

Maine Revised Statute Title 38, Chapter 12-A: ASBESTOS

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38 §1271. FINDINGS AND PURPOSE

The Legislature finds that the presence of friable and potentially friable asbestos in public and private buildings is a public health hazard; that State Government and local government agencies are conducting major abatement programs; that it is critical to the safe conduct of all asbestos abatement activities such as monitoring, design, analysis, training, identification, encapsulation, removal, handling and disposal activities that trained and qualified personnel from the public and private sectors be employed; and that work practice standards for asbestos abatement activities must be established and enforced to ensure protection of the public health. [1993, c. 355, §25 (AMD).]

The purpose of this chapter is to provide a flexible means by which the State, acting through the Department of Environmental Protection, may ensure that those engaged in the management and abatement of friable asbestos-containing materials are properly trained, supervised and directed to protect the public health. [1991, c. 473, §1 (AMD).]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1991, c. 473, §1 (AMD). 1993, c. 355, §25 (AMD).

38 §1272. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 448, §1-C (NEW).]

1. Asbestos. "Asbestos" means a group of naturally occurring minerals that separate into fibers of high tensile strength and are resistant to heat, wear and chemicals, including, but not limited to, chrysotile, amosite, crocidolite, actinolite, tremolite and anthophyllite and any of these minerals that have been chemically treated or altered.

[1987, c. 448, §1-C (NEW) .]

2. Asbestos abatement activity. "Asbestos abatement activity" means activity involving the removal, demolition, enclosure, repair, encapsulation, handling, transportation or disposal of asbestos-containing materials in an amount greater than 3 square feet or 3 linear feet. "Asbestos abatement activity" includes associated activities such as design, monitoring, analysis and inspection of any asbestos-containing material in an amount greater than 3 square feet or 3 linear feet, and conducting training for persons seeking a state certificate or license.

[2009, c. 374, §3 (AMD) .]

3. Asbestos abatement contractor. "Asbestos abatement contractor" means a business entity that engages in, or intends to engage in, asbestos abatement activities as a business service on property that it does not own and that employs or involves one or more asbestos abatement project supervisors, asbestos abatement design consultants, asbestos air monitors or asbestos inspectors for asbestos abatement activities.

[1991, c. 473, §3 (AMD) .]

4. Asbestos abatement design consultant. "Asbestos abatement design consultant" means an individual engaged in preparing and supervising the implementation of facility plans for the removal or abatement of asbestos. These activities include, but are not limited to, the performance of air quality and bulk sampling; advising building owners, contractors and project supervisors on health impacts of asbestos abatement activities; and supervising the conduct of training courses. This category of specialists includes, but is not limited to, engineers, architects, health professionals, industrial hygienists, private consultants or other individuals involved in asbestos risk assessment or regulatory activities.

[1993, c. 355, §27 (AMD) .]

5. Asbestos abatement project supervisor. "Asbestos abatement project supervisor" means an individual with responsibility for the supervision of asbestos abatement activities. Those persons include, but are not limited to, abatement project supervisors employed by contractors, in-house asbestos abatement units, employees of governmental or public entities who coordinate or directly supervise asbestos abatement activities performed by public schools, governmental or other public employees in a school district, governmental or other public buildings and project supervisors employed as consultants to monitor and direct abatement contractors.

[1993, c. 355, §28 (AMD) .]

6. Asbestos abatement worker. "Asbestos abatement worker" means an individual engaging in any asbestos abatement activity for any employer.

[1993, c. 355, §29 (AMD) .]

6-A. Asbestos air monitor. "Asbestos air monitor" means a person responsible for applying applicable rules and standards at a specific location by monitoring procedures during asbestos abatement activities in order to protect the public health from the hazards associated with exposure to asbestos.

[1991, c. 473, §4 (NEW) .]

6-B. Asbestos analytical laboratory. "Asbestos analytical laboratory" means a public or private entity that scientifically analyzes samples of solids, liquids or gases to determine the presence and concentration of asbestos fibers.

[1991, c. 473, §4 (NEW) .]

6-C. Asbestos air analyst. "Asbestos air analyst" means an individual engaging in the analysis of air samples for fiber count including, but not limited to asbestos fibers.

[1993, c. 355, §30 (NEW) .]

6-D. Asbestos bulk analyst. "Asbestos bulk analyst" means an individual engaging in the analysis of bulk samples for asbestos or other material composition.

[1993, c. 355, §30 (NEW) .]

7. Asbestos-containing material. "Asbestos-containing material" means any material containing asbestos in quantities equal to or greater than 1% by volume.

[1991, c. 473, §5 (AMD) .]

8. Asbestos evaluation specialist.

[1991, c. 473, §6 (RP) .]

8-A. Asbestos consultant. "Asbestos consultant" means a business entity that engages in, or intends to engage in, the design, inspection or monitoring of asbestos abatement activities.

[1993, c. 355, §31 (AMD) .]

8-B. Asbestos inspector. "Asbestos inspector" means an individual whose activities include, but are not limited to, collecting bulk samples and assessing the potential for exposure associated with the presence of asbestos-containing material.

[1993, c. 355, §31 (AMD) .]

8-C. Asbestos professional. "Asbestos professional" means an individual certified by the commissioner to engage in asbestos abatement activities, including, but not limited to, an asbestos abatement worker, an asbestos abatement project supervisor, an asbestos air monitor, an asbestos inspector, an asbestos abatement design consultant, an asbestos air analyst, an asbestos bulk analyst and an asbestos management planner.

[1993, c. 355, §31 (AMD) .]

8-D. Asbestos management planner. "Asbestos management planner" means a person who assesses hazards associated with the presence and condition of asbestos-containing materials in schools and who develops a response action plan based upon the assessment.

[1993, c. 355, §32 (NEW) .]

9. Business entity. "Business entity" means a partnership, firm, association, corporation, sole proprietorship or other business concern.

[1987, c. 448, §1-C (NEW) .]

10. Certificate. "Certificate" means a document issued to an individual by the commissioner affirming that an individual has successfully completed the training and other requirements set forth in this chapter to qualify as an asbestos professional.

[1993, c. 355, §33 (AMD) .]

11. Commissioner.

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 630, §2 (RP); 1989, c. 890, Pt. B, §217 (RP) .]

12. Employee. "Employee" means an individual who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit, to engage in any employment.

[1993, c. 355, §34 (AMD) .]

13. Friable. "Friable" means materials that, when dry, have the potential to readily release asbestos fibers when crumbled, pulverized, handled, deteriorated or subjected to mechanical, physical or chemical processes. It also means potentially friable material that has deteriorated or has been or will be processed to the extent that, when dry, it may readily release asbestos fibers.

[1993, c. 355, §35 (AMD) .]

14. In-house asbestos abatement unit.

[1989, c. 325, §3 (RP) .]

14-A. In-house asbestos abatement unit. "In-house asbestos abatement unit" means the unit of a business or public entity that engages in, or intends to engage in, asbestos abatement activities or projects solely within the confines of property owned or leased by the entity and that employs one or more asbestos abatement supervisors for asbestos abatement activities.

[1989, c. 630, §3 (NEW) .]

15. License. "License" means a document issued by the commissioner to a business entity or public entity affirming that the entity has met the requirements set forth in this chapter to engage in asbestos abatement activities including, but not limited to, asbestos abatement contractor, in-house asbestos abatement unit, asbestos consultant, asbestos analytical laboratory and training provider.

[1993, c. 355, §36 (AMD) .]

15-A. Owner or operator. "Owner or operator" means a person who owns, leases, operates, controls or supervises an asbestos abatement activity within a building, structure or facility.

[1993, c. 355, §37 (AMD) .]

16. Person. "Person" means any individual, business entity, governmental body or other public or private entity.

[1987, c. 448, §1-C (NEW) .]

17. Public entity. "Public entity" means the State, any of its political subdivisions or any agency or instrumentality of either.

[1987, c. 448, §1-C (NEW) .]

18. Training provider. "Training provider" means a person providing training that is necessary to fulfill certification or licensing requirements under this chapter.

[1993, c. 355, §38 (NEW) .]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1989, c. 325, §§1-3 (AMD). 1989, c. 630, §§1-4 (AMD). 1989, c. 890, §§A40,B216- 218 (AMD). 1991, c. 473, §§2-10 (AMD). 1993, c. 355, §§26-38 (AMD). 2009, c. 374, §3 (AMD).

38 §1273. PROHIBITIONS

Unless otherwise provided in this section: [1987, c. 448, §1-C (NEW) .]

1. License or certificate required. No person or owner or operator may engage in any asbestos abatement activities in the State, unless licensed or certified pursuant to this chapter; and

[1993, c. 355, §39 (AMD) .]

2. Notification required. A person, owner or operator may not engage in any asbestos abatement activity over 3 linear feet or 3 square feet of asbestos-containing material unless that person, owner or operator notifies the commissioner in writing. This notification must be postmarked at least 10 calendar days before or delivered to the department at least 5 working days prior to beginning any on-site work,

including on-site preparation work. The department may approve a reduction in the number of days required for notification on a case-by-case basis when unforeseeable circumstances or compliance with standard notification procedures may cause a threat to the environment or human health.

[2009, c. 374, §4 (AMD) .]

3. In-house abatement units.

[1989, c. 325, §4 (RP) .]

4. Exemption. Asbestos abatement activities related to disposal undertaken at licensed asbestos disposal sites are exempt from the requirements of this section.

[2005, c. 52, §1 (AMD) .]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1989, c. 325, §§4,5 (AMD). 1991, c. 473, §§11,12 (AMD). 1993, c. 355, §39 (AMD). 1993, c. 355, §40 (AMD). 2001, c. 626, §17 (AMD). 2005, c. 52, §1 (AMD). 2009, c. 374, §4 (AMD).

38 §1274. LICENSING AND CERTIFICATION

(REPEALED)

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1989, c. 325, §6 (AMD). 1989, c. 630, §5 (AMD). 1989, c. 890, §§A40,B219 (AMD). 1991, c. 473, §13 (RP).

38 §1274-A. CERTIFICATION AND LICENSING REQUIREMENTS

The board may adopt and amend rules necessary to govern the licensing of business or public entities including but not limited to asbestos abatement contractors, in-house asbestos abatement units, asbestos consultants, asbestos analytical laboratory and training providers; and the certification of asbestos professionals undertaking asbestos abatement activities. [1993, c. 355, §41 (AMD).]

SECTION HISTORY

1991, c. 473, §14 (NEW). 1993, c. 355, §41 (AMD).

38 §1275. APPROVAL OF TRAINING COURSES

The board, after consultation with the Commissioner of Administrative and Financial Services and the Commissioner of Labor, shall develop rules establishing criteria and procedures for the approval of training courses and examinations that ensure the qualifications of applicants for certification as required in this chapter. The board shall adopt these rules in accordance with Title 5, chapter 375, subchapter II. [1993, c. 355, §42 (AMD).]

1. Course requirements. To qualify for approval, a training course must contain a combination of class instruction, practical application and public health procedures of a length and content that to the satisfaction of the commissioner must ensure adequate training for the level and type of responsibility for each named certification category.

[1993, c. 355, §42 (AMD) .]

2. Instructors. All courses certified under this section must be conducted by instructors whose training and experience is determined by the commissioner to be appropriate for the subject matter being taught and the level of certification category for which the course is designed. All courses must be designed and conducted under the guidance of an asbestos abatement design consultant.

[1993, c. 355, §42 (AMD) .]

3. Transition. Training courses conducted by, and instructors employed by, a firm with in-house asbestos abatement units contracting for asbestos removal with the Federal Government are considered certified under this section pending review for certification if the firm has submitted to the commissioner by March 1, 1990, a training course that meets training requirements set forth in this chapter.

[1991, c. 473, §15 (AMD) .]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1989, c. 630, §§6,7 (AMD). 1991, c. 473, §15 (AMD). 1993, c. 355, §42 (AMD).

38 §1276. RECIPROCITY AGREEMENT

The commissioner may develop reciprocity agreements with other states when the states have established licensing and certification requirements that are at least as stringent as those set forth in this chapter.

[1987, c. 448, §1-C (NEW).]

SECTION HISTORY

1987, c. 448, §1-C (NEW).

38 §1277. SUPPORT SERVICES

The Department of Administrative and Financial Services shall provide supporting services to the commissioner for the implementation of this chapter, including: [2007, c. 466, Pt. A, §71 (AMD).]

1. Training records. Maintenance of training records for employees of public and private entities intending to undertake asbestos abatement activities in the State;

[1987, c. 448, §1-C (NEW) .]

2. Evaluation of applications. Assistance in the evaluation of applications for licensing or certification for compliance with this chapter and subsequent rules, upon request of the commissioner; and

[1991, c. 473, §16 (AMD) .]

3. Evaluation of training programs. Evaluation, development and management of training programs which are appropriate for applicants attempting to comply with the provisions of this chapter and subsequent rules.

[1991, c. 473, §16 (AMD) .]

4. Maintenance of project records.

[1991, c. 473, §17 (RP) .]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1989, c. 890, §§A40,B220 (AMD). 1991, c. 473, §§16,17 (AMD). 2007, c. 466, Pt. A, §71 (AMD).

38 §1278. FEES

1. Fees established.

[2009, c. 374, §5 (RP) .]

1-A. License and certification fees. Fees for each license and certification category are established under section 352. The fees must be paid upon application and annually thereafter.

[2009, c. 374, §6 (NEW) .]

2. Notification fees. Notification of asbestos abatement activities pursuant to section 1273, subsection 2 must be accompanied by the notification fee established under section 352 unless the activity occurs in single-unit residential buildings. Notification fees are based on the total linear or square feet of asbestos-containing material involved in the activity.

A.

[2009, c. 374, §7 (RP) .]

[2009, c. 374, §7 (AMD) .]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1989, c. 630, §§8,9 (AMD). 1991, c. 473, §18 (AMD). 1993, c. 355, §§43,44 (AMD). 2009, c. 374, §§5-7 (AMD).

38 §1279. RENEWAL

Each license or certificate issued under this chapter expires one year after the date of issue. Licensees or certificate holders may apply to the commissioner for the renewal of a license or certificate. No renewal may be granted if the application is received more than 2 years following expiration of the previously issued license or certificate. [1989, c. 890, Pt. B, §221 (AMD); 1989, c. 890, Pt. A, §40 (AFF) .]

To qualify for renewal of a license or certificate, the applicant shall submit: [1987, c. 448, §1-C (NEW) .]

1. Fee.

The appropriate fee as prescribed in section 1278;

[1987, c. 448, §1-C (NEW) .]

2. Training. Evidence of completion of any continuing education or training that may be required by rules promulgated by the board; and

[1989, c. 890, Pt. B, §222 (AMD); 1989, c. 890, Pt. A, §40 (AFF) .]

3. Disclosure. A signed statement disclosing any violations of asbestos abatement standards for which the applicant may have been cited by a regulatory agency of the Federal Government or the State. If no citations were received during the previous year, that fact shall be stated. The disclosure shall include evidence that all penalties and fees assessed to the applicant are paid in full.

[1987, c. 448, §1-C (NEW) .]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1989, c. 890, §§A40,B221, 222 (AMD).

38 §1280. STANDARD OF ACCEPTABLE WORK PRACTICE

The board shall adopt rules that establish criteria and procedures of acceptable work practices for licensees and certificate holders and persons exempt from licensing and certification requirements under section 1273, subsection 4 engaged in the following asbestos abatement activities. [1993, c. 355, §45 (AMD) .]

1. Removal; demolition; encapsulation; enclosure; repair; handling; transportation; analysis; disposal; storage; design; monitoring; or inspection. For any asbestos activity that involves more than 3 linear feet or 3 square feet of friable asbestos-containing material, the board shall consider the following:

- A. Proper work practices for the removal of asbestos-containing materials; [1987, c. 448, §1-C (NEW) .]
- B. Proper work practices for the encapsulation of asbestos-containing materials; [1987, c. 448, §1-C (NEW) .]
- C. Proper work practices for enclosure of asbestos-containing materials; [1987, c. 448, §1-C (NEW) .]
- D. Proper work practices for the demolition of a structure or position of a structure which contains structural members or components of or covered by asbestos-containing materials; [1987, c. 448, §1-C (NEW) .]
- E. Proper work practices for the storage, transport and disposal of asbestos-containing materials; [1991, c. 473, §20 (AMD) .]
- F. Administrative penalties and cessation of operations to ensure compliance with this subsection; [1991, c. 473, §20 (AMD) .]
- G. Air monitoring, bulk and air sample analysis and criteria governing public access to sites where asbestos abatement activity has occurred; and [1991, c. 473, §20 (NEW) .]
- H. Asbestos abatement, monitoring, inspection, design and analysis activities. [1991, c. 473, §20 (NEW) .]

In adopting these rules, the board shall consider cost-effective methods and alternatives that do not sacrifice public or worker health or safety.

[1993, c. 355, §45 (AMD) .]

2. Other activities. For any asbestos project not subject to the specific considerations of subsection 1, reasonable precautions to prevent the release of asbestos to the environment shall be made. At a minimum, the following precautions shall be considered:

- A. Construction of adequate barriers to contain asbestos fibers released within the work area; [1987, c. 448, §1-C (NEW) .]
- B. Wetting of all asbestos-containing material prior to removal and during collection; [1987, c. 448, §1-C (NEW) .]

C. Use of high efficiency particulate air vacuum equipment and wet-cleaning techniques to clean up the work area following abatement until there is no visible residue; [1987, c. 448, §1-C (NEW).]

D. Containing waste in appropriately labeled impermeable containers; and [1987, c. 448, §1-C (NEW).]

E. Proper storage, transfer and disposal to an approved landfill facility in a manner that does not release fibers into the air. [1987, c. 448, §1-C (NEW).]

[1987, c. 448, §1-C (NEW) .]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 1989, c. 890, §§A40,B223, 224 (AMD). 1991, c. 473, §§19,20 (AMD). 1993, c. 355, §45 (AMD).

38 §1281. EMERGENCY PROVISIONS

In an emergency that results from a sudden, unexpected event that is not a planned asbestos abatement project, including the emergency repair, installation, removal or servicing of heating equipment in single-unit residential buildings by persons licensed by the Maine Fuel Board under Title 32, chapter 139, the commissioner may waive the requirements for a license or certificate under this chapter. For the purposes of this section, emergency includes a sudden unexpected event that, if not immediately attended to, presents a safety or health hazard; operations necessitated by nonroutine failures of equipment or to protect equipment from damage; and actions of fire and emergency medical personnel pursuant to duties within their official capacities. Any person who performs an asbestos abatement activity, which activity would normally require notification pursuant to section 1273, subsection 2, under emergency conditions, shall notify the commissioner by phone within one working day and in writing within 3 days after performance of that activity. [2009, c. 344, Pt. D, §13 (AMD); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 2005, c. 52, §2 (AMD). 2009, c. 344, Pt. D, §13 (AMD). 2009, c. 344, Pt. E, §2 (AFF).

38 §1282. STANDARDS OF CONDUCT

The Board of Environmental Protection shall promulgate rules which establish standards of acceptable professional conduct for licensees and certificate holders engaged in asbestos abatement activities, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee or certificate holder, the suspension or revocation of a license or certificate or the denial of the renewal of a license or certificate. [1987, c. 448, §1-C (NEW).]

SECTION HISTORY

1987, c. 448, §§1-C (NEW).

38 §1283. INTERIM PROCEDURES

In developing a program to implement this chapter, the commissioner shall provide for interim licensing and certification procedures to ensure a transition period of not less than 180 days before the application of the requirements established in this chapter. [1987, c. 448, §1-C (NEW).]

SECTION HISTORY

1987, c. 448, §§1-C (NEW).

38 §1284. ASSISTANCE FROM OTHER DEPARTMENTS

The Commissioner of Administration, the Commissioner of Labor and the Commissioner of Health and Human Services shall assist the Commissioner of Environmental Protection in the enforcement of the licensing and certification requirements of this chapter. [1987, c. 448, §1-C (NEW); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY

1987, c. 448, §§1-C (NEW). 2003, c. 689, §B7 (REV).

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