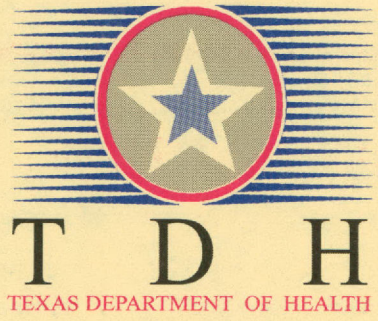


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**ASBESTOS  
PROGRAMS BRANCH  
UPDATE**

Volume 3, No. 2 May - August 1996

Government Publications  
Texas State Documents

**FROM THE CHIEF**  
**ASBESTOS PROGRAMS BRANCH**

OCT 31 1997

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The asbestos abatement project is a potentially hazardous undertaking. If not done with attention to detail you may be exposing your employees or yourself to serious risk. Normally the perceived risk is the exposure to asbestos. But, asbestos is actually only one of the risks you face when performing abatement. You must consider other safety factors such as slipping or falling, heat stress, electrocution, air quality, and fire. It is stressed in class that there must be a clearly marked exit path in case of fire. The Texas Department of Health regulations require fire extinguishers to be placed in containment. Clearly there are many safety considerations when designing abatement and during its execution.

Sadly, one man died and five others were burned recently during abatement. I know that the individuals in charge of the job are suffering terrible anguish over what happened and will be playing the events leading up to the fire over and over in their minds for a long time. It is unfortunate that this happened but we all must learn from it. In this particular case floor tile adhesive was being removed. All other methods to remove the material had failed. As a final measure to attempt to remove the adhesive, a stripper solution was used. This particular solvent had a flash point of approximately 100°F. Apparently one can of solvent had been out

in the sun and was hot when it was opened. Ultimately a spark from a grinder or from the electric motor on a buffer started the flash fire inside the containment. The fire was so quick and intense that the employees did not have time to get to hoses or fire extinguishers to help the men in the flames.

The use of a solvent with a flash point below 140°F is not a good idea in containment. Beside the risk of fire, most solvents have vapors that are harmful if inhaled. OSHA regulations prohibit the use of flammable liquids inside containment. If our compliance inspectors discover the use of flammable solvents in containment, the supervisor will be warned, and the case will be referred to OSHA.

Ultimately, if the adhesive does not come up after scraping and wet sanding, as prescribed in the Resilient Floor Covering Institute (RFCI) guidelines or some other reasonable method, one must consider whether it makes sense to try to remove any more. If the material has not come up upon being subjected to these methods, it is highly doubtful that it will come up, if ever, in any quantity or condition, to pose any health risk. Certainly, it could pose no risk as great as that of the fire that was experienced by these men.

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# LICENSING PROGRAM

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## ASBESTOS PROFESSIONAL LICENSING SECTION

The Asbestos Licensing Section will be implementing a new system for processing license applications on September 1, 1996. The change will be in the remittance process, which all license applications go through before being received by the Asbestos Licensing Section. All license applications which are mailed by the applicants, will have to be sent through the new "Money Mail P.O. Box System." Those applications that are received through the new mailing system will have top priority by the accounting department. Those applications will be processed first, and when time permits, the regular mailed applications will be processed. The Asbestos Licensing Section would like to encourage everyone who will be applying for a license, whether it is a renewal or initial application, to utilize this new mailing system. The

asbestos licensing section will be conducting a mass mail-out of supplies to all licensed contractors, consultant agencies, management planner agencies, and training providers prior to September 1, 1996. Bar coded envelopes and labels will be distributed by the licensing section, which can be used when submitting license applications. These envelopes will contain the Program's budget number, name and mailing address, and will require a postage stamp, so please make sure that a mailing stamp is placed on the envelope.

If you have any questions regarding this new procedure, please contact the Asbestos Licensing Section at either (512) 834-6610 or (800) 572-5548 (in Texas).

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# ENFORCEMENT PROGRAM

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## NOTIFICATION and INFORMATION SECTION

### NOTIFICATIONS NOT MEETING THE 10-DAY REQUIREMENT

Notifications continue to be submitted that do not meet the 10-day requirement, despite previous articles in the Asbestos Programs Branch Update and comprehensive efforts that have been made to educate the regulated community. Contractors and consultants are submitting the noncompliant notifications as frequently as the building owners. The Texas Asbestos Health Protection Rules (TAHPR) are written (Sec.295.61(b)) so that the task, but not the responsibility, may be delegated to the contractor or the consultant. The Notice of Violation proceedings will be written against the building owner, because the building owner continues to bear the legal responsibility. This legal

dilemma has resulted in some building owners being very upset with their contractors or consultants, who submitted the noncompliant notifications on their behalf.

Although a contractor or a consultant does not bear any legal responsibility regarding the timeliness of the notification, they should feel some obligation toward keeping their client in compliance. TAHPR's training and licensing requirements are established so that the licensees are educated in all aspects of the regulations and are kept informed of all current policies. The licensees are given instructions regarding the correct notification

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procedures. Their clients should benefit from their knowledge and be guided in the submittal of the notification, even if the building owner is doing the actual submittal. The regulations, TAHPR and the National Emission Standard for Hazardous Air Pollutants (NESHAP), require that the notification be postmarked ten full working days (skip Saturdays and Sundays) *prior* to the start of the abatement or demolition. This means that the post mark day counts as day one, count ten working days, and the project can start on the eleventh day. In many cases, notifiers are submitting the notification one day late. It must be post marked or hand delivered to the Toxic Substances Control Division in Austin to start the clock. Several notifiers have told us the only way they have been able to ensure the post mark is to take the notification form to the post office and have a postal clerk post mark it at the window. Otherwise, mail in a box might be picked

up a little earlier or mailed too late to be post marked the same day. The obligation to ensure mailing in time for post marking belongs to the notifier. This requirement exists so that the government has an opportunity to schedule an inspection. This ensures that those who perform asbestos work are in compliance with the laws protecting human health and that the building owner is receiving the appropriate service being provided by those licensed or accredited.

Contractors need to be reminded of a notification issue of which they can be found in violation. A project must be started on the date listed in the notification, regardless whether or not the notification was submitted in accordance to the ten day requirement. To start on any other date than the date listed is a violation of TAHPR, Sec. 295.61(f).

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## Asbestos Ban and Phase-out

Many people think that asbestos-containing materials (ACM) are not in production anymore. That is based upon the intent of the Environmental Protection Agency (EPA) to ban the manufacturing of ACM and phase out the use of those materials. A successful challenge to that intent resulted in the prohibition of some materials and the continued manufacturing of others.

The rules for the ban on manufacturing ACM can be found in the Federal Register, Vol. 59, No. 123, Tuesday, June 28, 1994 on pages 33208-33211. As of August 27, 1990, no person shall manufacture or import flooring felt or begin new uses of asbestos. After August 26, 1996, no person shall manufacture, nor import for use in the US, commercial paper, corrugated paper, rollboard, or specialty paper which contains asbestos. All other materials which contained asbestos in August of 1990 can continue to be produced. This makes it very difficult for building owners who want to abate asbestos from their buildings and maintain asbestos

free buildings.

Building owners are required to properly maintain ACM installed in their buildings and to follow strict regulations when removing those materials. If they do not want ACM to be installed, they should specify that no ACM will be used and ask for test results, as well as, contractor and supplier statements that no ACM was used. Under the current Texas Department of Health (department) and Occupational Safety and Health Administration (OSHA) regulations, materials still must be verified to not be ACM before renovation or demolition is undertaken. The department is working with the Environmental Protection Agency (EPA) to develop a procedure which will be recognized as meeting the requirements of an asbestos inspection during construction of new facilities. This might take a year or more to complete. Regardless, the building owner will prove that ACM was not disturbed in an unauthorized fashion.

## Asbestos State Accreditation Examination Calendar September 1, 1996 - August 31, 1997

FACILITY LOCATIONS	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Texas Department of Health 8407 Wall Street Exchange Building, Room N218 Austin, Texas *Contact: Athan Ogoh	11	8	5	10	14	11	11	15	13	10	8	12
Arlington Community Center 2800 South Center Street Music Room Arlington, Texas *Contact: Athan Ogoh	3	2	13	4	7	5	5	9	7	3	2	5
Public Health Region 4 1517 West Front Street Tyler, Texas Contact: Joel Sprouls 903-595-3585	3	1	5	3	7	4	4	1	6	3	1	5
Crowne Plaza Hotel • Galleria Area (Hotel will post room #) 2222 West Loop South Houston, Texas *Contact: Athan Ogoh	17	15	19	13	16	18	14	22	21	12	15	19
Public Health Region 10 6070 Gateway East, Suite 401 El Paso, Texas *Contact: Athan Ogoh		23			24			24			23	
Public Health Region 8 7430 Louis Pasteur Drive Conference Room 130 San Antonio, Texas *Contact: Athan Ogoh	27		22		3		19		16		18	

Registrations must be postmarked by the 10th day of the month that precedes the month in which you will take the examination. The above facilities can only accommodate a limited number of persons, therefore it is recommended that you submit your registration early or else you may find that your first and second choices

are already full. Prior to the day of your examination, you will be given the time in which you will need to report to the facility. The location of a facility within a specified city is subject to change, when necessary. If such a change in location occurs, all registrants for that examination will be notified.

\* Athan Ogoh: 800-572-5548 or 512-834-6600

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## **Enforcement**

Following an inspection of an abatement project or other asbestos activity, a Notice of Violation (NOV.) may be issued for violations of the Texas Asbestos Health Protection Rules (rules) or the National Emission Standards for Hazardous Air Pollutants (NESHAP). The NESHAP is delegated to the state from the US Environmental Protection Agency (EPA). Financial and other penalties may be issued by both the department and the EPA for violations of the NESHAP. Although OSHA regulations are not delegated to the state of Texas, parts of the various regulations listed as a reference in the rules are enforced as a part of the Texas law. Any blatant OSHA violations noted in an asbestos inspection may be reported to OSHA by the department inspectors.

## **Enforcement Staff**

For several months the enforcement section has consisted of Horace Edison, Enforcement Section Coordinator, and Roni Thompson, Administrative Assistant. They have been joined by three new enforcement specialists who bring the section to full strength. Elizabeth Grimsley has worked in the asbestos industry in two states prior to moving to Texas. Bill Billingsley worked in the asbestos section at a major university, prior to joining the Texas Department of Health as an inspector in another division, and now joins the asbestos enforcement staff. Terry Baudoin has spent several years in the asbestos industry. Their collective experience will greatly help us help you in complying with the various regulations.

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## **REQUEST LICENSEES TO PROVIDE INPUT FOR FUTURE ASBESTOS UPDATES**

If there are any of you that have any questions, articles and/or stories you would like to share with other licensees, we would welcome them and will include them in our tri-annual bulletins. Due to

spacing limitations in the bulletin, we cannot guarantee that what you submit will be in the upcoming bulletin. However, we will include them in future editions.

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## **ASBESTOS PROGRAMS OUTREACH**

Efforts continue to educate the asbestos industry about their responsibilities and risks. Presentations have been given to such groups as Building Owners and Managers Association, Building Officials Association of Texas, Texas Municipal League, State Attorney General's Conference, Texas Apartment Association, and the Code Enforcement Association of Texas. A mass mail out was sent to the Texas Municipal League members (more than 1200) in

June. Included in that mail out were copies of the Texas Asbestos Health Protection Rules, pamphlets for the regulated industry and for homeowners, the demolition/renovation and instruction guide, and a flowchart for the demolition of buildings.

We would be glad to attend your meetings and/or give a presentation to any group (10 or more) that you feel would benefit from it.

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## **ENFORCEMENT SECTION**

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Following are Agreed Administrative Penalty Orders Signed by the  
Commissioner of Health.

### **COMMERCIAL CONTRACTING COMPANY GROUP, INC.**

**Location:**San Antonio

**Violations:**Failure to provide timely notification

**Fine:**\$2,500

**Rule Violated:**NESHAP

### **J&J MANAGEMENT**

**Location:**Richardson

**Violations:**Failure to provide notification of asbestos related activities

Failure to contract with or employ a licensed asbestos contractor, inspector

**Fine:**\$10,000

**Rules Violated:**TAHPA and NESHAP

### **DYNAMIC CONTRACTORS**

**Location:**San Antonio

**Violations:**Failure to wet regulated asbestos containing material

Failure to appropriately label asbestos waste containers

**Fine:**\$400

**Rules Violated:**TAHPA and NESHAP

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## ***FYI***

Effective May 7, 1996 the Division of Occupational Health changed to the *Toxic Substances Control Division*. When corresponding with the division, please remember to use the new name.


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## IS JAIL TIME IN YOUR FUTURE?

As the result of his illegal acts, a Philadelphia real estate developer was sentenced to two and one-half years in prison and fined \$30,000. He was convicted on one count of conspiracy to violate the Clean Air Act (CAA), one felony count of failure to follow the National Emission Standards for Hazardous Air Pollutants (NESEAP) work practices related to asbestos removal under the CAA, and one felony count for violating the CAA by ***FAILING TO NOTIFY AUTHORITIES OF THE ASBESTOS REMOVAL OPERATION.*** The developer hired a

man off the street (who was neither trained nor certified in asbestos removal) to remove asbestos pipe insulation from the basement and a crawlspace above the 12th floor of a building. The man he hired was also convicted for his part and was sentenced in federal court to 15 months imprisonment. The developer also had a crew of untrained individuals remove the asbestos. The asbestos was illegally dumped in three locations in Philadelphia.

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 Recycled Paper

Texas Department of Health  
Toxic Substances Control Division  
Asbestos Programs Branch  
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Austin, Texas 78756-3189

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