

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

FILED  
1989 JUN 29 PM 3:20  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Department of Health TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code, §§16-32-4, 16-32-5, 16-32-6, 16-32-7, 16-32-8, and 16-32-9.

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 63

TITLE OF RULE BEING FILED AS AN EMERGENCY: Asbestos Abatement Licensing Rule

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The above-titled rule is filed on an emergency basis in order to comply with statutory deadlines requiring the licensure by July 1, 1989, of asbestos management planners (§16-32-4(a), W. Va. Code), asbestos abatement project designers (§16-32-5(a), W. Va. Code), asbestos contractors (§16-32-6(a), W. Va. Code), asbestos abatement supervisors (§16-32-7(a), W. Va. Code), asbestos inspectors (§16-32-8(a), W. Va. Code), and asbestos workers (§16-32-9(a), W. Va. Code).

Use Additional Sheets If Necessary.

*David K. Heydinger, M.D.*  
David K. Heydinger, M.D.  
Director of Health

[EMERGENCY]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES  
DEPARTMENT OF HEALTH

ASBESTOS ABATEMENT LICENSING RULE

SERIES 63

1989

[EMERGENCY]  
WEST VIRGINIA LEGISLATIVE RULES  
DEPARTMENT OF HEALTH

ASBESTOS ABATEMENT LICENSING RULE

64 CSR 63

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[EMERGENCY]  
TITLE 64  
WEST VIRGINIA LEGISLATIVE RULES  
DEPARTMENT OF HEALTH

SERIES 63  
ASBESTOS ABATEMENT LICENSING RULE

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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 - June 29, 1989

1.4. Effective Date - June 29, 1989

1.5. Notice of Public Hearing -

1.6. Public Hearing -

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 director of the West Virginia department of health.

§64-63-3. Definitions

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

3.2. Asbestos Abatement - The removal, encapsulation, enclosure, or repair of asbestos-containing material.

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

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

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

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

3.7. **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.

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

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

3.10. **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.

3.11. **Department** - The State department of health.

3.12. **Director** - The director of the department of health or the director's duly authorized representative.

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 department 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 proprietorship, 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 director 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 director.

4.1.2. Applicants and their employers or agents shall demonstrate to the satisfaction of the director that the applicant is familiar with, and capable of complying fully, with all applicable requirements, procedures and standards of the EPA, OSHA, the State departments of health, natural resources, and labor, and the State air pollution control commission 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 director 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.

4.1.5. All persons who have applied to the department for a license by July 1, 1989, and who hold a valid license from any other state shall be considered licensed in West Virginia until such time as their application is acted upon by the department.

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 department 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 department shall be sent by certified mail or hand-delivered to the department; and

5.1.4. Keep a record of each asbestos project and make the record available to the State departments of health, natural resources and labor, and the State air pollution control commission 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 departments of health, natural resources and labor, and to the State air pollution control commission, 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 director 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 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. Suspension or Revocation of License**

9.1. The director 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:

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

9.1.2. 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;

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

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

9.2. The director shall investigate all alleged violations of this rule reported to the department. Upon the finding of a violation in connection with any project involving the asbestos abatement, the director shall issue 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 director shall deliver a copy of such order by certified mail, return receipt requested, to the property owner and to the contractor.

**§64-63-10. Inspections** - The director shall have the right of entry to any asbestos project and shall have the right to conduct inspections to determine compliance with this rule.

**§64-63-11. 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

KEN HECHLER  
Secretary of State

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STATE OF WEST VIRGINIA  
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Charleston 25305

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Special Assistant

(Plus all the volunteer  
help we can get)

August 10, 1989

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Aug. 10, 1989  
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Health

RULE: New Rule, Series 63, Asbestos Abatement Licensing Rule

DATE FILED AS AN EMERGENCY RULE: June 29, 1989

DECISION NO. 14-89

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
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FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

THIS DATE Aug. 10, 1989  
ADMINISTRATIVE LAW DIVISION

WILLIAM H. HARRINGTON  
Chief of Staff

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Special Assistant

(Plus all the volunteer  
help we can get!)

## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

DECISION

EMERGENCY RULE DECISION  
(ERD 14-89)

AGENCY: Department of Health  
RULE: New Rule, Series 63, Asbestos Abatement Licensing Rule  
FILED AS AN EMERGENCY RULE: June 29, 1989

- par. 1 The Department of Health has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Fire Commission (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Health Department has filed this emergency rule with supporting documents with the Secretary of State on June 29, 1989 and with the LRMRC on June 29, 1989.

par. 7 It is the determination of the Secretary of State that the Health Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-32-3 reads in part:

*§16-32-3. Powers and duties of the director of health.*

*(a) To issue licenses and assess fees pursuant to this article and the rules and regulations promulgated thereunder.*

*(b) To promulgate rules and regulations necessary to carry out the requirements of this article in accordance with the provisions of chapter twenty-nine-a of this code, to include, but not limited to, the required training, the prescription of fees and procedures for the issuance and renewal of licenses.*

par. 9 WV Code further states in part in §16-32-4, 5, 6, 7, 8 and 9:

*§16-32-4(a). After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for an individual who does not possess a valid asbestos management planner's license to design a building's or facility's asbestos management plans.*

*§16-32-5(a). After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for any person who does not possess a valid asbestos abatement project designer's license to specify engineering methods and work practices under asbestos abatement contract to another person.*

*§16-32-6(a). After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for any person who does not possess a valid asbestos contractor's license to contract with another person to abate, enclose, remove or encapsulate asbestos.*

*§16-32-7(a). After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for an individual who does not possess a valid asbestos abatement supervisor's license to direct an asbestos abatement project.*

*§16-32-8(a). After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for an individual who does not possess a valid asbestos inspector's license to work as an asbestos inspector on an asbestos project.*

*§16-32-9(a). After the first day of July, one thousand nine hundred eighty-nine, it shall be unlawful for an individual who does not possess a valid asbestos worker's license to work as an asbestos worker on an asbestos project.*

par. 9 It is the determination of the Secretary of State that the Health Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(q) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

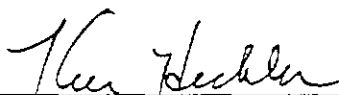
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Health Department are as follows:

The above-titled rule is filed on an emergency basis in order to comply with statutory deadlines requiring the licensure by July 1, 1989, of asbestos management planners (§16-32-4(a), W. Va. Code), asbestos abatement project designers (§16-32-5(a), W. Va. Code), asbestos contractors (§16-32-6(a) W. Va. Code), asbestos abatement supervisors (§16-32-7(a) W. Va. Code), asbestos inspectors (§16-32-8(a), W. Va. Code), and asbestos workers (§16-32-9(a), W. Va. Code).

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency.

par. 14 This decision shall be cited as Emergency Rule Decision 14-89 or ERD 14-89 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Health, the Attorney General and the Legislative Rule Making Review Commission.

  
\_\_\_\_\_  
KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_