

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1990 JAN -2 PM 3:15

WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code, §16-32-3

AMENDMENT TO AN EXISTING RULE: YES NO

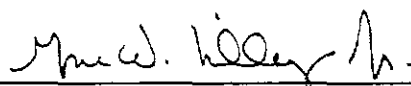
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: Asbestos Abatement Licensing Rule

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



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



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

DATE: December 29, 1989

TO: George W. Lilly, Jr., Ed.D., Acting Administrator --
Division of Public Health

FROM: Taunja Willis Miller, Secretary *TW*
Department of Health and Human Resources

SUBJECT: Asbestos Abatement Licensing Rule

You are hereby authorized to file the Division of Public Health's revised Asbestos Abatement Licensing Rule with the Secretary of State and the Legislative Rule-Making Review Committee.

GWL\kjs



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 6, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

M E M O R A N D U M

DATE: September 29, 1989

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

FROM: Taunja Willis Miller, Secretary *TW*
Department of Health and Human Resources

SUBJECT: Approval of Proposed Rule for Public Comment

Your August 25, 1989 filing of the proposed rule, Asbestos Abatement Licensure Rule, for public hearing is hereby ratified and approved.

TWM/kpg

FISCAL NOTE FOR PROPOSED RULES

Rule Title: ASBESTOS ABATEMENT LICENSING RULE

FILED

SEP 25 PM 2:16

Type of Rule: Legislative Interpretive

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.

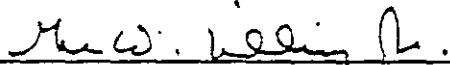
License fees, ranging from \$50 to \$300 must be paid by contractors and individuals involved in asbestos abatement. State and county employees are not exempt from licensure. Facilities presently operating under federal OSHA standards on owned premises are exempt from the requirements of this rule.

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

DATE: January 2, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: DIVISION OF HEALTH

LEGISLATIVE RULE TITLE: ASBESTOS ABATEMENT LICENSING RULE

1. Authorizing statute(s) citation W.Va. Code §16-32-3

2. a. Date filed in State Register with Notice of Hearing:
August 25, 1989 (Comment Period)

b. What other notice, including advertising, did you give of the hearing?

Notice and copies of the proposed rule were sent to various concerned agencies and groups, persons licensed under the emergency rule, and all persons who had expressed interest.

c. Date of hearing (s): Comment Period ended October 2, 1989

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

January 2, 1990

f. Name and phone number of agency person to contact for additional information:

Kay Howard 348-3223

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NOT APPLICABLE

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

WEST VIRGINIA DIVISION OF HEALTH
RULE ABSTRACT
1989

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 Filing With The
Legislative Rule-Making Review Committee

[PROPOSED]
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH

ASBESTOS ABATEMENT LICENSING RULE

64 CSR 63

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

FILED

SERIES 63
ASBESTOS ABATEMENT LICENSING RULE

1989 JAN -2 PM 3:15

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 serpentinite (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 on-site 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. Disposal sites shall be in conformance with applicable federal, state and local laws and regulations.

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 and presently subject to OSHA regulation 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

Proposed Rules
Public Comments Received
Discussion and Response

Title: Asbestos Abatement Licensing Rule, West Virginia Division
of Health Legislative Rules, 64 CSR 63

A public comment period regarding this rule ended October 2, 1989. Four comments were received (copies attached). Changes made to the rule following the public comment period are indicated by the underlining of text to be added.

(1) Comment: (Resilient Floor Covering Institute) - We believe that the Emergency Rule and Proposed Rule are unnecessarily overbroad and need to be revised and clarified as they apply to nonfriable ACM [asbestos containing material], such as resilient floor covering (floor tile and sheet vinyl flooring). RFCI believes that the Emergency and Proposed Rules should not impose the full panoply of asbestos licensing, regulation, and training requirements on traditional flooring craftsmen who remove or repair non-friable resilient flooring consistent with the industry recommended work practices. In order to comport with the intent of the statute pursuant to which it is promulgated, W. Va. Code §16-32-1 et seq., and the physical properties of non-friable ACM, we believe that the final Rule should recognize the distinction between friable and nonfriable ACM. Resilient floor tile and sheet vinyl flooring are nonfriable products and remain nonfriable when removed consistent with industry work practices. Thus, licensed asbestos abatement contractors and workers trained in asbestos abatement procedures are not needed to remove resilient flooring. Instead, traditional flooring craftsmen can remove such flooring in both a health protective and cost-effective manner. The Institute offered extensive additional discussion supporting this position. It furthermore requested that the emergency rules be amended consistent with all of its recommendations.

The Institute further stated that the costs of such a program would prohibit traditional flooring craftsmen from practicing their trade because of the prohibitive cost of licensure; and that it is inappropriate for the Division to support an asbestos program by "imposing substantial fees on persons who remove or repair resilient flooring consistent with the recommended work procedures."

Response: Concerns have recently been expressed regarding the licensing of contractors who remove asbestos containing floor coverings and mastics. Until recently, the Division of Health (hereinafter Division) had not required the licensing of these contractors if they did not deal with other forms of asbestos-containing materials.

The U.S. Environmental Protection Agency (EPA) considers asbestos-containing floor covering removal to require corrective

action if the materials become friable during removal, which usually occurs. This causes a fiber release to the indoor air and places the worker and public at risk.

Experience has shown that many floor tile removal projects are conducted without regard to maintaining the floor tile and adhesives in a nonfriable state. Improper removal affects indoor air quality and places both workers and the public at risk. Recent air sampling conducted on floor tile removal projects using transmission electron microscopy analysis has shown elevated fiber levels.

In view of these factors, the Division is now requiring all contractors who remove asbestos-containing floor coverings and mastics to obtain a West Virginia asbestos abatement license. Workers and supervisors must also be licensed. Persons already licensed are covered under their respective category.

The Division intends to consider the establishment of a special license category for those involved in abatement of non-friable materials and also the possible need for specialized training for those applying for the license.

(2) Comment: (Resilient Floor Covering Institute) - The Department of Health should clarify in the regulation preamble, or policy guidance that a flooring craftsman or contractor who installs a new floor covering over the top of an existing resilient floor covering structure (e.g., floor tile or sheet vinyl) which contains asbestos is not subject to the Rule (See also Comment #1).

Response: This issue will be addressed as part of the consideration of a special license category mentioned in the response to comment (1).

(3) Comment: §3.2. Asbestos

(WV Manufacturers Association) - The definition of asbestos should require that the substance be friable or have a reasonable probability of becoming friable in the course of ordinary or anticipated use. The Association believes that the purpose for the inclusion of the term "friable" in the asbestos licensure law was "to clarify that the substances of concern are those which are capable of being reduced to powder or becoming airborne and which thereby become a threat to human health or safety."

Response: The Division believes that the terms asbestos and friable should be defined separately as they are in the present rule. The definition of asbestos (W. Va. Code §16-32-2) was included to define the material and not to categorize the materials as to its degree of friability or to its potential to become a threat to human health.

(Ohio Valley Council of Sheet Metal Workers) - The word

weight should be changed to content.

Response: The definition used is taken from W. Va. Code §16-32-2(a).

(4) Comment: §3.3. Asbestos Abatement (Resilient Floor Covering Institute) - We recommend that the definition of asbestos abatement be revised to apply only to friable ACM. In the alternative, a new definition of "asbestos containing material" could be added which would include only material containing friable asbestos. A third alternative would be to revise the definition of "repair" and include a new definition of "removal" so that both terms apply only to friable ACM.

Response: As mentioned in the response to comment (1), the abatement of nonfriable materials, such as floor tile, may place both workers and the public at risk if the materials are allowed to become friable during removal. The Division therefore believes that the existing definitions should stand.

(5) Comment: §3.5. Asbestos Abatement Supervisor (Ohio Valley Council of Sheet Metal Workers) - Should be amended to indicate that it is mandatory for at least one licensed supervisor be present at all times on any asbestos removal project.

Response: The Division agrees with this concern, but believes that it would be better addressed as an amendment to §5.1.2 of licensed contractor duties.

Proposed: §5.1.2. Ensure that each asbestos project is supervised on-site by a licensed asbestos abatement supervisor;

(6) Comment: §3.6. Asbestos-Containing Material

(Ohio Valley Council of Sheet Metal Workers) - The word weight should be changed to content.

(WV Manufacturers Association) - The term "Asbestos Containing Material" is repetitive, and should be deleted or merged into the definition of asbestos.

Response: See response to comment (3) regarding the word weight. The terms asbestos and asbestos containing materials are not repetitive. It is important to include both terms since asbestos in a building does not usually exist as 100 percent asbestos but is instead included in some other nonasbestos material in various amounts.

(7) Comment: §3.13. Encapsulate (Ohio Valley Council of Sheet Metal Workers) - Remove the words any material and insert proper adhesive or bridging encapsulant designed specifically for prevention of fiber release. Remove last four words of definition as now stated.

Response: The Division believes that the present definition of encapsulate is more technically correct than the suggested definition. This definition is taken from W. Va. Code §16-32-1(1).

(8) Comment: §3.16. Friable (Resilient Floor Covering Institute) - A clarifying revision should be made to the definition of "friable" asbestos to make it consistent with the EPA definition. The definition of "friable" should identify resilient floor tile and sheet vinyl flooring as nonfriable.

Response: This definition is from W. Va. Code §16-32-2(n).

(9) Comment: §3.19. Owned Premises (Ohio Valley Council of Sheet Metal Workers) - Remove this section completely. Because this definition is used only in §64-63-7.2 under exemptions from notifications and licensing and in effect destroys the whole intent and purpose of Asbestos Abatement Licensing Rules as stated in Title 64, Series 63. This also indicates the lack of addressing the entities covered by this entire rule, by in fact addressing one particular sector of the population. The A.H.E.R.A. Act specifies schools. Many other states specify schools and public buildings, while others address schools and private and public buildings. The great State of West Virginia needs to specify schools, private and public buildings.

Response: In conformance with W. Va. Code §16-32-11, the present licensing and notification requirements apply to all asbestos abatement work except that work being done in facilities operating under OSHA standards for removing and handling asbestos on owned premises. The purpose of this section was to exempt industry abatement work being done in-house by company employees. Private contractors working for industry are not exempt. There is no need to specify that individuals involved in asbestos abatement projects in schools and public buildings are subject to licensure requirements since these facilities are not covered by OSHA and are therefore subject to licensure requirements. Private buildings may or may not be subject to licensure requirements depending on whether or not the facility is covered by OSHA and on who is doing the abatement work.

(10) Comment: §3.20. Person (Ohio Valley Council of Sheet Metal Workers) - Add: That applies to the State for licensing in one of the six categories of licensing.

Response: The term person may at times be used for purposes other than referring to a license applicant. Therefore, the suggested definition for person is inappropriate.

(11) Comment: (WV Manufacturing Association) - The WVMA urges that the following definition be added to the regulations: "Facilities presently operating under OSHA standards - means any facility at which the operations are covered by the regulations governing employee exposure to asbestos in the workplace. These

regulations are found at 29 C.F.R. §1910.1001 and §1926.58.

Response: The Division agrees that clarification is needed, but proposes an amendment of §7.2. See comment (18).

(12) Comment: §64-64-4. (Ohio Valley Council of Sheet Metal Workers) - Under the final Rule of the A.H.E.R.A. Act published by the E.P.A. on October 30, 1987- Subject: Asbestos in Schools Section V "E.P.A. now requires states to adopt at a minimum, a "Model Accreditation" Plan to certify asbestos workers, inspectors, project designers, supervisors, management planners and contractors who will be doing work in schools." (The Council provided a listing of training courses and also stated that a one day refresher course is required for annual renewal of all licenses.) In most states, they have required more than the stated minimum above.

Response: An applicant for licensure must submit proof of passage of an EPA approved training course or refresher course. The Division has notified EPA of its intent to begin a state accreditation program for training courses as soon as an appropriate rule can be developed and put into effect. The proposed state accreditation program will be at least as stringent as the EPA model accreditation program.

(13) Comment: §§4.1.1.1., 4.1.2. and 4.2.1.: (WV Manufacturers Association) - These sections should be amended to add approval of a course which complies with the OSHA requirements contained in 29 C.F.R. 126.58(k)(3) or 29 C.F.R. 1910.1001(j)(5).

Response: Although OSHA does not conduct or approve asbestos training courses, all EPA approved courses cover OSHA requirements. Courses which may later be approved by the State of West Virginia will also cover OSHA requirements.

(14) Comment: §4.1.4. (WV Manufacturers Association) - The proposed rules provide that licenses expire one year after issuance. This is an exceedingly brief period of time. Even considering the yearly renewal application procedures of Section 64-63-4.2, the annual licensing requirements are unnecessarily burdensome and will result in excessive paperwork. The WVMA urges that licenses should remain effective for a longer period of time, perhaps a five (5) year period.

Response: Due to the rapidly changing technology in the asbestos abatement field and due to the EPA requirements of annual refresher courses, the Division intends to continue to issue licenses annually. Additionally, W. Va. Code §16-32-10 authorizes the use of fees to support the Division's asbestos abatement program and was, in fact, designed to create a self-supporting program.

(15) Comment: §4.1.1.6. (Ohio Valley Council of Sheet

Metal Workers) - This section is contradictory as it requires a license to get a license.

Response: W. Va. Code §16-32-4(b)(1) sets the possession of a valid asbestos inspector's license as a precondition for an asbestos management planner's license. The Division may at a later time consider the possibility of issuing a dual license or some other mechanism to ensure the appropriate training.

(16) Comment: §5.1.4.4. (Ohio Valley Council of Sheet Metal Workers) - Insert the words "E.P.A. Approved" after the word "each".

Response: Disposal sites in West Virginia are approved by the West Virginia Department of Natural Resources rather than by EPA. The Division agrees, however, that contractors should be required to use lawful disposal sites.

Proposed: §5.1.4.4. The name and address of each asbestos disposal site where waste containing asbestos was deposited and the disposal site receipts. Disposal sites shall be in conformance with applicable federal, state and local laws and regulations.

(17) Comment: §64-63-6. Training Accreditation

(Ohio Valley Council of Sheet Metal Workers) - This section is totally insufficient. The training requirements for training providers must be accredited by the great State of West Virginia, and training should be provided here. Process of application for each category of training being applied for by the provider to receive accreditation by the State.

(WV Manufacturing Association) - This section should state that all training courses offered prior to July 1, 1989, and thereafter, which comply with the OSHA requirements of 29 C.F.R. shall be deemed acceptable for licensure of graduates and as training courses in West Virginia.

Response: See response to comments (12) and (13).

(18) Comment: §7.2.

(Ohio Valley Council of Sheet Metal Workers) - Remove this section entirely as it serves no practical purpose but to endanger innocent people in the great State of West Virginia by not requiring licenses the same as others only because of "owned premises" wording.

(WV Manufacturing Association) - The proposed regulations fail to define what constitutes an "owned premises" under the Act. The term is not used in the federal Occupational Safety and Health Administration [OSHA] Regulations. For this reason, the WVMC urges the Division of Health to adopt language for the pro-

posed regulations which would apply the exception to both owned and leased places of business. This construction of the "owned premises" provision is consistent with both the provisions and spirit of the Act.

(WV Manufacturing Association & Resilient Floor Covering Institute) - The Regulations should define the term "facilities presently operating under OSHA standards". Both the Act and the proposed rules use the phrase "facilities presently operating under OSHA standards" without further clarification of the meaning of the phrase. However, the legislative intent underlying this term was to exempt from licensing requirements certain operators who were already covered by OSHA regulations regarding the handling of asbestos by employees. Clarification should include flooring dealers or contractors who remove a resilient floor covering structure which contains asbestos in compliance with OSHA standards.

Response: The Division does not agree that innocent people are endangered due to the exempting of industry workers from the licensing law. Training and safety requirements for industry workers regulated by OSHA usually meet or exceed those of non-OSHA regulated workers. Leased properties deserve further study. However, it is felt that the inclusion of leased properties into the definition of owned premises may complicate rather than clarify the issue depending upon what types of legal arrangements are in place between the lessor and lessee. The Division does agree that §7.2 could be reworded to clarify that the facilities in question must be subject to OSHA regulations rather than just operating under OSHA standards. See also response to comment (9).

Proposed: §7.2. Facilities presently operating under OSHA standards and presently subject to OSHA regulation for removing and handling asbestos on owned premises, shall be exempt from licensure.

(19) Comment: §8.5. (Ohio Valley Council of Sheet Metal Workers) - Add 29 CFR 1910.134.

Response: The Division does not believe that 29 CFR 1910.134, which deals with respiratory protection, needs to be included since 29 CFR 1926.58 makes reference to 29 CFR 1910.134.

(20) Comment: §64-63-9. (Ohio Valley Council of Sheet Metal Workers - This section infers mandatory fines for violation of a cease and desist order. The original intent of this section was to include these fines as mandatory for individuals found to be actively doing any form of asbestos related work, but not possessing a license required by the great State of West Virginia.

Response: A cease and desist order may be issued for a license violation or for a violation of any of the Federal standards referenced in §64-63-8, since a licensed person is required

to comply with these standards. A violator of a cease and desist order would be subject to fine no matter what the nature of the violation which prompted the order.

(21) Comment: Fees (Table 64-63A)

(Ohio Valley Council of Sheet Metal Workers) - We feel that the Asbestos Worker would be in most cases the lowest paid of the six categories and we feel that the fee schedule for the worker is high at \$50 and should be dropped to \$25 annually.

(Upshur County Schools) - The Upshur County Board of Education has secured proper training for several of its employees to perform these services only for the school system. It is our point of view that the licensing fees assessed for the certification of such employees of a public agency are exorbitant. It does, however, seem inappropriate that one public agency charges fees of this magnitude for the licensing of employees of another public agency. We would appreciate your consideration of exempting public schools from these licensing fees or, in the event that a total exemption is not possible, considering reducing the amount of the fees to a more reasonable amount.

Response: The West Virginia Code §16-32-2 did not exempt public employees, state or county, from licensure requirements or from the payment of fees. The State Attorney General's office has advised that public employees are not exempt under the present law. The Division considers that the \$50 worker fee is adequate based upon studies which were conducted on the current rate structure. As discussed earlier, the only source of income for the Division's Asbestos Abatement Licensing Program is licensure fees. The program incurs costs in issuing licenses and in conducting field services, the majority of which are conducted in schools. The concept of public agencies billing each other for services provided is well established. Schools are not required to obtain contractor licenses.

Therefore, to exempt a large group, such as public employees, could seriously jeopardize the Division of Health's ability to comply with its legislative mandate. It is also well to note that many of the program's efforts are aimed at schools since most of the federal asbestos legislation deals with schools.

Comments Received Concerning
Proposed Amendments to
Asbestos Abatement Licensing Rule
August 28 - October 2, 1989

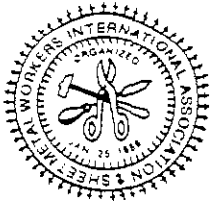
Walter D. Anderson, Managing Director
Resilient Floor Covering Institute

Robert L. Foster, Chairman
Environmental Control Committee
W. Va. Manufacturers Association

Lynn E. Westfall, Superintendent
Upshur County Schools (cc: Gary Williams)

David J. Williams, Exec. Secretary
Ohio Valley Council of Sheet Metal Workers

OHIO VALLEY COUNCIL OF SHEET METAL WORKERS



ALBERT O. LARSON
President
3666 Carnegie Avenue
Cleveland, Ohio 44115
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GARY R. PAXTON
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4949 Northcutt Place
Dayton, Ohio 45414
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October 2, 1989

DAVID J. WILLIAMS
Executive Secretary
2362 South Avenue
Toledo, Ohio 43609
(419) 382-4808

Ms. Kay Howard
Division of Health
Capitol Complex
Charleston, West Va. 25305

Dear Ms. Howard:

I am writing these comments in regards to the emergency rules which were passed by the great State of West Virginia regarding Asbestos Abatement.

First I would like to state that we feel the emergency rules that were passed are very weak in content and could prove detrimental to the health of the citizens of the great state of West Virginia, especially for those working in or attending schools within the State.

The most important change that our organization would like to see implemented is to require a photo I.D. for all license holders in all categories of Asbestos Abatement. The photo I.D. being an original part of the first set of proposed Rules.

The following comments are in regard to the proposed emergency rules for Asbestos Abatement Licensing:

DEFINITIONS

1. S64-63-3.1

Asbestos - The word weight should be changed to content.

2. S64-63-3.4

Asbestos Abatement Supervisor - Should be amended to indicate that it is mandatory for at least one licensed

supervisor be present at all times on any asbestos removal project.

3. S64-63-3.5

Asbestos Containing Material - The word weight should be changed to content.

4. S64-63-3.13

Encapsulate - Remove the words any material and insert proper adhesive or bridging encapsulant designed specifically for prevention of fiber release. Remove last four words of definition as now stated.

5. S64-63-3.19

Owned Premises - Remove this section completely.

Because this definition is used only in S-64-63-7.2 under exemptions from notifications and licensing and in effect destroys the whole intent and purpose of Asbestos Abatement Licensing Rules as stated in Title 64, Series 63. This also indicates the lack of addressing the entities covered by this entire rule, by in fact addressing one particular sector of the population. The A.H.E.R.A. Act specifies schools. Many other states specify schools and public buildings, while others address schools and private and public buildings. The great State of West Virginia needs to specify schools, private and public buildings.

6. S64-63-3.20

Person - Add: That applies to the State for licensing in one of the six categories of licensing.

7. S64-63-4

Comment on Licensing - Under the final Rule of the A.H.E.R.A. Act published by the E.P.A. on October 30, 1987- Subject: Asbestos in Schools Section V "E.P.A. now requires states to adopt at a minimum, a "Model Accreditation" Plan to certify asbestos workers, inspectors, project designers, supervisors, management planners and contractors who will be doing work in schools."

The following is a list of training courses for each category:

Asbestos Worker	3 days
Asbestos Inspector	3 days
Asbestos Project Designer	3 days
Asbestos Supervisor	4 days
Asbestos Management Planner	5 days (Inspectors course plus 2 days)
Asbestos Contractor	4 days

Also, a one day refresher course is required for annual renewal of all licenses. In most states, they have required more training than the stated minimum listed above.

8. S64-63-4.1.1.6

This section is contradictory as it requires a license to get a license.

9. S64-63-5.1.4.4

Insert the words "E.P.A. Approved" after the word "each".

10. S64-63.6

This section is totally insufficient. The training requirements for training providers must be accredited by the great State of West Virginia, and training should be provided here. Process of application for each category of training being applied for by the provider to receive accreditation by the State.

11. S64-63-7.2

Remove this section entirely as it serves no practical purpose but to endanger innocent people in the great State of West Virginia by not requiring licenses the same as others only because of "owned premises" wording.

12. S64-63-8.5

Add 29-CFR 1910.134

13. 64-63-9

This section infers mandatory fines for violation of a cease and desist order. The original intent of this section was to include these fines as mandatory, for individuals found to be actively doing any form of asbestos related work, but not possessing a license required by the great State of West Virginia.

Ms. Kay Howard
October 2, 1989

Page 4

14. S64-63A

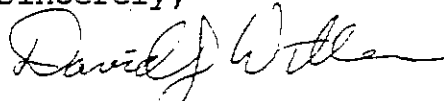
We feel that the Asbestos Worker would be in most cases the lowest paid of the six categories and we feel that the fee schedule for the worker is high at \$50 and should be dropped to \$25 annually.

The Ohio Valley Council of Sheet Metal Workers feels that these suggestions should be given special consideration by the Department of Health and the great State of West Virginia. These suggestions not only benefit those working within the public and private sector, but also the thousands of students attending schools as well as the general public. It would also set a precedence for all future legislation proposed to the Asbestos Abatement Rules and Regulations set down by the great State of West Virginia.

Thank you for your consideration of these comments, and I would like to be notified of any hearings, or changes in rules pertaining to the Abestos Abatement Removal Industry.

If you have any questions regarding our comments, please do not hesitate to contact me at the above number.

Sincerely,



David J. Williams
Executive Secretary

DJW:mha

RESILIENT FLOOR COVERING INSTITUTE

966 Hungerford Drive • Suite 12-B
Rockville, MD 20850
301 340 8580

September 30, 1989

Regulatory Development Section
Attn: Ms. Kay Howard
Division of Health
Department of Health and Human Services
Capitol Complex-Bldg. 3, Room 507
Charleston, West Virginia 25305

Dear Ms. Howard:

The Resilient Floor Covering Institute ("RFCI") appreciates the opportunity to submit these comments on the proposed West Virginia, Department of Health and Human Services, Asbestos Abatement Licensing Rules, 64 C.S.R. 63 (the "Proposed Rule"), which, when promulgated in final form, would supplant the Emergency Asbestos Abatement Licensing Rule, 64 C.S.R. 63 (1989) ("Emergency Rule"). We have been informed by the Department of Health and Human Services ("Department") that comments on the Proposed Rule would be accepted through October 2, 1989.

RFCI is a trade association of resilient floor covering producers in the United States who are currently engaged in the manufacture of tile and sheet vinyl products for residential and commercial installation. A list of RFCI member companies is attached as Appendix A.

The Emergency Rule currently in effect requires that any asbestos-containing material ("ACM"), whether friable or nonfriable, be removed by asbestos contractors and workers licensed by the state. The Proposed Rule would impose similar requirements on contractors and workers engaged in activities involving both friable and nonfriable ACM. Thus, the Emergency and Proposed Rule prohibit traditional flooring craftsmen from removing and repairing resilient flooring unless they obtain an asbestos Contractor or worker license and take a four-day training course in asbestos abatement procedures.

We believe that the Emergency Rule and Proposed Rule are unnecessarily overbroad and need to be revised and clarified as they apply to nonfriable ACM, such as resilient floor covering (floor tile and sheet vinyl flooring). RFCI believes that the Emergency and Proposed Rules should not impose the full panoply of asbestos licensing, regulation, and training requirements on traditional flooring craftsmen who remove or repair non-friable

Successor To
Resilient Tile Institute

resilient flooring consistent with the industry recommended work practices. In order to comport with the intent of the statute pursuant to which it is promulgated, W.Va. Code § 16-32-1 et. seq., and the physical properties of nonfriable ACM, we believe that the final Rule should recognize the distinction between friable and nonfriable ACM. Resilient floor tile and sheet vinyl flooring are nonfriable products and remain nonfriable when removed consistent with industry work practices. Thus, licensed asbestos abatement contractors and workers trained in asbestos abatement procedures are not needed to remove resilient flooring. Instead, traditional flooring craftsmen can remove such flooring in both a health protective and cost-effective manner.

Resilient floor tile and sheet vinyl flooring are "nonfriable" because the physical properties of these products defy their being crumbled, pulverized or reduced to powder by hand pressure.^{1/} The nonfriable characteristics of these products result from their manufacturing process. These products were manufactured so that any asbestos fibers were firmly encapsulated by a thermoplastic binder in the product. Furthermore, the mere chipping or breakage of a product, for example, does not cause the product to become friable because the broken pieces also cannot be reduced to powder by hand pressure.

Federal agencies and advisory committees also have consistently and properly taken the position that asbestos-containing resilient flooring products are nonfriable. For example, EPA described resilient tile and sheet vinyl flooring as not being friable in its final ACM in school regulation which became effective on December 14, 1987.^{2/} Similarly, OSHA, in an appendix to its asbestos standard, states that "[m]aterials such as vinyl-asbestos floor tile . . . are considered nonfriable and generally do not emit airborne fibers unless subjected to sanding" 51 Fed. Reg. 22612, 22754 (June 20, 1986). Likewise, the General Service Administration ("GSA") in October, 1986, wrote that "[a]sbestos is still used in its nonfriable form (which means

^{1/} EPA, in its National Emission Standard for Asbestos, has defined "friable" to mean any "material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry." 40 C.F.R. § 61.141.

^{2/} The EPA preamble to this rule describes "nonfriable ACM" to include floor tile, 52 Fed. Reg. 41826, 41845 (Oct. 30, 1987), and describes "miscellaneous ACM" to include vinyl flooring. Id. at 41830. A recent EPA Guidance Document states that "most ACM in this [other miscellaneous] category (e.g., wall board, ceiling tile, floor tile) is hard and nonfriable." EPA, "Guidance for Controlling Asbestos-Containing Materials in Buildings" (June 1985) at 2-8.

it doesn't crumble easily) in building products and materials ranging from floor tiles to roofing shingles." GSA Answers Your Asbestos Concerns (Oct. 1986).^{3/} Thus, there is a clear consensus among federal governmental bodies that resilient flooring products in normal condition are nonfriable.

By applying to nonfriable ACM, the Emergency Rule and Proposed Rule also are significantly broader than EPA's asbestos in school program where accredited personnel are required to conduct a "response action" which is limited to removals only involving friable ACM. See 40 C.F.R. §§ 763.83, .90(g). Similarly, the EPA National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos applies only to renovations and demolitions of friable asbestos materials. 40 C.F.R. § 61.145. Likewise, many states, including Arkansas, California, Colorado, Louisiana, and Ohio, limit their asbestos licensing programs to abatement projects involving friable ACM and/or specifically exempt resilient flooring removals. In essence, the "friable only" approaches continue to reflect EPA's judgment in 1974 that nonfriable activities "will not release asbestos in a manner which is dangerous to human health." EPA 450/2-74-009a, at 16 (October, 1974).

Importantly, the resilient flooring industry has developed a defined set of work practices for the removal of resilient flooring, which prohibit sanding, whereby the flooring remains nonfriable during removal. A copy of these work practices is enclosed herewith as Appendix B. These work practices have been expressly recognized by OSHA as minimizing asbestos exposure and satisfying OSHA asbestos exposure limits. For example, during the development of the OSHA asbestos standard, the Agency reviewed studies involving the removal of floor tile and sheet vinyl flooring using the recommended work practices. Based on these

^{3/} Statements by other government agencies and advisory committees include:

" . . . Nonfriable materials, including asbestos-cement (A-C) pipe A-C sheets, Resilient Floor Coverings, and Roofing Felts . . ." HQ USAF Bolling AFB DC Jul 81 Policy on the Use of Building Materials Containing Asbestos.

"The majority . . . of asbestos used in construction materials is considered nonfriable -- immobilized in strong binding materials, such as cement or tiles, which do not readily release asbestos fibers to the air." J.H. Paull, Division of Environmental Health Engineering, School of Hygiene and Public Health, the Johns Hopkins Univ. "GAO Asbestos Control Management Document," January 15, 1985.

studies, the Agency cited these recommended work practices as the basis upon which "OSHA determined that it is feasible to comply with the 0.2 f/cc PEL during the removal and installation of vinyl-asbestos flooring." 51 Fed. Reg. 22612, 22663 (June 20, 1986). OSHA recently reaffirmed its review of these studies in the preamble to the OSHA standard amendment establishing a short-term excursion limit of 1 f/cc average over 30 minutes. The Agency stated that "there appears to be virtually no possibility that the excursion limit [during removals] would be exceeded if the recommendations of the Resilient Floor Covering Institute were followed." 53 Fed. Reg. 35610, 35614 (Sep. 14, 1988).

In view of the above, there is no necessity for applying the full panoply of asbestos abatement registration, licensing, and training requirements upon traditional flooring craftsmen working with nonfriable ACM.

Moreover, the additional costs of such an overbroad regulatory program are significant and inappropriate, especially considering there is not a need for full asbestos abatement procedures for resilient flooring removals performed consistent with the recommended work practices. For instance, the great number of homeowners, commercial building owners, and public housing owners, including the State of West Virginia, are incurring and will incur significantly greater costs because the Proposed Rule would require the exclusive use of more expensive, licensed asbestos abatement contractors to remove resilient flooring, while excluding traditional flooring craftsmen from this activity. Other economic costs for the replacement of resilient floor covering will also increase significantly. The flooring craftsmen of West Virginia would be unfairly prevented from practicing their trade because the costs of obtaining an asbestos abatement license and more costly asbestos abatement insurance (if even available) may be prohibitive. Indeed, the licensing provisions and the significant cost of complying therewith are particularly unnecessary and inappropriate because the EPA-approved four day training course required for the license principally focuses on full asbestos abatement procedures involving friable ACM (e.g., decontamination units, negative pressure enclosures, isolated showers, and other specialized procedures). However, none of those asbestos abatement procedures are intended to apply to activities where the OSHA asbestos exposure standard is not expected to be exceeded (e.g., where resilient flooring is removed consistent with industry work practices). As explained above, OSHA has recognized that the use of the recommend work procedures will not result in asbestos exposure exceeding the permissible exposure limit and excursion limit under the current asbestos standard.

RFCI further believes that it is inappropriate for the Department to generate revenues for operating the West Virginia

asbestos program by imposing substantial fees on persons who remove or repair resilient flooring consistent with the recommended work procedures. These craftsmen and their customers should not have to bear the burden of paying for the state's asbestos program.

In addition to the great deal of money the traditional flooring craftsmen would have to spend in order to qualify as asbestos abatement contractors in order to continue their craft in West Virginia, unless the Proposed Rule is revised, the licensing requirement also will exacerbate the shortage of accredited asbestos removal contractors in the United States by requiring them in situations where full abatement procedures are not needed, see EPA Study of Asbestos-Containing Materials in Public Buildings (February 1988), while at the same time unfairly preventing the traditional floor craftsmen from practicing their trade.

Overall, RFCI strongly believes that the best interests of housing and building owners and occupants, workers, and the public will be served if flooring contractors and workers who repair and remove resilient flooring consistent with the recommended work practices are not subject to asbestos licensing and training requirements. Flooring craftsmen would still be subject to the requirements of the OSHA asbestos standard and the NESHAP asbestos standard. Thus, RFCI requests that the Emergency Rule and the Proposed Rule be revised to apply only to abatement projects involving friable ACM. Alternatively, we recommend that the Emergency and Proposed Rule specifically except contractors and workers who remove resilient flooring using procedures that do not render the flooring friable.

Consistent with these comments, we recommend that the definition of "asbestos abatement" in § 64-63-3.2 be revised to apply only to friable ACM. In the alternative, a new definition of "asbestos containing material" could be added which would include only material containing friable asbestos. A third alternative would be to revise the definition of "repair" and include a new definition of "removal" so that both terms apply only to friable ACM.

The terms "asbestos abatement", "repair", and "removal", are not defined in the West Virginia Asbestos Licensing Statute. However, the statute defines "enclosure" only to apply to friable ACM. W.Va. Code § 16-32-2(m). Our proposed alternative definitions would be consistent with the legislature's and Department's limitation of the term "enclosure" to friable ACM. Moreover, by the statute not defining "asbestos abatement", "repair", and "removal", the Legislature did not prohibit the Department from limiting those terms to friable ACM and, indeed, have strongly indicated through the definition of "enclosure" that those terms should be so limited. By limiting the asbestos

licensing requirements to friable ACM projects, the West Virginia regulations would be consistent with the EPA asbestos-in-school accreditation requirements and the licensing requirements of many other states which adequately protect human health.

A clarifying revision should also be made to the definition of "friable" asbestos to make it consistent with the EPA definition. EPA defines "friable asbestos material" as "any material containing more than 1 percent asbestos by weight that hand pressure can crumble, pulverize, or reduce to powder when dry." 40 C.F.R. § 61.141. We recommend, in order to avoid conflicts between West Virginia and the traditional federal definition, that the EPA definition be used in the final Rule. Moreover, even under the proposed "friable" definition, resilient floor tile and sheet vinyl flooring are not "friable" because these products, do not emit fibers "under normal use and maintenance." W. Va. Code § 16-32-2(n). Accordingly, to make it explicitly clear, the definition of "friable" should identify resilient floor tile and sheet vinyl flooring as nonfriable.

RFCI also requests that certain additional clarifications be made to the Proposed Rule. First, Section 64-63-7.2 of the Rule should be revised to clarify that when a flooring dealer or contractor, who is subject to federal OSHA standards, removes a resilient flooring covering structure (floor tile or sheet vinyl) which contains asbestos, in compliance with the Occupational Exposure to Asbestos Standard (29 C.F.R. § 1926.58), that activity is exempt from the notification and license provisions of the Rule. The underlying statute makes clear that the statutory exemption (Section 16-32-11) applies to both the notification and licensing requirements of the regulation and is not limited to the facility owner or its employee since it explicitly requires that the facility, which presumably means the workers working with the ACM, presently operate under the Federal OSHA Standard. However, the Proposed Rule is more narrowly stated. It should therefore be revised to make the exemption in the Rule consistent with the statute and exempt a flooring dealer or contractor who is subject to federal OSHA standards and in compliance with the Occupational Exposure Asbestos Standard.

Second, the Department of Health should clarify in the regulation, preamble, or policy guidance that a flooring craftsman or contractor who installs a new floor covering over the top of an existing resilient floor covering structure (e.g., floor tile or sheet vinyl) which contains asbestos is not subject to the Rule. Thus, a craftsman or contractor who "goes over the top" should not be required to obtain an asbestos contractor or worker license where: (1) a new floor covering is installed over existing asbestos-containing floor covering; (2) carpeting is installed over the existing floor covering; or (3) embossing or other leveling compound or wood substitute is applied to the existing

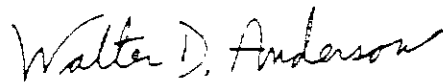
floor covering, and then the new resilient floor covering is installed.

Finally, these comments, while explicitly directed for the most part at the Proposed Rule, apply equally to the Emergency Rule. Thus, to the extent that the current Emergency Rule, or any provision thereof, is not supplanted or rescinded, or otherwise continues in effect, we recommend that the Emergency Rule be revised consistent with these comments on the Proposed Rule.

RFCI believes that our concerns explained above would enable the traditional flooring craftsmen to continue their business of removing resilient flooring in a health protective and cost effective manner without the need for an unnecessary asbestos license or permit. These changes would provide a significant cost savings to owners, including the State of West Virginia, residents, and the general public by allowing an appropriate alternative to more expensive asbestos abatement contractors.

If you have any questions about our comments, please do not hesitate to contact me or our legal counsel, William N. Hall (202) 466-1118. We also would like to meet with you and your staff to discuss our comments at your earliest convenience

Sincerely,



Walter D. Anderson
Managing Director

Enclosure

**RESILIENT
FLOOR
COVERING
INSTITUTE**

966 Hungerford Drive • Suite 12-B
Rockville, MD 20850
301 340 8580

APPENDIX A

January 1, 1988

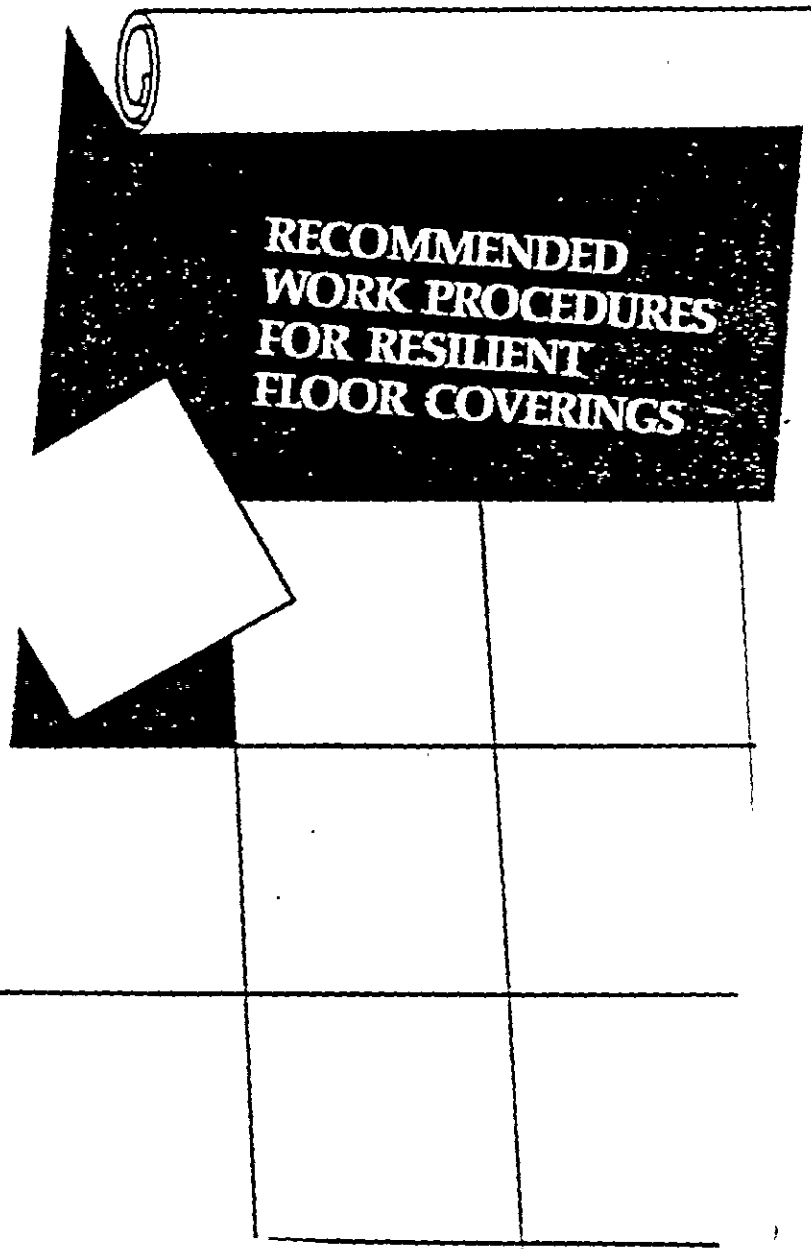
RESILIENT FLOOR COVERING INSTITUTE

MEMBERSHIP LIST

REGULAR MEMBERS

American Biltrite, Inc., Lawrenceville, NJ 08648
Azrock Industries Inc., San Antonio, TX 78265
Congoleum Corporation, Lawrenceville, NJ 08648
Kentile Floors, Inc., Brooklyn, NY 11215
Mannington Mills, Inc., Salem, NJ 08079
National Floor Products Co., Florence, AL 35630
Tarkett Inc., Parsippany, NJ 07054

APPENDIX B



Issued by
Resilient Floor Covering Institute
966 Hungerford Dr., Suite 12-B
Rockville, MD 20850

RFCI-WP-1983
Revised 1987

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RECOMMENDED WORK PROCEDURES FOR RESILIENT FLOOR COVERINGS



WARNING

Do Not Sand Existing Resilient Flooring, Backing, Or Lining Felt. These Products May Contain Asbestos Fibers That Are Not Readily Identifiable. Sanding Of Asbestos Containing Material Can Place Fine Particles Of Asbestos In The Air. These Asbestos Particles If Inhaled May Cause Serious Bodily Harm. Smoking Greatly Increases The Risk Of Serious Bodily Harm.

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Issued by
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Rockville, MD 20850

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IMPORTANT INFORMATION FOR INSTALLERS OF RESILIENT FLOOR COVERINGS

Introduction

The member companies of the Resilient Floor Covering Institute are manufacturers of the following forms of Resilient Floor Coverings:

1. Sheet Vinyl.
2. Vinyl Floor Tile.

While today these products do not contain asbestos, it is possible that in the past some of these products, including asphalt tile, may have contained asbestos fibers which were firmly encapsulated in the products to provide durability and adaptability.

The Resilient Floor Covering Institute is providing this booklet of recommended work practices for installing or removing resilient floors so that you may proceed with this work in the safest possible way.

There are several general rules to follow:

1. Unless absolutely positive beyond any doubt that the floor is a non-asbestos product, assume it contains asbestos and treat it in the manner prescribed in this pamphlet for a floor containing asbestos.
2. It is preferred to install a new floor over a floor which contains asbestos rather than to remove that floor. This can be done by several methods—new underlayment, use of leveling compounds, following installation procedures recommended by the floor covering manufacturer.
3. Never sand any resilient floor or its backing to remove them from the floor.
4. All sweeping must be done wet.
5. All scraping must be done wet.
6. Material removed must be placed in heavy-duty polyethylene bags at least 6 mils thick, properly labeled, and disposed of in an authorized land fill.

WHAT ABOUT ASBESTOS?

In the past decade much attention has been focused on the relationship between exposure to asbestos fibers and respiratory ailments. It has been determined that inhalation of free airborne asbestos fibers may be injurious to health. However, the asbestos fibers contained in the above types of resilient floor coverings are *not free*, but firmly encapsulated or *locked in* the product during the manufacturing process. Asbestos contained therein will not become airborne during the lifetime of the product when these products are used and maintained as recommended by the manufacturer.*

Recommended Work Procedures

PREPARATION OF FLOORS WITH EXISTING RESILIENT FLOOR COVERINGS TO RECEIVE NEW RESILIENT FLOOR COVERINGS

Follow the installation instructions published by the manufacturer of the new floor covering when a new resilient sheet or tile floor covering is to be installed on a surface presently covered with a resilient floor covering. These instructions will tell you what must be done to the existing surface before the new resilient floor covering can be installed.

Of the four general procedures listed below, Items 1 and 2 are covered by manufacturers' instructions; Items 3 and 4 are covered specifically in this Work Procedures Manual**:

Resilient Floor Covering Installed Over . . .

1. *The Existing Surface.* Follow the manufacturer's instructions for removing wax, filling in low spots, etc. Use wet scrubbing. Never sand an existing resilient floor covering.
2. *New Underlayment.* Install panels on top of the existing surface (wood subfloors only) and apply new floor covering directly over this. Follow the manufacturer's instructions.
3. *Partially Removed Existing Adhered Sheet Vinyl Floor Covering.* See instructions below under heading "Partial

*See "Monitoring for Airborne Asbestos From Vinyl Asbestos Floor Tile" and "Monitoring for Airborne Asbestos From Sheet Vinyl Floor Covering," report prepared by SRI International, 1975-79. Available on request from the Resilient Floor Covering Institute, 900 Hangar Road Dr. Suite 12-B, Rockville, Md 20850.

**In case of minor variations, the manufacturer's instructions should be followed.

Removal of Existing Adhered Sheet Vinyl Floor Covering," page 8.

4. *Completely Removed Existing Resilient Floor Covering*
 - (a) *Sheet Vinyl*—See instructions below:
 1. "Complete Removal of an Unadhered (Loose-Lay) or Peripherally Adhered Sheet Vinyl Floor Covering," page 6.
 2. "Complete Removal of an Existing Adhered Sheet Vinyl Floor Covering," page 11.
 - (b) *Tile*—See instructions under heading "Complete Removal of an Existing Resilient Tile Floor Covering," page 14.

SHEET VINYL FLOOR COVERING

Preparation of Floors With Existing Sheet Vinyl Floor Covering to Receive a New Resilient Floor Covering

Sheet vinyl floor covering is installed in several ways:

1. Unadhered or Loose-Lay.
2. Adhered or Cemented.
3. Peripherally adhered.

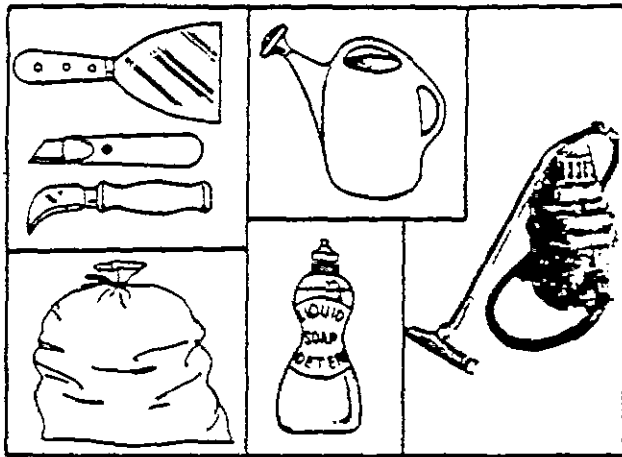
Some resilient floor covering can be installed over existing resilient sheet vinyl floor covering under certain conditions. Be sure to follow the floor covering manufacturer's instructions, regarding the conditions and floor preparation required.

If partial or complete removal of the existing sheet vinyl floor covering is required, the following instructions are to be followed:

Supplies and Tools (refer Sketch L)

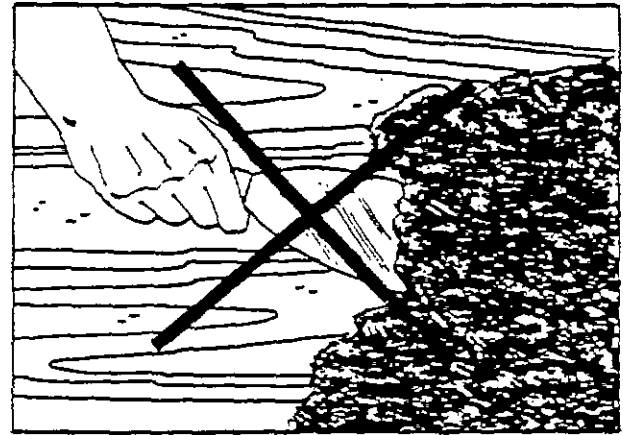
1. Broad, stiff-bladed wall scraper, or floor scraper
2. Utility or hook knife.
3. Tank type HEPA (High Efficiency Particulate Air) filter vacuum cleaner with disposable dust bag.
4. Large size heavy-duty impermeable trash bags (or closed impermeable containers) with ties, tapes, or string to tie shut, and tags for labeling.
5. Hand sprayer or sprinkling can.
6. Liquid dishwashing detergent or liquid wallpaper remover mixed with water to make a dilute solution (1 oz. liquid in one gallon of water).

Special Precautions (Continued)



 **WARNING**

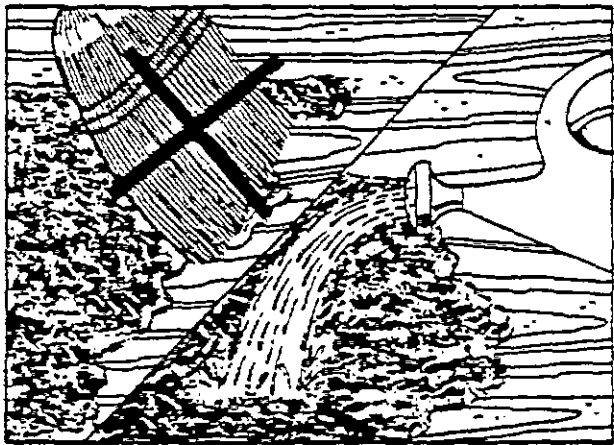
Sketch 1. Tools and supplies for sheet removal.




 **WARNING**

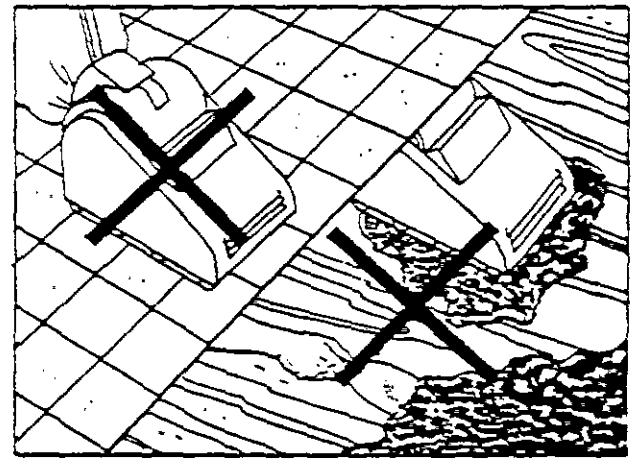
Sketch 3. Never dry scrape adhered areas of floor covering.

Special Precautions



 **WARNING**

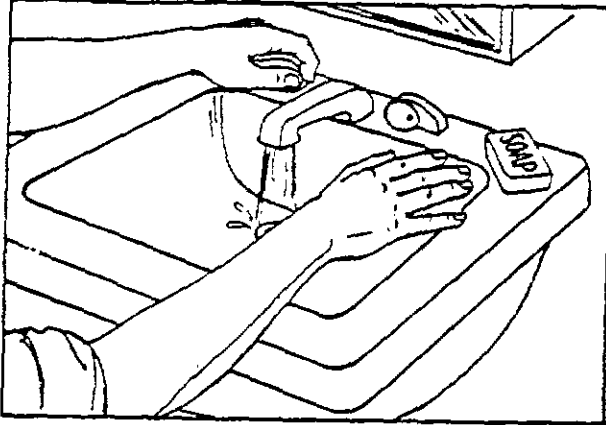
Sketch 2. Never dry sweep. If unavoidable, use water or other suppressants.



 **WARNING**

Sketch 4. Never sand an existing floor covering; nor sand or dry sweep residual.

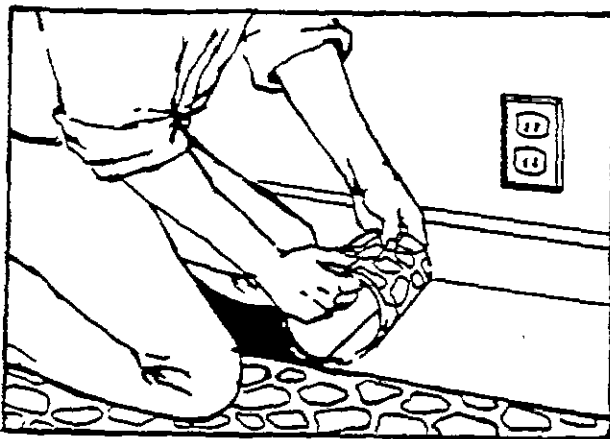
Special Precautions (Continued)



Sketch 5. Wash hands before eating and at the end of the work day.

Complete Removal of an Unadhered (Loose-Lay) or Peripherally Adhered Sheet Vinyl Floor Covering

- Remove any binding strips or other restrictive moldings from doorways, walls, etc.
- Cut a strip the length of the floor and about 18" wide along one wall. Remove this strip, gently turn it over and roll face out into a tight roll (see Sketch 6). Tie or tape securely so it will not unroll. Place

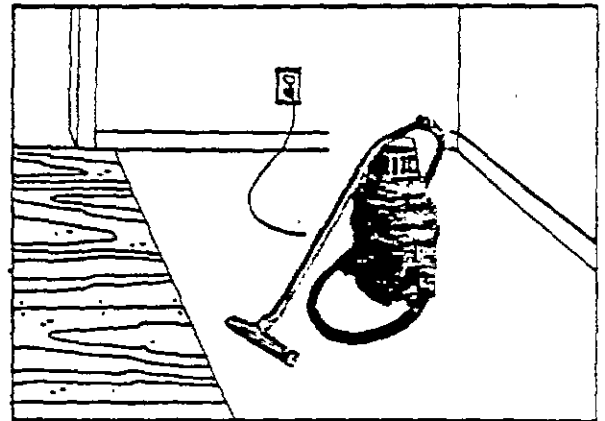


Sketch 6. When removing cut strips, roll face out into a tight roll.

6

it in a heavy-duty impermeable trash bag, or closed impermeable container big enough to accommodate several rolls, for disposal.

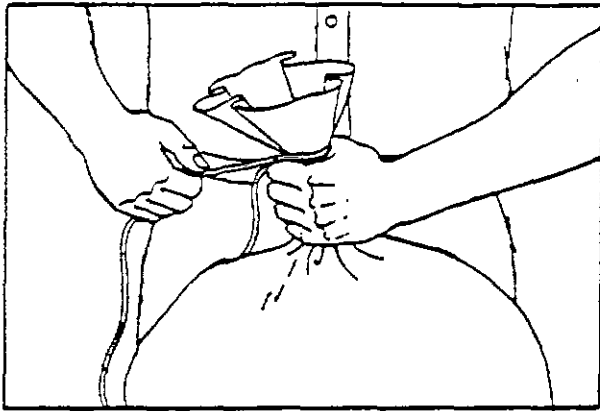
- Clean the exposed floor with a vacuum cleaner positioned so that exhaust air does not blow over the unclean area (see Sketch 7). **DO NOT DRY SWEEP. IF UNAVOIDABLE, USE WATER OR OTHER DUST SUPPRESSANTS.**
- Repeat the above, cutting, removing, rolling, disposing of one strip at a time and cleaning the newly exposed area immediately until the whole floor covering has been removed and the whole floor vacuumed clean.



Sketch 7. Position vacuum so that exhaust air does not blow over unclean area. Do not create dust.

- If seams or door openings have been adhered with double faced tape, remove the tape and place in the heavy-duty impermeable trash bag or closed impermeable container.
- If any floor covering areas have been adhered with adhesive and remain stuck to the floor, they should be removed by the wet scraping method explained in page 10. **DO NOT DRY SCRAPE OR SAND.**
- Carefully remove the dust bag from the cleaner and place it in the trash bag.
- Close and seal the trash bags tightly for disposal (see Sketch 8). Identify contents with a label stating "Caution—Contains Asbestos—Dispose in an approved land fill only."

7



Sketch 8. Seal trash bags securely for disposal.

- i. Install the new resilient floor covering according to the manufacturer's instructions.

Partial Removal of Existing Adhered Sheet Vinyl Floor Covering

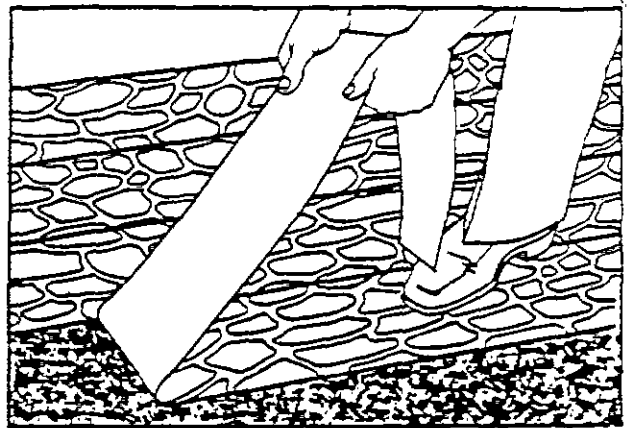
Most felt backed sheet floor coverings can be separated in the backing or felt layer. The felt left on the floor presents a smooth surface on which some new sheet floor coverings can be installed directly. Be sure to follow the manufacturer's instructions. Use the following procedure to partially remove the existing adhered floor covering.



Never Sand an Existing Floor Covering

- a. Remove any binding strips or other restrictive moldings from doorways, walls, etc.
- b. Make a series of parallel cuts 4 to 8 inches apart through the top layers and about halfway through the backing, parallel to the wall.
- c. Start at the end of the room farthest from the entrance door and pry up the corner of a strip, separating the backing layer. Pull the top layer back upon itself slowly and evenly at the angle that permits the best separation, and half the backing and the top layers will pull free (see Sketch 9). After

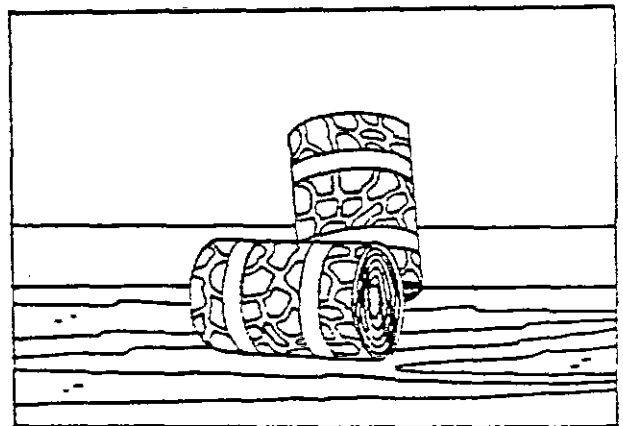
8



Sketch 9. Separating top layer from backing.

it is removed, roll up the strip face out into a tight roll. Tie or tape securely (see Sketch 10) and place in the heavy-duty impermeable trash bag or closed impermeable container for disposal.

- d. Each succeeding strip should be removed in the above manner. Avoid walking on the exposed felt as much as possible. Roll up each strip as it is removed and place it in the trash bag or closed container. Close full bags tightly and seal securely for



Sketch 10. Rolled up strips must be tied or taped securely.

9

disposal. Identify with a label stating, "Caution—contains asbestos. Dispose in an approved land fill only."

- e. Occasionally, parts of the top layers will stick to the backing. This can often be eliminated by peeling from the opposite direction. The stiff-bladed scraper will help in stubborn areas.
- f. Any high spots of felt on the floor can be levelled by wet scraping.

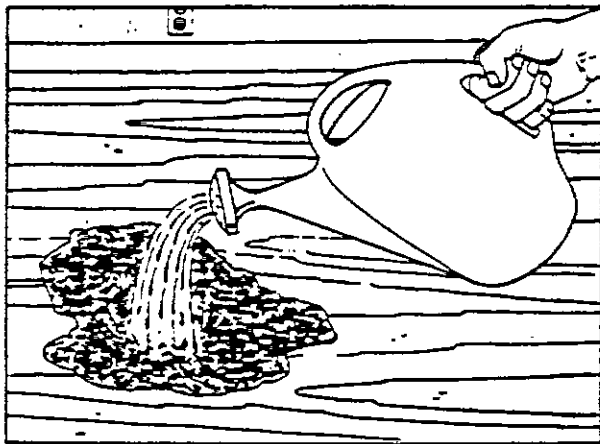


WARNING

Never Sand or Dry Scrape Residual Felt

Wet scraping is done as follows:

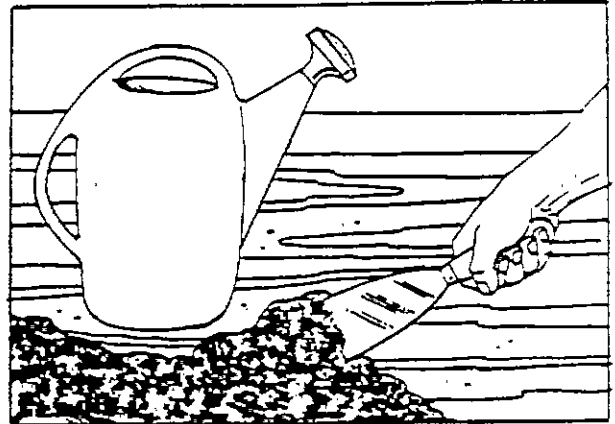
- 1. Pour the detergent solution into the sprayer or sprinkling can.
- 2. Thoroughly wet the high felt spot with this solution. Wait a few minutes to allow the solution to soak into the felt (see Sketch 11 below).



WARNING

Sketch 11. Do not dry scrape. Thoroughly wet dry felt before removal.

- 3. Use the stiff-bladed scraper to remove the excess felt (see Sketch 12). If felt dries out, or dry felt is exposed during scraping, re-wet with more solution.
- 4. Pick up the larger pieces by hand and place in the trash bag immediately.
- g. Non-adhered felt left on the floor can be cut open and re-adhered to the floor with adhesive.



Sketch 12. After wetting felt, use stiff-bladed scraper to remove.

- h. If small areas of backing pull free from the floor, the depression should be filled with latex patching compound, as recommended by the floor covering manufacturer. Patching compound *must* be troweled to finished smoothness since the area *cannot* be sanded later.
- i. Clean the floor with the vacuum cleaner using the metal floor tool. **DO NOT DRY SWEEP WITH A BROOM.** Position the vacuum cleaner so that discharge air does not blow on the felt. Carefully remove the dust bag from the cleaner immediately and place in a heavy-duty impermeable trash bag or closed impermeable container.
- j. Close and seal trash bags tightly for disposal. Identify contents with a label: "Caution—contains asbestos. Dispose in an approved land fill only."
- k. Do not walk over the felt unnecessarily, as this might scuff the felt and raise dust.
- l. Install the new resilient floor covering immediately, following the manufacturer's instructions.

Complete Removal of an Existing Adhered Sheet Vinyl Floor Covering

If complete removal is required, follow these instructions:

**WARNING****Never Sand an Existing Floor Covering**

- a. Remove any binding strips or other restrictive moldings from doorways, walls, etc.
- b. Make a series of parallel cuts 4 to 8 inches apart, parallel to a wall.
- c. Start at the end of the room farthest from the entrance door, pry up the corner of the first strip, separating the backing layer. Pull the top layer back upon itself slowly and evenly at an angle that permits the best separation, and most of the backing and top layers will pull free (see Sketch 9). Remove this strip, gently turn it over and roll face out into a tight roll. Tie or tape securely (see Sketch 10) and place in a heavy-duty impermeable trash bag or closed impermeable container for disposal.
- d. Repeat the above on the next two strips but do not remove anymore than a total of three strips at this time.
- e. Remove the felt remaining on the floor in the stripped area by *wet scraping*.

**WARNING****Never Sand or Dry Scrape Residual Felt**

Wet scraping is done as follows:

1. Pour the detergent solution into the sprayer or sprinkling can.
2. Thoroughly wet the residual felt with this solution. Wait a few minutes to allow the solution to soak into the felt (see Sketch 11).
3. Stand on the remaining floor covering (not the felt) and use the stiff-bladed scraper to scrape up the wet felt (see Sketch 13 below).

**WARNING****Do Not Scrape Dry Felt**

Re-wet the felt if it dries out or if dry felt is exposed during scraping. Pick up the scrapings as they are removed from the floor and place in a heavy-duty impermeable trash bag or closed impermeable container. Scrape *all* felt from this floor area before proceeding further.

12



Sketch 13. Stand on the remaining floor covering, not the felt, during felt removal.

4. Repeat the above on the next series of strips. Do only *one* three-strip area at a time. Stand on the remaining floor covering or clean floor (do not stand on the felt) to scrape up the felt.
5. Repeat this operation until the felt has been removed from the whole floor. Close full bags tightly, and seal securely for disposal. Identify with a label stating, "Caution—Contains Asbestos. Dispose in an approved land fill only."
- f. When the whole floor has been cleaned free of felt, let it dry and vacuum up any dirt using the vacuum cleaner with the metal floor tool. Stand only in vacuumed areas as you proceed across the floor.

**WARNING****Do Not Dry Sweep**

- Position the vacuum cleaner so that the discharge air does not blow on the floor being cleaned.
- g. Carefully remove the dust bag from the cleaner and place in a heavy-duty impermeable trash bag or closed impermeable container for later disposal.
 - h. When the floor is dry, it is ready to have a new resilient floor covering installed. Follow the floor covering manufacturer's instructions.

13

RESILIENT TILE FLOOR COVERING

Preparation of Floors With Existing Resilient Tiles to Receive New Resilient Floor Covering

Some resilient floor coverings can be installed over existing resilient tile installations. Follow the installation instructions published by the manufacturer of the new floor covering when a new resilient floor covering is to be installed on a surface presently covered with a resilient floor covering. These instructions will tell you what must be done to the existing surface before the new resilient floor covering can be installed.



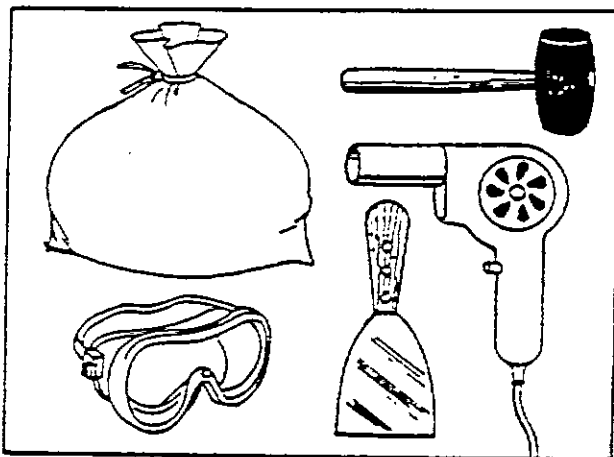
WARNING

Never Sand an Existing Tile Installation
(see Sketch 4)

Complete Removal of Existing Resilient Tile Floor Covering

Supplies and Tools (refer Sketch 14)

1. Heavy-duty wall scraper with approximately 4" blade and 6" to 8" handle.
2. Hammer.
3. Commercial type hand-held hot air blower.
4. Heavy-duty polyethylene bags at least 6 mils thick (or closed impermeable containers), ties, and labels.

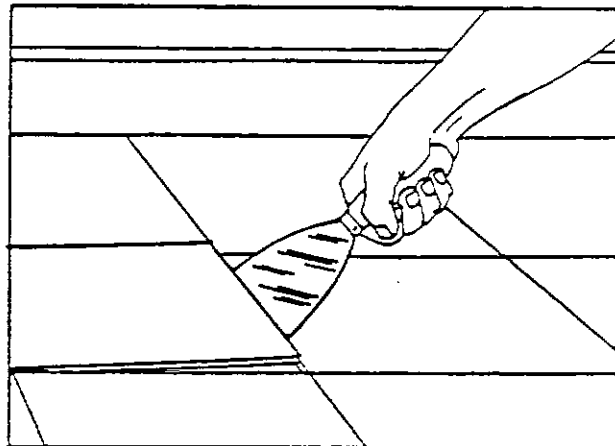


Sketch 14. Tools and supplies for tile removal.

14

Removal Procedure

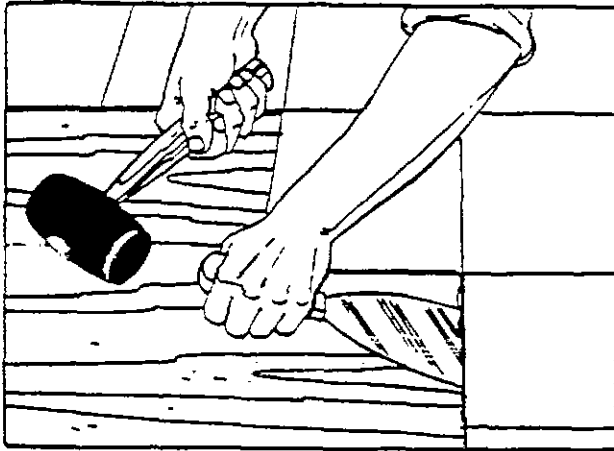
- a. Those areas normally exposed to heavy foot traffic patterns usually have tiles adhered the tightest. As a matter of good practice in starting the tile removal, those sections which receive least traffic should be the locations selected for starting the removal of the tile. Since tiles are normally in a 9" x 9" or 12" x 12" dimension, it should be the goal to remove individual tiles as a complete unit.



Sketch 15. Wedge the scraper in the seam of two adjoining tiles and gradually force tile upward.

- b. Start the removal by carefully wedging the wall scraper in the seam of two adjoining tiles and gradually forcing the edge of one of the tiles up and away from the floor (see Sketch 15). Do not break off pieces of the tile but continue to force the balance of the tile up by working the scraper beneath the tile and exerting both a forward pressure and a twisting action on the blade to promote release of the tile from the adhesive and the floor.
- c. When the first tile is removed place it, without breaking it into smaller pieces, in the heavy-duty impermeable trash bag or closed impermeable container which will be used for disposal.

15



Sketch 16. Difficult tile removal can often be accomplished by striking the scraper handle with a hammer or mallet as shown.

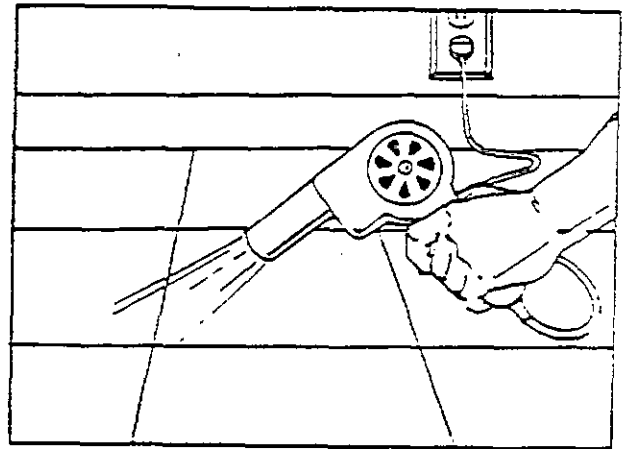
- d. With the removal of the first tile accessibility of the other tiles is improved. Force the wall scraper under the exposed edge of another tile and continue to exert a prying twisting force to the scraper as it is moved under the tile until the tile releases from the floor. Again, dispose of the tile, and succeeding tiles, by placing in the heavy-duty bag or closed container without additional breaking.
- e. Some tiles will release quite easily while others require varying degrees of force. Where the adhesive is spread heavily or is quite hard, it may prove easier to force the scraper through the tightly adhered areas by striking the scraper handle with a hammer using blows of moderate force while maintaining the scraper at a 25° to 30° angle to the floor (see Sketch 16). Caution: Use safety goggles.
- f. If some areas are encountered where even the technique detailed in the previous paragraph proves to be inadequate, the removal procedure can be simplified by thoroughly heating the tile(s) with a hot air blower until the heat penetrates through the tile and softens the adhesive.

16

NOTE 1: Handle the hot air blower, tiles, and adhesive carefully to avoid personal burns (see Sketch 17 below).

NOTE 2: Do not handle the heated tiles and adhesive without suitable glove protection for the hands.

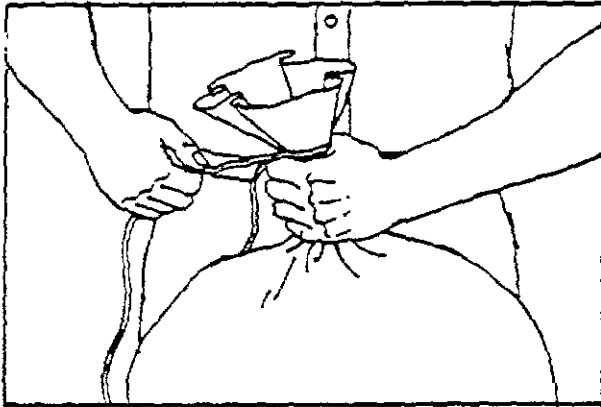
- g. As small areas of subfloor are cleared of tile, the adhesive remaining on the floor must be scraped up with the 4" hand scraper until only a thin, smooth film remains. In those areas where deposits are heavy or difficult to scrape, the removal can be expedited by heating with the hot air blower prior to scraping. Deposit scrapings in a heavy-duty impermeable trash bag or closed impermeable container.
- h. As indicated in previous paragraphs, tiles should be placed immediately in a heavy-duty impermeable trash bag or closed impermeable container. Do not attempt to break tiles after they are in the bag.



Sketch 17. In very difficult areas, using a hot air blower can simplify tile removal.

17

- i. When all tiles have been removed from the floor and placed in heavy-duty polyethylene bags at least 6 mils thick or closed containers, seal the bags securely for disposal (see Sketch 18 below) and mark: "Caution—Contains Asbestos—Dispose in an approved land fill only."



Sketch 18. Seal trash bags securely for disposal.



WARNING

Do Not Sand Existing Resilient Flooring, Backing, Or Lining Felt. These Products May Contain Asbestos Fibers That Are Not Readily Identifiable. Sanding Of Asbestos Containing Material Can Place Fine Particles Of Asbestos In The Air. These Asbestos Particles If Inhaled May Cause Serious Bodily Harm. Smoking Greatly Increases The Risk Of Serious Bodily Harm.

Upshur County Schools

102 SMITHFIELD STREET
BUCKHANNON, WEST VIRGINIA 26201
(304) 472-5480

LYNN E. WESTFALL, SUPERINTENDENT

DR. RICHARD G. HOOVER, ASSISTANT SUPERINTENDENT

September 13, 1989

Regulatory Development Section
Division of Health
Capitol Complex
Charleston, West Virginia 25305

Attention: Ms. Kay Howard


Dear Ms. Howard:

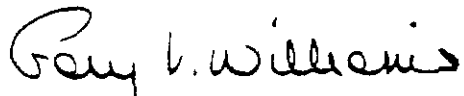
We are pleased to respond to your solicitation for comments regarding the "Asbestos Abatement Licensing Rule" which is Series 63 of new rules being proposed. We have serious concerns regarding the provision of the licensing law which requires persons employed by county boards of education to be licensed to serve as asbestos inspectors, management planners, and asbestos abatement workers.

The Upshur County Board of Education has secured proper training for several of its employees to perform these services only for the school system. It is our point of view that the licensing fees assessed for the certification of such employees of a public agency are exorbitant. As with every other state agency, public schools must manage their budgets extremely carefully. We can understand the need for such fees for licensing of personnel to perform these duties for private industry. It does, however, seem inappropriate that one public agency charges fees of this magnitude for the licensing of employees of another public agency. We would appreciate your consideration of exempting public schools from these licensing fees or, in the event that a total exemption is not possible, considering reducing the amount of the fees to a more reasonable amount.

Thank you for the opportunity to comment regarding the proposed rules.

Sincerely yours,


Lynn E. Westfall, Superintendent


Gary V. Williams, Supervisor

LEW:GVW/lmf

cc: The Honorable Dale Riggs, Member, House of Delegates
The Honorable Donald Stemple, Member, House of Delegates
The Honorable Jae Spears, Member, West Virginia State Senate

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PURCHASE ORDER

Notice to Vendor

MAIL INVOICE TO

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102 Smithfield Street
P. O. Box 580 - Buckhannon, W. Va. 26201
(304) 472-5480

Purchase Order Number Must Be Marked
On All Packages and Invoices

**PREPAY ALL TRANSPORTATION
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Do Not Pack this order with any other order
you have from us.

VENDOR W. V. Department of Health
Asbestos Abatement Licensing Program
4877 Brenda Lane
Charleston, W. V. 25312

Deliver To Upshur County Board of Education
102 Smithfield St.
Buckhannon, W. V. 26201

FUND 11
PROJECT _____
PROG/FUNCTION 92391
OBJECT 582
LOCATION 001

DATE 9/11/89 DEPARTMENT attn: Gary Williams

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
	WV Licensing fees for:		
	Gary Williams (021-36-2748) - Asbestos Inspector/Management Planner)		200.00
	Ralph J. Davidson (233-66-9712) Asbestos Inspector/Management Planner/Asbestos Worker		250.00
	Lyle K. Anderegg (232-60-2106) Asbestos Worker		50.00
	Michael L. Bosley (234-86-2016) Asbestos Worker		50.00

The Board of Education will not be responsible for any
changes nor for supplies delivered except on purchase order
duly executed and signed by the Superintendent.

Total of Purchase Order \$550.00

Lynne E. Mitchell Superintendent



WEST VIRGINIA
MANUFACTURERS ASSOCIATION

SUITE 505
405 CAPITOL STREET
CHARLESTON, WV 25301
TELEPHONE (304) 342-2123

October 2, 1989

HAND DELIVERED

Regulatory Development Section
Division of Health
Capitol Complex
Charleston, West Virginia 25305


ATTENTION: Kay Howard

Re: Comments on Asbestos Abatement Licensing
Regulations (§16-32-1 et seq. Proposed
August 25, 1989.

Dear Ms. Howard:

Enclosed, please find for filing a copy of the comments of the West Virginia Manufacturers Association on the Asbestos Abatement Licensing Regulations of the Division of Health, proposed on August 25, 1989. Please contact my office if you have any questions.

Very truly yours,


Robert L. Foster, Chairman
Environmental Control Committee

RLF:gmw

Enclosure

COMMENTS OF
THE WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED RULES FOR ASBESTOS
ABATEMENT LICENSING (64 C.S.R. 63)

Submitted: October 2, 1989

COMMENTS OF
THE WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED RULES FOR ASBESTOS
ABATEMENT LICENSING (64 C.S.R. 63)

A. INTRODUCTION

On September 1, 1989, public notice appeared in the State Register announcing the filing on August 25, 1989 of Proposed Division of Health Asbestos Abatement Licensing Rules, 64 C.S.R. 63 ["proposed rules"]. Pursuant to this notice, the West Virginia Manufacturers Association ["WVMA"] files these comments on the proposed rules. The WVMA represents a broad cross-section of the industrial sector of West Virginia. These comments on the proposed Asbestos Abatement Licensing Rules are intended in the tradition of the active and supportive role that the WVMA has adopted regarding regulatory programs affecting worker health and safety and the environment.

B. GENERAL COMMENTS

1. PROVISION FOR EXEMPTION OF FACILITIES ON OWNED PREMISES:
SECTION 64-63-7.2.

On March 28, 1988, the West Virginia Legislature enacted House Bill 4647 ["the Act"], providing for the licensure of persons engaged in the business of handling and removing asbestos and asbestos-containing products. Pursuant to that Act, the Division

of Health filed the proposed rules. The exemption from licensing contained in Section 64-63-7.2 of the proposed rules contains language identical to that used in Section Eleven, Chapter Sixteen, Article Thirty-Two of the West Virginia Code (W. Va. Code § 32-16-11). Both the rule and the statute provide that, "facilities presently operating under OSHA standards for removing and handling asbestos on owned premises shall be exempt from licensure." The WVMA is concerned that the proposed rule fails to add specificity to the statutory provision.

Specifically, the proposed regulation fails to define the following terms: (1) "owned premises"; and (2) "facilities presently operating under OSHA standards." As proposed, the Asbestos Abatement Licensing Rules give no further indication of which employees fall within the provisions of this exception to licensing requirements. In furtherance of the legislative intent, the WVMA urges the Division of Health to clarify the meaning of W.Va. Code § 16-31-11 as set out below.

a. "Owned Premises" Should be Construed to Include Leased Premises.

The proposed regulations fail to define what constitutes an "owned premises" under the Act. The term is not used in the federal Occupational Safety and Health Administration ["OSHA"] Regulations. For this reason, the WVMA urges the Division of Health to adopt language for the proposed regulations which would apply the exception to both owned and leased places of business. This construction of the "owned premises" provision is consistent with both the provisions and spirit of the Act.

H.B. 4647 creates a comprehensive licensing program for those persons who handle asbestos and asbestos products, imposing on various persons the requirement to obtain the following licenses: an asbestos management planner's license (W. Va. Code §16-32-4); an asbestos project designer's license (W. Va. Code § 16-32-5); an asbestos contractor's license (W. Va. Code § 16-32-6); an asbestos abatement supervisor's license (W. Va. Code §16-32-7); an asbestos inspector's license (W. Va. Code §16-32-8); and an asbestos worker's license (W. Va. Code 16-32-9). An exemption from the aforementioned licensing requirements is created in W. Va. Code §16-32-11. Furthermore, several of the provisions which create the actual licensing requirements also contain language which serves to limit their application. W. Va. Code §16-32-6(a) provides that "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." (Emphasis added). W. Va. Code §16-32-5 declares, "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." (Emphasis added). This language exempts from the particular licensing requirements all employees engaged in asbestos-related activities for their own employers, and is consistent with the more general exemption of W. Va. Code §16-32-11. These provisions highlight the Legislature's intention that the licensing requirements be applied only to those persons continuously engaged as independent contractors in the commercial practice of asbestos

abatement and removal. In light of the limitations contained in these provisions, it would be prudent for the Division of Health to construe the broader-based exemption of W. Va. Code §16-32-11 to include all employees engaged in asbestos-related work for their employer and on their employer's business premises, whether owned or leased.

The WVMA takes the position that the health and welfare of asbestos abatement workers, inspectors, and supervisors would not be further by discriminating between employers owning their business premises and those leasing their business premises. Such a distinction would arbitrarily reward those businesses that happened to structure the acquisition of physical plant facilities as long-term debt transactions rather than as a lease arrangement. We therefore urged that Section 64-63-7.2 of the proposed rules be revised to read as follows:

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

- b. The Regulations Should Define The Term "Facilities Presently Operating Under OSHA Standards."

Both the Act and the proposed rules use the phrase "facilities presently operating under OSHA standards" without further clarification of the meaning of the phrase. However, the legislative intent underlying this term was to exempt from licensing requirements certain operators who were already covered by OSHA regulations regarding the handling of asbestos by

employees. In furtherance of the legislative intent, the WVMA urges that the following definition be added to the regulations:

3.22. Facilities presently operating under OSHA standards - means any facility at which the operations are covered by the regulations governing employee exposure to asbestos in the workplace. These regulations are found at 29 C.F.R. §1910.1001 and §1926.58.

Without this definition, the proposed rule exempting facilities "presently operating under federal OSHA standards" could be construed as limiting the exemption to those operators who were already conducting asbestos removal and handling operations prior to the July 1, 1988 effective date of the Act. This construction would severely limit the scope of the exemption and would arbitrarily discriminate against businesses that acquire property containing asbestos or conduct asbestos removal or maintenance activities after July 1, 1988. As previously stated, it is apparent from the exemptions contained within W. Va. Code §§ 16-32-5(a) and 6(a) that the West Virginia Legislature intended to impose licensing requirements on independent contractors hired to handle asbestos, while exempting from licensing requirements employees who handle asbestos for their employers on property owned or leased by their employer. The Legislature has determined that federal regulations on the handling of asbestos are adequate to protect the health of employees who are utilized by their employers to remove and handle asbestos on property owned or leased by the employer. Thus, the Legislature intended to exempt from the licensing requirements of the Act all employees engaging in the

handling of asbestos for the benefit of their employers, regardless of the point in time at which the employer/operator undertakes asbestos operations and comes under the coverage of OSHA standards governing employee exposure to asbestos. By defining the term "facilities presently operating under OSHA standards", the Division of Health would make clear that the exemption extends to all employers who are operating under OSHA asbestos standards at the time exemption is sought under W. Va. Code §16-32-11.

2. PROVISIONS REGARDING ASBESTOS TRAINING COURSES: SECTION 64-63-4.1.1.1; 64-63-4.1.2; 64-63-4.2.1; and 64-63-6.

The regulations should be amended by the Division of Health to provide approval of OSHA-mandated training programs for the purpose of the State licensing program. OSHA regulations provide reasonable training guidelines for asbestos abatement workers. For construction workers, 29 C.F.R. 1926.58(k)(3) requires employers to institute training programs for all employees exposed to airborne concentrations of asbestos in excess of the regulated level. The training programs must be conducted in a manner that employees are able to understand. Instruction is required on the following topics: the health effects associated with asbestos exposure; the relationship between smoking and asbestos exposure; the nature of operations that could result in exposure to asbestos; the purpose, proper use, fitting, and limitations of respirators; proper work practices for performing the employee's job; medical surveillance program requirements; and methods of recognizing asbestos. Employers must also provide, at no cost to employees, access to training materials. For employees

other than construction workers, 29 C.F.R. 1910.1001(j)(5) imposes nearly identical training requirements. Thus, the WVMA urges that the proposed regulations be amended to read as follows:

4.1.1.1. Proof of passage of an applicable EPA-approved asbestos course, or passage of a course which complies with the OSHA requirements as contained in 29 C.F.R. 126.58(k)(3) or 29 C.F.R. 1910.1001(j)(5). A copy of the certificate indicating the date on which training was completed and the location at which training was conducted shall be acceptable;

4.1.2. 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, or passing a course which complies with the OSHA requirements contained in 29 C.F.R. 126.58(k)(3) or 29 C.F.R. 1910.1001(j)(5) shall be accepted as meeting this requirement.

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, or a course which complies with the OSHA provisions for annual training contained in 29 C.F.R. 126.58(k)(3) or 29 C.F.R. 1910.1001(j)(5), and all applicable fees. Licensees should apply for renewal no later 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 64-63-A at the ends of this rule.

6.1 - 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.

6.2. - All training courses offered prior to July 1, 1989, and thereafter, which comply with the OSHA requirements of 29 C.F.R. 1926.58(k)(3) or 29 C.F.R. 1910.1001(j)(5), shall be deemed acceptable for licensure of graduates and as training courses in West Virginia.

3. PROVISION FOR EXPIRATION OF LICENSES AFTER ONLY ONE YEAR: SECTIONS 64-63-4.1.4; TABLE 64-63A.

The proposed rules provide that licenses expire one year after issuance. This is an exceedingly brief period of time. Even considering the yearly renewal application procedures of Section 64-63-4.2, the annual licensing requirements are unnecessarily burdensome and will result in excessive paperwork. The WVMA urges that licenses should remain effective for a longer period of time, perhaps a five (5) year period.

Therefore, the WVMA requests that Section 64-63-4.1.4 and Table 64-63A be amended accordingly to reflect this change.

4. PROVISIONS DEFINING "ASBESTOS CONTAINING MATERIAL": SECTION 64-63-3.6; AND "ASBESTOS": SECTION 64-63-3.2.

a. The Term "Asbestos Containing Material" Is Repetitive, and Thus Unnecessary.

"Asbestos Containing Material" ["ACM"] is defined in Section 64-63-3.6 of the proposed rules as "[a]ny material or product which contains more than one (1) percent asbestos by weight." Asbestos is defined in Section 64-63-3.2 as "[t]he 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. Since both terms identify the same

object, the reference to Asbestos Containing Material should be deleted or merged into the definition of asbestos contained in Section 64-63-3.2.

b. The Definition of Asbestos Should Require That the Substance be "Friable."

Both the Act and the proposed rules define the term "friable" as "[m]aterial 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." However, the proposed rule has deleted the language requiring a material to be friable before the licensing requirements of the rule are triggered. As proposed, the rule covers all "asbestiform varieties" of the various materials listed. The reference to "asbestiform varieties" does not serve to clarify the definition of asbestos, since the term "asbestiform" is not itself defined by either the proposed rules or OSHA guidelines. The term "friability" is defined by the Act. We believe the purpose for its inclusion was to clarify that the substances of concern are those which are capable of being reduced to powder or becoming airborne and which thereby become a threat to human health or safety.

The Act and its focus are consistent with the OSHA regulation in this regard. In Appendix G to the OSHA asbestos regulation (29 CFR § 1910.1001) the concept of friability is discussed in relation to the risk posed by asbestos exposure: "The potential for a product containing asbestos . . . to release breathable fibers depends on its degree of friability. . . ."

Materials such as vinyl-asbestos floor tile or roofing felts are considered nonfriable and generally do not emit airborne fibers unless subjected to sanding or sawing operations." The WVMA therefore urges that the definition of asbestos be amended to encompass the concept of friability and thereby focus on the risk that is to be managed through these regulations.

3.2 Asbestos - The asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite, and actinolite-tremolite, which are friable or which have a reasonable probability of becoming friable in the course of ordinary or anticipated use, and which contains more than one (1) percent asbestos by weight.

C. CONCLUSION

The WVMA appreciates the opportunity to comment on these regulations and trusts that our comments will be given due and deliberate consideration.