

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED
1989 AUG 25 PM 2:13
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Health TITLE NUMBER: 64

RULE TYPE: Legislative; CITE AUTHORITY _____

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 63

TITLE OF RULE BEING PROPOSED: Asbestos Abatement Licensing Rule

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 2, 1989 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING

ADDRESS.

Regulatory Development Section

Attn: Kay Howard

Division of Health

Capitol Complex

Charleston, WV 25305

or may be delivered to:

Room 507, Motor Vehicles Building
Capitol Complex

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

George W. Lilley, Jr.
George W. Lilley, Jr., Ed.D., Administrator
Division of Health

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: ASBESTOS ABATEMENT LICENSING RULE

FILED

1989 AUG 25 PM 2:13

Type of Rule: X Legislative Interpretive

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
Procedural

Agency Health Address 1900 Kanawha Blvd., E.

Charleston

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$197,860	\$168,260	\$168,260
Personal Services			138,860	138,860	138,860
Current Expense			40,000	25,600	25,600
Repairs and Alterations					
Equipment					
Other			19,000	3,800	3,800
Estimated Revenue			168,000	168,000	168,000

2. Explanation of above estimates.

Personnel include a program chief, two support personnel and two inspectors. Current year current expense includes two vehicles. Current year equipment costs include computer equipment. Revenue estimates can be made more accurately after the first year of the program, since licenses must be renewed annually. Expenditures will be commensurate to received revenue as all license fees are placed in the program's revenue account as provided by Article 32, Chapter 16 of the W. Va. Code.

3. Objectives of these rules:

To protect the public health by establishing procedures and standards for the licensure and training of persons who engage in activities related to asbestos abatement and for the operation of asbestos abatement projects.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None. The program will be self-supporting.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.


License fees, ranging from \$50 to \$300 must be paid by contractors and individuals involved in asbestos abatement. State and county employees are not exempt from licensure. Facilities presently operating under federal OSHA standards on owned premises are exempt from the requirements of this rule.

C. Economic Impact on Citizens/Public at Large.

None identified.

Date August 21, 1989

Signature of Agency Head or Authorized Representative



George W. Lilley, Jr., Ed.D., Administrator
Division of Health

WEST VIRGINIA DIVISION OF HEALTH
RULE ABSTRACT
1989

FILED
1989 AUG 25 PM 2:13
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Asbestos Abatement Licensing Rule

CSR Title and Series: 64 CSR 63

Type: Legislative

Summary: This proposed new rule establishes standards for the licensure of asbestos abatement project designers, management planners, inspectors, contractors, supervisors and workers. Federal standards relating to asbestos abatement are adopted. Penalties such as licensure suspension or revocation are included. Cease and desist orders may be issued for projects violating standards. Civil penalties mandated by law may be assessed for violation of cease and desist orders.

For further information contact: Regulatory Development Section, telephone (304) 348-3223 or Asbestos Licensure Program, telephone (304) 348-0650, Capitol Complex, Charleston, West Virginia 25305.

[PROPOSED]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH

ASBESTOS ABATEMENT LICENSING RULE

SERIES 63

1989

For Public Comment Period
August 28, 1989 Through October 2, 1989

[PROPOSED]
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH

ASBESTOS ABATEMENT LICENSING RULE

64 CSR 63

INDEX

	Page
Section 1. General	1
Section 2. Application and Enforcement	1
Section 3. Definitions	1
Section 4. Initial and Renewal License	3
Section 5. Licensed Contractor Duties	4
Section 6. Training Accreditation	5
Section 7. Exemptions from Licensing	5
Section 8. Applicable Federal Standards	5
Section 9. Inspections	5
Section 10. Penalties	6
Section 11. Administrative Due Process	6
Section 12. Severability	6

[PROPOSED]
TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH

SERIES 63
ASBESTOS ABATEMENT LICENSING RULE

FILED
1989 AUG 25 PM 2:13
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§64-63-1. General

1.1. **Scope** - This legislative rule establishes procedures and standards for the licensure and training of persons who engage in activities related to asbestos abatement and for the operation of asbestos abatement projects.

1.2. **Authority** - W. Va. Code §16-32-3.

1.2. **Filing Date** -

1.4. **Effective Date** -

1.5. **Notice of Public Comment Period** - August 25, 1989

1.6. **Public Comment Period** - October 2, 1989

1.7. **Final Approval** -

§64-63-2. Application and Enforcement

2.1. **Application** - This rule applies to asbestos contractors, inspectors, management planners, and workers, and to asbestos abatement project designers and supervisors.

2.2. **Enforcement** - This rule shall be enforced by the administrator of the West Virginia division of health.

§64-63-3. Definitions

3.1. **Administrator** - The administrator of the division of health or the administrator's duly authorized representative.

3.2. **Asbestos** - The asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite, and which material contains more than one (1) percent asbestos by weight.

3.3. **Asbestos Abatement** - Procedures to control fiber release from asbestos-containing materials. Includes removal, encapsulation, enclosure, repair, demolition, renovation, and similar activities.

3.4. **Asbestos Abatement Project Designer** - A person who specifies engineering methods and work practices to be used during asbestos abatement projects.

3.5. **Asbestos Abatement Supervisor** - A person responsible for the direction of asbestos abatement projects.

3.6. **Asbestos-Containing Material** - Any material or product which contains more than one (1) percent asbestos by weight.

3.7. **Asbestos Contractor** - A person who enters into contract for a project for asbestos abatement.

3.8. **Asbestos Inspector** - A person employed to inspect for the presence of asbestos containing materials, evaluate the condition of such materials and collect samples for asbestos content confirmation.

3.9. **Asbestos Management Planner** - A person employed to interpret survey results, assess hazards, evaluate and select control options or develop an operation and maintenance plan.

3.10. **Asbestos Project** - An activity involving the inspection for, or abatement of asbestos.

3.11. **Asbestos Worker** - Any person who engages in an asbestos project, but who does not engage in specific asbestos abatement related activities required to be performed by other licensed persons in accordance with this rule and Article 32, Chapter 16 of the West Virginia Code.

3.12. **Division** - The division of health of the department of health and human resources.

3.13. **Encapsulate** - The application of any material onto any asbestos containing material to bridge or penetrate the material to prevent fiber release.

3.14. **Enclosure** - The permanent confinement of friable asbestos containing materials with an airtight barrier in an area not used or designed as an air plenum.

3.15. **EPA** - United States Environmental Protection Agency.

3.16. **Friable** - Material which is capable of being crumbled, pulverized, or reduced to powder by hand pressure or which under normal use or maintenance emits or can be expected to emit asbestos fibers into the air.

3.17. **License** - An authorization issued by the division permitting a person to perform certain specific work related to asbestos projects.

3.18. **OSHA** - The United States Department of Labor Occupational Safety and Health Administration.

3.19. **Owned Premises** - Property on which an asbestos project is to be conducted by the property owner or by the property owner's employees, without benefit of contractual arrangements.

3.20. **Person** - A corporation, partnership, sole proprietor-

ship, firm, enterprise, franchise, association or any individual or entity.

3.21. **Repair** - Returning damaged asbestos containing material to an undamaged condition so as to prevent asbestos fiber release.

§64-63-4. Initial and Renewal License

4.1. Initial License

4.1.1. Applicants for licensure as an asbestos contractor, inspector, management planner or worker or as an asbestos abatement project designer or supervisor shall submit to the administrator a current application which shall include:

4.1.1.1. Proof of passage of an applicable EPA-approved asbestos training course. A copy of the certificate indicating the date on which training was completed and the location at which training was conducted shall be acceptable;

4.1.1.2. Date of birth. Applicants shall be at least eighteen years of age;

4.1.1.3. Signature of applicant;

4.1.1.4. A history of all prior enforcement actions taken against the applicant by any federal or state agency or court;

4.1.1.5. Attachment of all applicable license fees. A schedule of fees is shown in Table 64-63A at the end of this rule;

4.1.1.6. If the application is for an asbestos management planner, proof of possession of a valid asbestos inspector's license; and

4.1.1.7. Other information as may be requested by the administrator.

4.1.2. Applicants and their employers or agents shall demonstrate to the satisfaction of the administrator that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the EPA, OSHA, and of the State agencies of health, natural resources, labor and air pollution control covering any part of an asbestos project. Passing an applicable EPA-approved training course shall be accepted as meeting this requirement.

4.1.3. The administrator may deny a license and retain the license fee if the applicant fails to satisfy application requirements. Written notice of denial and an opportunity for reapplication shall be afforded to all applicants. Incomplete applications will be returned to the applicant along with the

license fee.

4.1.4. Licenses issued under these rules shall expire one year from the last day of the month in which they were issued.

4.2. Renewal Application

4.2.1. Prior to the expiration date shown on the license, each licensee who desires to retain a valid license shall submit a renewal application, proof of passage of an applicable EPA-approved refresher course and all applicable fees. Licensees should apply for renewal no less than forty-five (45) days prior to expiration in order to avoid a temporary license lapse. A schedule of license fees is shown in Table 64-63A at the end of this rule.

4.2.2. Licensees failing to renew their licenses within six (6) months after the expiration date of the license shall be required to apply as new applicants.

§64-63-5. Licensed Contractor Duties

5.1. Licensed asbestos contractors shall carry out the following duties:

5.1.1. Ensure that each of the contractor's employees or agents who will come into contact with asbestos or who will be responsible for an asbestos project is properly licensed;

5.1.2. Ensure that each asbestos project is supervised by a licensed asbestos abatement supervisor;

5.1.3. Notify the division and all other entities as may be required by State or federal law at least twenty (20) days prior to commencement of each asbestos project. Notification to the division shall be sent by certified mail or hand-delivered to the division; and

5.1.4. Keep a record of each asbestos project and make the record available to the State agencies of health, natural resources, labor and air pollution control upon request. Records required by Section 5 of this rule shall be kept for at least thirty (30) years. The records shall include:

5.1.4.1. The name, address and asbestos worker's license number of the individual who supervised the asbestos project and each employee or agent who worked on the project;

5.1.4.2. The location and a description of the project and the amount of asbestos material that was removed;

5.1.4.3. The starting and completion dates of each project and a summary of the procedures that were used to comply with all federal and State standards;

5.1.4.4. The name and address of each asbestos disposal site where waste containing asbestos was deposited and the disposal site receipts.

5.2. The records required by Section 5 of this rule shall be available to the State agencies of health, natural resources, labor and air pollution control upon request during normal business hours. Records for current projects shall be immediately available. For completed projects, the contractor may be afforded a reasonable time to comply with such requests, depending upon the length of time since a project's completion and whether or not such advance notice might adversely affect an investigation being conducted by any of the aforementioned agencies.

§64-63-6. Training Accreditation - All training courses offered prior to July 1, 1989, and thereafter, which have received full accreditation by the EPA, shall be deemed acceptable for licensure of graduates and as training courses in West Virginia.

§64-63-7. Exemptions from Notification and Licensing

7.1. In an emergency that results from a sudden unexpected event that is not a planned renovation or demolition, the administrator may waive the requirement of twenty (20) days prior notification by licensed asbestos contractors.

7.2. Facilities presently operating under OSHA standards for removing and handling asbestos on owned premises shall be exempt from licensure.

§64-63-8. Applicable Federal Standards - All persons licensed under this rule shall comply with the following applicable federal standards which were in effect as of the effective date of this rule and which are hereby incorporated in this rule by reference:

8.1. EPA: Asbestos Hazard Emergency Response Act, 40 CFR Part 763, Subpart E.

8.2. EPA: Friable Asbestos Containing Materials In Schools, 40 CFR Part 763, Subpart F.

8.3. EPA: National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M.

8.4. EPA: Toxic Substances; Asbestos Abatement Projects, 40 CFR Part 763, Subpart G.

8.5. OSHA: Occupational Exposure to Asbestos, 29 CFR 1926.58.

§64-63-9. Inspections - The administrator shall have the right of entry to any asbestos project and shall have the right to conduct inspections to determine compliance with this rule.

§64-63-10. Penalties

10.1. The administrator shall, depending upon the severity of the violation and upon the degree of health hazard created, reprimand, or suspend or revoke, the license of, an asbestos abatement project designer or supervisor, or an asbestos inspector, contractor, management planner, or worker, if the licensee:

10.1.1. Fraudulently or deceptively obtains or attempts to obtain a license;

10.1.2. Fails at any time to meet the qualifications for a license or to comply with the requirements of Article 32, Chapter 16 of the West Virginia Code or this rule;

10.1.3. Fails to meet applicable federal or state standards for asbestos abatement; or

10.1.4. Employs or permits an individual without the appropriate license to work on an asbestos abatement project.

10.2. The administrator shall investigate all alleged violations of this rule or of Article 32, Chapter 16 of the West Virginia Code reported to the division. Upon the finding of a violation in connection with any project involving the asbestos abatement, the administrator shall, depending upon the severity of the violation and upon the degree of health hazard created, initiate an appropriate enforcement action which may include the issuance of a cease and desist order directing that all work on the project be halted forthwith. Posting of the cease and desist order on the project site shall constitute notice of its contents to the property owner and all persons working on the asbestos abatement project. Where practicable, however, the administrator shall deliver a copy of such order by certified mail, return receipt requested, to the property owner and to the contractor.

10.3. In any case where a person fails to halt work following the issuance of a cease and desist order by the administrator, the violation shall be presumed to be willful and shall be assessed a civil penalty of not less than ten thousand dollars (\$10,000) nor more than twenty-five thousand dollars (\$25,000) for an initial violation and not less than twenty-five thousand dollars (\$25,000) nor more than fifty thousand dollars (\$50,000) for each subsequent violation.

10.4. Any person who violates any provision of this rule or of Article 32, Chapter 16 of the West Virginia Code shall be guilty of a misdemeanor.

§64-63-11. Administrative Due Process - Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules and Procedures for Contested Case Hearings and Declaratory Rulings, 64

CSR 1.

§64-63-12. Severability - The provisions of this rule are declared to be severable. If any provision of this rule shall be held invalid, the remaining provisions shall remain in effect.

Table 64-63A. LICENSURE FEE SCHEDULE

<u>Type of License</u>	<u>Fee</u>
Asbestos Worker	\$ 50.00
Asbestos Inspector	\$100.00
Asbestos Abatement Project Designer	\$100.00
Asbestos Abatement Supervisor	\$100.00
Asbestos Management Planner	\$100.00
Asbestos Contractor	\$300.00