deter or discourage violations of the regulations. EPA's uniform civil penalty policy, established in 1984 for all its regulatory programs, requires regional enforcement officials to assess penalties that are, at a minimum, as great as the amount by which a company would benefit if it did not comply. According to the policy, the final assessed penalty should include this minimum penalty—the economic benefit component—plus an additional amount determined by the seriousness of the violation.

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Although the delegated agencies are not required to follow EPA's penalty policy, EPA encourages them to do so. We found a general trend among the agencies we reviewed to bring their enforcement policies more in line with EPA's policy. As of December 1991, 9 of the 12 agencies in Regions III and V with enforcement authority for the asbestos regulations had an economic benefit calculation consistent with EPA's penalty policy. In addition, 10 of the states with delegated agencies have revised their statutes to raise the maximum penalty amounts for Clean Air Act violations, including asbestos, to at least \$10,000 per violation. (Seven of the 10 states raised the maximum penalty amounts in 1990 and 1991.) According to officials of these agencies, strong penalty policies help deter violations and put enforcement officials in a better position when negotiating with violators.

In examining the penalties that the delegated agencies assessed for violations of the asbestos regulations, we found that the agencies did not always fully use their authority to assess penalties, even in cases involving substantive violations. For example, in fiscal year 1990, at least 3 of the 12 agencies did not assess a penalty at all for most of their cases involving substantive violations of asbestos work practice requirements. Substantive violations include, for example, removing friable (easily crumbled) asbestos material without keeping it wet and not sealing all waste material that contains asbestos in leakproof containers. Maryland identified 62 substantive violations but assessed penalties in only 17 of those cases. Wisconsin assessed penalties for only 4 of its 30 substantive violations, and Minnesota assessed a penalty for only 1 of 16 substantive violations.

According to officials of these three agencies, they seek penalties only for the most serious of their substantive violations. Officials in Wisconsin and Minnesota also said that they lack the staff time and support to pursue all violators. The civil judicial process in these states requires the agencies to refer cases to the state attorneys general for action. Because most civil judicial referrals are time-consuming and costly to pursue and because asbestos cases are competing with other Clean Air Act cases with the potential for higher penalties, asbestos violations are rarely given priority by state attorneys general, according to these officials.

Under the Clean Air Act, EPA can intercede in an enforcement case when it believes an agency has not assessed adequate penalties. EPA can impose penalties against violators—by “overfiling”—in cases in which an agency assessed no penalty when one was required or in cases in which the penalty was “grossly deficient” given all the circumstances of the case.

However, in fiscal year 1990, Regions III and V did not overfile a single penalty assessed by a delegated agency, although regional enforcement officials believed that some of the penalties were insufficient. According to EPA headquarters officials, most regions have been reluctant to overfile to collect additional penalties because the term "grossly deficient" in EPA's policy is ambiguous. Additionally, EPA regional and headquarters officials told us that the high cost of seeking penalties made it impractical to do so. The Clean Air Act allows civil judicial penalties of up to a maximum of \$25,000 per day per violation, but EPA must refer these cases to the Department of Justice for filing in federal court. According to EPA officials, developing and documenting the case for Justice is time-consuming and costly, making it likely that the referral and court costs will be higher than the actual penalty assessed.

As of January 1992, EPA was revising its enforcement guidance to clarify its policy on when a regional office should overfile. Specifically, the new policy will require each delegated agency to use an economic benefit component, either EPA's model for calculating economic benefit or its own, when assessing penalties. EPA will consider overfiling when an agency's penalty does not meet the goal of collecting the economic benefit plus, if appropriate, an additional penalty reflecting the seriousness of the violation.

EPA is also implementing the new enforcement provisions of the Clean Air Act Amendments of 1990. The amendments give EPA the authority to administratively assess penalties of up to a maximum of \$200,000 per case for violations, eliminating the need for EPA to refer all asbestos violation cases to the Department of Justice. According to EPA enforcement officials, because asbestos violations rarely exceed \$200,000 in penalties, the agency expects almost all of its asbestos enforcement cases to be pursued through the more efficient administrative process. This less time-consuming and less resource-intensive process could make it easier for EPA to overfile to ensure that appropriate penalties are assessed for asbestos violations.

The delegated agencies' actions to raise the maximum penalty amounts for Clean Air Act violations and to adopt an economic benefit calculation consistent with that of EPA could put the agencies in a better position to assess more appropriate penalties for violations of the asbestos regulations. Furthermore, EPA's new authority to assess penalties administratively and the agency's effort to clarify the overfiling policy

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should result in more overfiling by EPA when state agencies do not assess appropriate penalties.

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## Conclusions

Faced with a broad range of responsibilities to protect the environment at a time of budget constraints, EPA and the delegated agencies have found it difficult to fully implement the asbestos program. However, the asbestos regulations were promulgated to address the potential threat to human health from the substantial release of asbestos fibers that can occur during renovation or demolition of buildings if proper emission controls are not used. Effective monitoring is needed to ensure that the regulations are complied with and the public is protected. Nonetheless, the wide disparities that we found in compliance monitoring among the delegated agencies and EPA regions raise questions about whether public health is being consistently protected. This situation could deteriorate further as EPA and the agencies work to carry out the new requirements of the Clean Air Act Amendments of 1990.

By continuing to work with the state and local agencies to better target resources and to seek additional means of program financing, EPA could help the agencies better address their resource problem. Continuing to lower expectations for those agencies that do not meet grant requirements, however, is not a long-term solution to the resource problem if the asbestos program is to be viable. Nor do other EPA actions, such as conducting supplemental inspections in states with insufficient inspections, appear to provide a long-term solution, especially considering EPA's own resource problem. In addition, the effectiveness of EPA's identification of regional offices or state and local agencies that are not operating viable programs comes into question when Regions III and V use substantially different criteria to evaluate state and local performance. For example, the two regions vary widely in the percentage of projects they require the delegated agencies to inspect in order for the agencies' inspection performance to be considered adequate.

Determining and defining the minimum levels of compliance monitoring that constitute a viable program would allow EPA to provide its regional offices with guidance on (1) planning compliance activities in states that have not been delegated program responsibility, (2) negotiating agreements with delegated agencies, and (3) assessing the performance of delegated agencies. The NARS data base, if its accuracy problems are corrected, could help EPA monitor the regional offices' and the agencies' performance nationwide in meeting the standards. If the agencies are not



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able or willing to meet these expectations despite EPA's efforts to work with them to increase their ability, EPA may have to take back delegated authority or seek additional funding to support the agencies as the only means to ensure compliance with the asbestos regulations.

EPA's new administrative penalty authority and current efforts to clarify the overfiling policy, coupled with the improvements that many of the states with delegated agencies have made in their enforcement laws and policies, should help correct the situation we found of substantive violations resulting in no or low penalties. Higher penalties, in turn, should provide stronger deterrence and increase compliance.

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## Recommendations

In light of the EPA asbestos program's resource problem, we recommend that the Administrator, EPA, take the following actions:

- Establish national standards of performance for EPA regional offices and the delegated state and local agencies to meet in implementing the asbestos program. In recognition of the limited resources available, these standards should be based on the minimum levels of compliance monitoring needed to ensure a viable program that protects public health. The standards should incorporate appropriate methods for targeting resources.
- Correct inaccuracies in the NARS data base and monitor the performance of EPA regional offices and the delegated state and local agencies to identify instances in which regions or agencies need special assistance to develop their capacity to operate a viable program for monitoring and enforcing federal asbestos regulations.

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Our work was conducted from February through October 1991 in accordance with generally accepted government auditing standards. Appendix I contains more information on the objectives, scope, and methodology of our review. As requested, we did not obtain written agency comments on a draft of this report. However, we discussed the facts in this report with EPA officials, who generally agreed with the information. We made changes where appropriate.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will provide copies to the Administrator, EPA; the Director, Office

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of Management and Budget; and appropriate congressional committees. We will also make copies available to other interested parties on request.

This work was performed under the direction of Richard L. Hembra, Director, Environmental Protection Issues, who can be reached at (202) 275-6111. Other major contributors to this report are listed in appendix II.

Sincerely yours,



J. Dexter Peach  
Assistant Comptroller General



# Objectives, Scope, and Methodology

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Representative John J. LaFalce requested that we examine the Environmental Protection Agency's (EPA) implementation of regulations promulgated under the Clean Air Act to prevent or minimize the release of asbestos fibers into the air during the renovation or demolition of public and commercial buildings containing asbestos. Specifically, we agreed with his office to examine EPA's (1) monitoring of building owners' and contractors' compliance with the regulations and (2) enforcement of the regulations when violations are detected.

Our review included 12 states and 2 local governments to which EPA has delegated the day-to-day responsibility for monitoring compliance with the regulations. Allegheny County, Pennsylvania; Delaware; the District of Columbia; Maryland; Pennsylvania; Virginia; West Virginia; and the city of Philadelphia, Pennsylvania, monitor compliance with the regulations in EPA Region III. Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin monitor compliance with the regulations in EPA Region V. These state and local governments, except for the District of Columbia and West Virginia, have also been delegated the responsibility for taking enforcement actions against violators.

EPA Region II was also included in our review. The two states in Region II—New York and New Jersey—have not been delegated responsibility for the program. Thus the EPA regional office is responsible for compliance monitoring and enforcement of the regulations in both states. Collectively, these EPA regional offices and state and local governments provide a geographical mix and a mix of large and small states, and heavily populated and less populated states. They also provide a mix of EPA, state, and local government operation of the program.

With regard to compliance monitoring, we obtained data from each of the 14 delegated agencies and EPA Region II on the number of project notifications received, the total number of inspections, and the number of projects inspected during fiscal year 1990 and the first half of fiscal year 1991. Through interviews with officials of these agencies, we also identified how the agencies were monitoring compliance with the requirements in the regulations for advance notification of renovation and demolition projects, and transportation and disposal of asbestos waste.

We compared the compliance monitoring of the delegated agencies with the requirements in the regulations; EPA's national asbestos strategy; EPA's regional office policies, procedures, and agreements with the delegated agencies; and EPA's National Asbestos Registry System (NARS), a national

data base of project notifications and inspections. We also reviewed the regional offices' fiscal year 1990 and 1991 mid-year reviews of the delegated agencies' programs, when available, to determine the agencies' progress in meeting their grant agreements. We discussed the reasons for any differences with appropriate EPA and delegated agency officials.

With regard to enforcement, we obtained data from the delegated agencies on violations detected, enforcement actions taken, and penalties assessed. We also reviewed EPA's civil penalty policy and the delegated agencies' asbestos enforcement policies. We discussed the adequacy of the penalties assessed by the delegated agencies and the cases in which EPA has exercised its authority to overfile when it believed the penalties were not adequate.

We conducted our work between February and October 1991 in accordance with generally accepted government auditing standards. We discussed the information in this report with EPA officials in the Offices of Air and Radiation, Enforcement, and Toxic Substances, who generally agreed with the factual information, and we made changes where appropriate. As requested, we did not obtain written agency comments on a draft of this report.

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