

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF THE SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Division of Health TITLE NUMBER: 64

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB243

SECTION §64-5-2 (mm), PASSED ON 3-10-90

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: April 6, 1990



Taunja Willis Miller, Secretary
Dept. of Health and Human Resources

[PROPOSED]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH

ASBESTOS ABATEMENT LICENSING RULE

SERIES 63

1990

Modifications Requested by 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

SERIES 63
ASBESTOS ABATEMENT LICENSING RULE

§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. These procedures include 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 is acceptable;

4.1.1.2. The applicant's date of birth. Applicants shall be at least eighteen years of age;

4.1.1.3. The 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 or State-accredited 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. A written notice of denial and an opportunity for reapplication shall be afforded to all applicants. Incomplete applications shall 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 the expiration of the license in order to avoid a temporary lapse of license. 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 apply as new applicants.

§64-63-5. Licensed Contractor Duties

5.1. Licensed asbestos contractors shall:

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. Contractors shall use disposal sites which are 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 agencies.

§64-63-6. Training Accreditation - All training courses which have received full accreditation by the EPA or the administrator, are 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 to enter any asbestos project and 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 of 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 W. Va. Code §16-32-1 et seq. 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 W. Va. Code §16-32-1 et seq. 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 immediately. Posting of the cease and desist order on the project site constitutes 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 is presumed to be willful and the person 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 the W. Va. Code §16-32-1 et seq. is 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 is 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