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ASBESTOS REGULATORY CLARIFICATIONS

Toxic Substances Control Division

ARC - 003

February 2001

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**Subject:** Air Monitoring Technician Working for an O&M Contractor

**BACKGROUND**

The Texas Asbestos Health Protection Rules (TAHPR), do not directly address whether an Operations and Maintenance (O&M) Contractor may employ or contract with a person who is licensed as an Air Monitoring Technician (AMT), to collect personal air samples for evaluating potential worker exposures. Specifically, the TAHPR state that an AMT shall be an employee of, or under contract to, an Asbestos Abatement Contractor when taking personal samples. The Texas Department of Health (TDH) recognizes that an O&M Contractor has the same responsibility for compliance with the Occupational Safety and Health Administration (OSHA) personal air sampling regulations, as an Asbestos Abatement Contractor. Since the TAHPR are not specific on this issue, the TDH seeks to clarify the requirements in 25 TAC §295.37 and §295.52.

**RESPONSE**

A licensed O&M Contractor may employ, or hire under contract, a licensed AMT for the purpose of taking personal samples for OSHA compliance. These samples must be sent to a licensed laboratory for analysis.

**DISCUSSION**

In the TAHPR, 25 TAC §295.37 (a)(1), it is not a conflict of interest for a person to be employed by or subcontracted to the Asbestos Abatement Contractor, to collect personal samples for the purpose of evaluating worker exposure, as required by OSHA regulations. Therefore, if it is not a conflict of interest for the Asbestos Abatement Contractor, then it is not a conflict for an O&M Contractor to employ or subcontract a person for that purpose.



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TAHPR, 25 TAC 295.37, states:

- (a) *Independent third-party air monitoring. Third-party area monitoring and project clearance monitoring for airborne concentrations of asbestos fibers during an abatement project shall be performed by a person under contract to the public building owner to collect samples by and for the owner of the public building being abated. Such persons must not be employed or subcontracted by the asbestos abatement contractor hired to conduct the asbestos abatement project, except that:*
- (1) *this restriction in no way applies to personal samples taken to evaluate worker exposure, as required by the Occupational Health and Safety Administration (OSHA) regulations; and*
  - (2) *an air monitoring technician providing the service for the contractor meeting his/her responsibilities under OSHA regulations must also be licensed to perform that function; and*
  - (3) *those who are licensed to perform asbestos abatement for their own account in their buildings shall employ an independent third-party air monitor for the purpose of obtaining area monitoring and final clearance.*

TAHPR, 25 TAC 295.52, states:

- (a) *...For purposes of asbestos abatement activities, a licensed air monitoring technician shall be an employee of an asbestos laboratory or an asbestos consultant agency when taking area or clearance samples, or an employee of or under contract to an asbestos abatement contractor, when taking personal samples.*
- (b) *...An AMT employed by an abatement contractor is limited to taking personal samples for compliance with Occupational Safety and Health Administration (OSHA) regulations (29 Code of Federal Regulations 1926.1101), which must then be sent to a laboratory for analysis.*



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The TAHPR appear to indicate that only an Asbestos Abatement Contractor can hire an AMT to collect personal samples. However, the TDH has determined that an AMT can also be an employee of, or under contract to, an O&M Contractor for the purpose of taking personal samples for compliance with OSHA regulations.

Approved:

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