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UPDATE

Volume 1, No. 2 May - August 1994

From the Chief

BUREAU OF ENVIRONMENTAL HEALTH

The May issue of this bulletin was the start of a project by our staff at keeping you more informed, and communicating information and news on asbestos issues. I commend them for taking this step and feel it will help you as a customer of the Texas Department of Health.

Our asbestos program has grown over the past years and more recently worked to transfer the NESHAP, subpart M, authority from the Texas Natural Resource Conservation Commission to the Department. This will consolidate asbestos activities in our state, and hopefully cut down on confusion and achieve some economics of scale.

Our mission as an agency is to protect the public health, and enforcement of federal and state asbestos rules and statutes will help us achieve that end. We also believe that public outreach, education, and technical assistance is a means of achieving that goal. This bulletin is one vehicle of working toward those desired results.

Charles Maddox
Chief, Bureau of Environmental Health

General Information

The revised asbestos rules are expected to be published in the Texas Register around the middle of September 1994. Major changes include:

- 1) A fee schedule for notifications
- 2) State accreditation for individual licenses, with the exception of workers
- 3) Guidance for air monitoring of abatement projects
- 4) Increased penalties

There are also some changes in licensing requirements. We are appreciative of all who took the time to visit the public hearings, those who testified, and those who wrote to express their views and recommenda-

tions. The information provided to the Texas Department of Health has been helpful in the revision of the rules and helped to identify areas which the Department needs to address in various ways in our outreach program.

Last April the Department published a new notification form which applies to notifications under the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) and to the Texas Asbestos Health Protection Act (TAHPA). All notifications are sent to the Department, now that the transfer for NESHAP enforcement has been made from the Texas Natural Resource Conservation Commission (TNRCC) to the Department. The TDH notification form is to be sent only to the Department and not to any local programs.

The Department is enforcing the requirements of NESHAP and TAHPA. Field inspectors have greatly increased their level of expertise in investigating and inspecting asbestos projects. This has resulted in an increase of completed enforcement actions. Additionally, the field inspectors attempt to work with building owners, consultants, and contractors to ensure they are aware of the regulations and are able to comply with the requirements. The Department endeavors to allow immediate corrective action to be made in cases of a minor oversight, to interpret rules so that the regulated community is better informed before hand and to gain voluntary compliance. In addition, the Department representatives meet with US Environmental Protection Agency (EPA) regularly to ensure we have the most recent federal rule interpretations.

Several policy letters are being written which will address various topics of interest to the regulated community. These will be sent to licensed training providers, licensed consultants, licensed contractors, and other persons on our mailing list. Policy letters will be numbered and titled to match particular parts of the asbestos rules. Recommendations for subjects to be included are always welcome. The Department determines the subjects primarily on the questions being asked and the violations of the regulations being observed.

Information on the state accreditation examination will be sent to the training providers and to each new licensee. Only persons desiring to be accredited for licensing within Texas need to take this examination. The background on this will be listed in the Texas Register with the revised rules under the comment and response section. It will be a check on the quality of instruction within the state and an aid in enforcement in the identification of training providers not meeting the requirements of the Model Accreditation Plan (MAP).

Licensing Program

ASBESTOS PROFESSIONAL LICENSE SECTION

The Asbestos Licensing Section fields many questions about the asbestos licensing process. The following frequently-asked questions and their answers are listed for your quick reference.

- Q.** Do I need to submit a copy of my professional liability insurance certificate to renew my license?
- A.** Yes. A current copy of your professional liability insurance certificate with the Texas Department of Health named as certificate holder, must be submitted for renewal licensure. This is a requirement for consultants, inspectors, management planners and laboratories. Contractors must have asbestos abatement liability and transporters must have transportation liability insurance. See Section 295.40(1)(A)-(D) of the Texas Asbestos Health Protection Rules for the insurance requirements. The only exception to the insurance requirements applies to school districts, state or federal entities, etc. that are self-insured.
- Q.** If I have all that is required to get my license except for the copy of my insurance certificate, can I go ahead and submit what I have now and send the rest later?
- A.** It is best to send a complete application with all required documentation attached. Your application will be processed much faster, eliminating the need for a "Deficiency Notification" letter to be sent. "Deficiency Notification" letters are sent to applicants if their application lacks key information or is otherwise deficient. Based on Section 295.38(a), "Only applications which are complete shall be considered by the Department; the burden of proof for all requirements for licensure rests with applicant."
- Q.** Is a physical examination required for renewing my license?
- A.** Yes. A current physical examination must be submitted on the Texas Department of Health's "Physician's Written Statement" form for renewing your license each year. Those categories that require a physical examination are Worker, O&M Supervisor, Project Supervisor, Air Monitoring Technician (Basic), Air Monitoring Technician (Upgraded), Individual Consultant, Inspector, and Project Manager.
- Q.** Can the same "Physician's Written Statement" form from last year be used if I apply for my renewal earlier than my expiration date? The Rules state that I may apply for renewal 60 days prior to my expiration date and my physical examination won't expire until later.
- A.** Any current physical may be used; however, an expired physical makes a license invalid. If the physical will expire within 30 days of the renewal application, a new physical will be required before that time to keep the renewed license valid.

When you have questions regarding your license or registration, please contact the asbestos licensing technicians at (512) 834-6610.

ASBESTOS TRAINER LICENSING SECTION

Since May 1, 1994, seven asbestos training providers were licensed by the Division of Occupational Health, Asbestos Trainer Licensing Section. The total number of approved training providers licensed in the State of Texas is now 43. Currently, there are two applications pending approval and licensure and there are three training providers with enforcement actions pending.

The public hearings held this summer on the new proposed regulations yielded comments relevant to this section, primarily in the following areas: scheduling of courses; the State accreditation examination; hours of operation; and length of course breaks during courses. The Asbestos Trainer Licensing Section appreciates all comments and suggestions received from the public regarding proposed rule amendments.

The procedures for implementation of the proposed State accreditation examination are currently being drafted. The Asbestos Trainer Licensing Section expects to have these procedures finalized to coincide with the implementation of the rule amendments.

Licensing Briefs

Charles R. "Chuck" McLendon, P.E., is now Administrator of the Licensing Program. He joined TDH on August 1, 1994. Mr. McLendon has a B.S. in Engineering, an M.B.A. and brings extensive management, contracting and consulting experience to the Program.

Enforcement Program

NOTIFICATION AND INFORMATION SECTION

New Notification Form

A new asbestos renovation and demolition notification form was created and released for use in April of this year. The transition period has now been completed and the old forms are **NO LONGER ACCEPTED**. This new form combines the notification requirements of TAHPA and NESHAP and is submitted to the Texas Department of Health (TDH); notification of NESHAP projects is no longer submitted to the Texas Natural Resource Conservation Commission (TNRCC).

The number of notifications that are received and processed at TDH has increased over the past year. In April, May and June the numbers of processed notifications were 1139, 1693, and 1320, respectively. These numbers include TAHPA and NESHAP notifications, as well as original and revised notifications. The notification staff works diligently inputting the notifications into the data program and sending the information to the Regional TDH inspectors and to the Local Air Quality Programs. The tremendous work load that is imposed on the technicians does not

allow time for telephone calls to get information that is lacking on the notifications. It is critical that the notifications be submitted with all required information.

Anytime that a new form is introduced there are problems with people continuing to use the old form and with completing the new form correctly. We realized the need for a transition time, so for 2 months we accepted old forms and new forms with some errors. TAHPA and NESHAP designate any notification that lacks any required information as improper. An instruction guide was created to help prevent the submission of improper notifications.

Every item on the notification is critical to being able to determine if the project is in compliance with TAHPA and/or NESHAP regulations. Unintentional violations (omitting the facility zip code, county and/or phone number) can be prevented by the consultant, management planner or contractor reviewing the notification for completeness and contacting the owner for verification of information. NESHAP is very specific as to the information that is required to be provided on the notification.

The items that have most frequently been omitted are:

- 1) the Facility Zip Code
- 2) the Abatement Contractor Information
- 3) the Demolition Contractor Information

The facility zip code is critical because it determines the inspection jurisdiction. TDH receives all notifications and determines whether the project falls within the jurisdiction of the State or one of the Local Air Quality Programs. Often the overlap is close enough that a zip code is the determining factor. The notification data base has been programmed to sort projects for inspection by the zip code.

If the asbestos project is a renovation, the abatement contractor must be provided, including the TDH license number if the project is in a public building. If the project is being performed by the owner, as in the O&M projects, **the owner's name must be listed**. It is not obvious when the space is left blank. Projects are targeted for inspection (it is more important to inspect some projects) based in part upon the abatement contractor. Due to this criteria, "to be determined" is not acceptable.

The demolition contractor information is often not provided because it may not be obvious as to where the information should be listed. The demolition contractor, under the definition of NESHAP, is considered as an "operator". Either the consultant's name or the demolition operator should be listed in item #2 on the notification form. If a consultant has been hired, as required in a public building where the project involves more than 260 linear feet or 160 square feet of asbestos-containing material, then it is more important that the consultant information be provided.

A means to educate the public as to the necessity of submitting a proper notification has been developed. A **Notification Deficiency Letter** will be sent when required information has not been provided. If the submitter responds to the letter and sends back a corrected notification, then no

enforcement proceedings will be enacted. This allows for the uneducated owner to submit a notification without the fear of penalty. It also allows for simple clerical errors. However, a policy is also in place that will impose a penalty for the frequent submittal of improper notifications by experienced contractors or owners. **The submittal of an improper notification is deemed a serious violation and a penalty of \$1,000 for a first violation and as much as \$5,000 for subsequent violations may be imposed. Failure to submit ANY notification for RENOVATION AND/OR DEMOLITION has been added to Section 295.70 (f)(1)(E) in the revised rules as a CRITICAL VIOLATION. A penalty of \$10,000 for the first occurrence, per day, per violation may be imposed.**

The notification staff can send a blank notification, an instruction guide, or answer any questions regarding the correct method to complete the form. We encourage that questions be asked before a notification is submitted. Please call at (512)834-6600 or 1-800-572-5548 and ask for **Asbestos Notifications** if you have any questions or concerns or need any forms. The TDH Regional Offices are also available for information or forms.

Notification Fees

The authority to collect the notification fees is the last portion of the enforcement of the National Emission Standard for Hazardous Air Pollutants to be transferred from the TNRCC to the TDH. The transfer will be completed sometime during September. The procedure to collect the fees will not change significantly. TDH will send an invoice to the building owner after the notification has been submitted. The fee structure will still be based upon an Asbestos Reporting Unit (ARU), calculated on the amount of regulated (RACM) asbestos that is being removed from a building. One ARU is either 160 square feet, 260 linear feet or 35 cubic feet, depending upon the type of asbestos-containing material that is being abated.

There are few changes that will occur once TDH assumes the responsibility for the fee collection. The fee will be raised from \$20 to \$25 per ARU and the maximum fee shall be raised to \$10,000 per notification. The minimum fee will be a \$50 administrative fee that will be assessed for all original notifications, even if no asbestos is present (as in a demolition) or if the amount of asbestos removed is less than two ARUs. Also, the time allowed before payment is due has been extended from 30 days to 60 days. However, a second notice for overdue fees will not be issued. Failure to pay the required fee after the due date will be considered a violation and may subject the building owner to administrative penalties.

A provision to assess and collect fees for projects that fall under the provisions of TAHPA (excluded from NESHAP) has been added to the revised TAHPA rules. This means that a notification for a project being performed in a public building, including the removal of floor tile or a Category II material, will be assessed a administrative fee. In summation, if a project falls under the jurisdiction of TAHPA, NESHAP, or both regulations, a fee will be assessed and an invoice will be sent. If the project

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ENFORCEMENT PROGRAM *continued from page 3*

involves less than two ARUs of regulated asbestos-containing material, the fee will be \$50.

The notification will still be sent to TDH and later the corresponding invoice will be sent from TDH instead of TNRCC. The invoice will contain all the information necessary for correct payment. Questions will be answered by the Notification Section at (512)834-6600 or 1-800-572-5548.

Enforcement Briefs

Since the inception of the Enforcement Program in January 1994, Notices of Violation totaling over \$250,000 have been issued. Agreed Orders totaling over \$33,000 are pending. Legal restrictions prohibit publication of the names of the violators until the Final Order is issued by the Commissioner of Health. Penalties imposed, although sent to TDH, are deposited in the states general revenue fund.

AHERA

The Texas Department of Health's Toxic Substances Control Act (TSCA) Program is presenting nine "Asbestos Regulations Seminars" throughout the state. These seminars are geared towards public and private (non-profit) school employees who are involved with the Asbestos Hazard Emergency Response Act (AHERA). Topics to be covered include health

effects of asbestos, options for controlling asbestos, asbestos management, and relevant state and federal regulations with regard to asbestos in schools. The seminars will be from 8:30 a.m. - 4:30 p.m. at the following sites:

- OCTOBER 17 - AUSTIN
- OCTOBER 19 - CANYON
- OCTOBER 27 - SAN ANGELO
- OCTOBER 28 - EL PASO
- NOVEMBER 2 - NACOGDOCHES
- NOVEMBER 4 - HOUSTON
- NOVEMBER 9 - CORPUS CHRISTI
- NOVEMBER 10 - EDINBURG
- NOVEMBER 17 - ARLINGTON

Please call the TDH Division of Occupational Health at (512)834-6600 or 1-800-452-2791 for reservations and further information.

Corrections

We would like to correct some misinformation that was printed in the May 5, 1994 Asbestos Update.

In the Licensing Program:

Licensing technicians category assignments - Sonja Moya: Laboratories, Kathy Reeves: O&M Contractors (Restricted), O&M Supervisors, (Restricted), Rhonda Raymond: Transporters, Inspectors, Individual Management Planners.

Trainer Licensing Section - Rocío Peña-Brow is the Training Technician (Examiner). The Training Section was started on January 1, 1993.

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