

Purpose of Proposed Bill HB 239

The purpose of the proposed Bill is to clarify Section 75-2-502 (3) "Asbestos project" by defining what materials are subject to regulation as it relates to conducting a response action (generally abatement) and to disposal of regulated asbestos waste. It will also increase the amount of regulated materials abated to qualify as an "asbestos project" and thus be regulated by the Asbestos Control Program. In addition the proposed Bill would add a definition of "regulated asbestos-containing material" in the MCA and redefine in Section 2 75-2-519 what materials would be regulated under "cleanup orders".

Responses to DEQ comments on HB 239

DEQ Statement	Agree/Disagree	Comment	Regulation Reference
<p>1. Changes would make the Asbestos Control Act less stringent than AHERA requirements</p>	<p>Agree Changes requirements for notification and permitting from 3 SF/3 LF to 160 SF/260 LF.</p>	<p>Federal NESHAP notification thresholds are 160 SF/260 LF. Currently 36 States and the District of Columbia use 160 SF/260 LF as notification threshold. Only 5 states other than Montana use 3 SF/3 LF for notification. AHERA (Asbestos Hazard Emergency Response Act) was developed for managing asbestos issues in public and private school buildings, kindergarten through grade 12. The ACP did not incorporate the AHERA regulation by reference into the ARM.</p>	<p>40 CFR Chapter 61 Subpart M 61.145 See attached. 40 CFR Part 763-Asbestos ARM 17.74.351</p>
<p>2. Proposed changes would reduce requirements for state accreditation of persons in asbestos-related occupations, state training, and state project permitting.</p>	<p>Mostly Disagree Training and state of Montana accreditation requirements would not change appreciably. Would only change the requirement for using state of Montana accredited Contractor / Supervisors and Workers working on projects where measurable quantities are less than 160 SF, 260 LF.</p>	<p>Asbestos surveys must be performed prior to conducting a demolition or renovation activity regardless of the how the ACP defines an "asbestos project" Surveys must be conducted by a Montana accredited asbestos inspector. OSHA requires EPA trained Contractor/Supervisors on all projects greater than 10 SF, 25 LF. AHERA requires EPA trained personnel for abatement above 3 SF/3 LF in schools.</p>	<p>ARM 17.74.354 (1) ARM 17.74.353 (2) 29CFR 1926.1101 40 CFR Part 763</p>

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No. 2 Continued.....	<p>Would not change the amount of state training/accreditations because most state of Montana accredited individuals work on projects larger than 160 SF/ 260 LF at some time during the year.</p> <p>Would slightly decrease the number of permits due to change in thresholds of reportable asbestos quantities.</p>	<p>Encourage ACP to research the number of project permits that fall into this category and loss of permit fees. Time not spent by ACP in permit application process and potentially on-site inspections can be devoted to increasing compliance (thus increasing fees).</p>	
<p>3. Redefining "asbestos" project also impacts the ACA including:</p> <p>75-2-503 Rulemaking authority</p> <p>75-2-504 Facility Permits</p> <p>75-2-508 Asbestos Control Account</p> <p>75-2-511 Accreditation Requirements</p> <p>75-2-515 Administrative Enforcement</p> <p>75-2-518 Inspections - sampling</p>	<p>Mostly Disagree</p> <p>Agree</p> <p>Agree</p> <p>Disagree</p> <p>Disagree</p> <p>Agree</p>	<p>Asbestos related occupations would not apply to projects under 160 SF/260 LF instead of 3 SF/3 LF but OSHA requires EPA trained personnel. NEED to redefine asbestos inspector and not relate this occupation to the definition of a Project</p> <p>Notification requirement quantities change Increase in compliance will offset loss of initial revenue from small permits. Would not change accreditation qualification requirements , Also see 75-2-503 ACP loses no jurisdiction to revoke accreditation</p> <p>ACP inspections can only occur if there is a project.</p>	
4. Significantly reduce protection of public health from exposure to asbestos...	Disagree	<p>Inspections still required by accredited personnel. Project control maintained by following OSHA work procedures and EPA accredited personnel. ACP permit currently requires nothing more than is required by OSHA since the ACP no longer regulates containment construction but des requires wet removal methods (as does OSHA) and no visible emissions.</p>	ARM 17.74.354 (1)

DEQ Statement	Agree/Disagree	Comment	Regulation Reference
5.Changing the definition of “asbestos project” would not be consistent with NESHAP	Disagree	Changing the definition will not in any way be inconsistent with NESHAP. New definition brings the ACA <u>in step with NESHAP</u> for notification requirements. Requirement to perform a thorough asbestos inspection would not change, it is always required regardless of the notification quantity triggers.	ARM 17.74.354 (1)
6.Ripple effect throughout ACA	Agree (minor effect)	Only change will be that asbestos-related occupations will be defined by the new quantity thresholds.	
7.Change of “asbestos-related occupation” would alter state accreditation requirements rendering them inconsistent with EPA standards.	Disagree	There is no correlation between this definition and the training requirements outlined in the Federal EPA MAP. NESHAP requires that all facilities be inspected prior to demolition or renovation, period.	15 US Code 2646
8. Proposed amendment of definition of “asbestos project” would not be consistent with NESHAP that requires <u>all</u> asbestos containing waste materials be transported off site to an approved landfill.	Disagree	NESHAP section 61.150 “Standard for waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations” only applies when the thresholds of 160 SF/260 LF for renovation or demolition projects are met.	40 CFR Chapter 61 Subpart M 60.150
9. Recommends incorporating definition of “regulated asbestos-containing material” as incorporated by reference. 72-2-502(7)	Disagree	Including the definition in the MCA brings upfront the materials that are regulated by the Asbestos Control Program and thus defines what they may regulate.	
10. The potential threat for unregulated materials that have been disturbed, deposited, or otherwise not yet made regulated becomes significantly greater when unsupervised.	Agree with statement but.....	The Asbestos Control Program only regulates Regulated Asbestos-Containing Materials, and as such does not regulate materials that are non-friable and in good condition. Therefore the ACP does not have the authority to order a clean-up unless the material impacted is currently regulated (friable) or has become regulated (a Category 1 or Category 2 non friable material)	

SUMMARY OF ASBESTOS NOTIFICATION REQUIREMENTS PER STATE

State	SF	LF	CF	Regulation, Notes	
Alabama	160	260	35	r 335-3-11-.05	
Alaska	160	260	35		
Arizona	160	260	35	r18-2-1101	
Arkansas	160	260	35	Regulation 21	
California	see notes	see notes	see notes	<p>Contractors must contact each district to figure out their limits. Counties in non-delegated air districts follow EPAs NESHAP requirements. Local Delegated Air Districts: Antelope Valley, Bay Area, Eastern Kern, Feather River, Great Basin, Lake, Mendocino, Modoc, Mojave Desert, Monterey Bay, North Coast, Northern Sierra, Northern Sonoma, Sacramento, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, South Coast, Tehama, Ventura, Yolo- Solano Counties in Non-Delegated Air Districts: Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Imperial, Lassen, Mariposa, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Tuolumne, Yuba</p>	
Colorado	160	260	35		Regulation 8
Connecticut	3	3			19a-332a-3
Delaware	160	260	35		1121-10, encourage contractors to send a courtesy notice on any amount
District of Columbia	160	260	35		
Florida	160	260	35		62-204.800
Georgia	160	260	35		391-3-14
Hawaii	160	260	35		HAR 11-501
Idaho	160	260	35		
Illinois	3	3			77-855, any amount larger than <160,260 go to EPA
Indiana	160	260	35	326 IAC 14-10-1, Reno projects greater than 3 linear feet, 3 square feet or 0.75 cubic feet of RACM must be conducted by a licensed asbestos abatement contractor.	
Iowa	160	260	35	IAC 875-155.1 (88B)	
Kansas	10	25		K.A.R 28-50-1-14, 65-5301, state specific adopted by OSHA	
Kentucky	160	260	35	401 KAR 58:025	
Louisiana	160	260	35	LAC 33:III.5151	
Maine	3	3		38 12-A 1271-1284	
Maryland	160	260	35	COMAR 26-11-21,23	
Massachusetts	160	260	35	Mass DEP 310 CMR 7.15	
Michigan	10	15		440-1988	
Minnesota	160	260	35	326-71- (subdivision) 4	
Mississippi	160	260	35	11 M.A.S 2-1-1.8	
Missouri	160	260	35	10 CSR 10-6.240	

State	SF	LF	CF	Regulation, Notes
Montana	3	3	N/A	MCA 75-2-5
Nebraska	3	3		178 NAC 22
Nevada	160	260	35	
New Hampshire	10	25	3	RSA 141-E
New Jersey	160	260	35	N.J.A.C. 7:26-2.12
New Mexico	160	260	35	20 NMAC 2.78
New York	160	260	35	12 NYC RR 56
North Carolina	160	260	35	G.S. 130A-449, NCAC 41.0605
North Dakota	160	260	35	NDAC 33-15
Ohio	160	260	35	37-45-20
Oklahoma	160	260	35	252-100-2, demo: no limit on demo report anyway
Oregon	3	3		340-248-0250
Pennsylvania	160	260	35	25 Pa. code 124.3
Rhode Island	160	260	35	R23-24.5-ASB-B2.1
South Carolina	see notes	see notes	see notes	61-86.1, report all jobs: minor jobs are <=25 sq ft, small jobs are < 160,260,35
South Dakota	160	260	35	ARSD 74-01;36;08;02
Tennessee	160	260	35	1200-01-20
Texas	160	260	35	T.A.C 25-1-295.31, "public" building follows NESHAP, "non-public" building reports any amount
Utah	160	260	35	R307-801-11
Vermont	10	10		V.S.A 18-26
Virginia	10	10		LIS 40.1-51.20
Washington	48	10		WAC 296-65-020
West Virginia	160	260	35	WVC 16.32
Wisconsin	160	260	35	NR 447.06
Wyoming	160	260	35	