



TEXAS DEPARTMENT OF STATE HEALTH SERVICES  
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OPINION COMMITTEE

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December 18, 2008

The Honorable Greg Abbott  
Attorney General for the State of Texas  
P.O. Box 12548  
Austin, TX 78711-2548

FILE # ML-45946-08  
I.D. # 45946

**RQ-0775-GA**

Via Certified Mail RRR No.: 7000 0520 0024 5416 4855

**Re: Request for opinion as to enforceability of Occupations Code section 1954.259(b) and 25 TAC section 295.34(l) prohibiting municipalities from issuing permits for renovation or demolition without evidence of an asbestos survey having been performed**

Dear General Abbott:

The Department of State Health Services (DSHS) is the licensing and regulatory authority over persons conducting activities within the scope of the Texas Asbestos Health Protection Act (TAHPA)<sup>1</sup> and, through delegated authority, the asbestos federal National Emission Standard for Hazardous Air Pollutants (NESHAP) for demolition and renovation.<sup>2</sup> DSHS is authorized to request an opinion on the enforceability of section 1954.259(b) of the TAHPA, which prohibits municipalities that require permits for renovation and demolition in public or commercial buildings from issuing such permits unless the applicant provides evidence acceptable to the municipality that an asbestos survey (inspection) has been completed by a licensed person or, alternatively, that a licensed engineer or architect has certified that the building does not contain asbestos.

**Background**

Asbestos is a substance for which there is no safe level of exposure,<sup>3</sup> so asbestos law is designed

<sup>1</sup> TEX. OCC. CODE ANN. tit. 12, ch. 1954 (§§ 1954.001 -.402) (Vernon 2004 & Supp. 2008).

<sup>2</sup> 40 C.F.R. Part 61, Subpart M, § 61.145 (2006).

<sup>3</sup> Asbestos School Hazard Detection and Control Act of 1980, 20 U.S.C. § 3601(a)(3) (2000); NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, EDUCATION AND INFORMATION DIVISION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ASBESTOS BIBLIOGRAPHY, DHHS (NIOSH) Publication No. 97-162 (1997), at 25, available at <http://www.cdc.gov/niosh/97-162.html>.

to prevent exposure by controlling the release of asbestos fibers. The federal asbestos NESHAP, the TAHPA, and the Texas Asbestos Health Protection Rules (TAHPR)<sup>4</sup> have long required building owners or their agents to obtain an asbestos survey before conducting renovation or demolition activities:

NESHAP: “[P]rior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos . . . . The requirements . . . apply to each owner or operator of a demolition or renovation activity . . . .”<sup>5</sup>

TAHPA: “[T]he department may enforce rules regarding demolition and renovation activities to protect the public from asbestos emissions. At a minimum, the rules must be sufficient to permit the department to obtain authority from the United States Environmental Protection Agency to implement and enforce in this state the provisions of 40 C.F.R. Part 61, Subpart M, that establish the requirements applicable to the demolition and renovation of a facility [including survey requirement] . . . .”<sup>6</sup>

TAHPR: “Prior to any renovation or dismantling within a public building, commercial building, or facility, including preparations for partial or complete demolition, as required by 40 CFR, §61.145, owners must have a thorough survey performed.”<sup>7</sup>

DSHS has been delegated the authority and responsibility to enforce the federal asbestos NESHAP for renovations and demolitions. The TAHPR adopts by reference the asbestos NESHAP for demolition and renovation. Both federal and state law hold responsible the owner or operator of a demolition or renovation activity, including any person who owns, leases, operates, controls, or supervises the structure, the operation, or both. Therefore, any owner or operator who fails to obtain a survey before conducting the regulated activities, unless some limited exemptions apply, violates both state and federal law.

Asbestos surveys reveal the presence or absence of asbestos-containing building materials and help to ensure that the renovation or demolition will be conducted safely and in accordance with asbestos law.

DSHS generally must also be *notified* of any activity that will disturb asbestos when a renovation is conducted, and must be notified of all demolitions regardless of whether asbestos is present in order to inspect for proper conduct of the demolition activity.

Despite the legal requirements to obtain a survey, the 77th Texas Legislature recognized that compliance with the survey requirement was inconsistent and passed S.B. 509 (2001) in response, noting that:

The Texas Asbestos Health Protection Act and rules require a survey for asbestos-containing building materials to be completed and any existing asbestos to be abated before any demolition or renovation of a public or commercial building.

<sup>4</sup> 25 TEX. ADMIN. CODE Part 1, Ch. 295, Subch. C, §§ 295.31 - .73 (West 2008).

<sup>5</sup> 40 C.F.R. § 61.145(a).

<sup>6</sup> TEX. OCC. CODE ANN. tit. 12, § 1954.060(a).

<sup>7</sup> 25 TEX. ADMIN. CODE § 295.34(c).

However, the compliance rate is low, as contractors claim to be unaware of the requirement and building permit offices do not always inform the permit applicant of the requirement. S.B. 509 prohibits a municipality that issues a renovation or demolition permit for a public or commercial building from doing so unless the applicant provides acceptable evidence that an asbestos survey of the affected parts of the building has been completed by a licensed asbestos surveyor or an engineer or architect has certified the lack of asbestos in the affected parts of the building.<sup>8</sup>

The legislation imposed the following requirement:

**SURVEY REQUIRED.** (a) In this section, "permit" means a license, certificate, approval, registration, consent, permit, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought.

(b) A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides:

(1) evidence acceptable to the municipality that an asbestos survey, as required by this chapter, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this chapter to perform a survey. . . .<sup>9</sup>

This provision of the Occupations Code applies only to renovation or demolition in public or commercial buildings, and this discussion is likewise so limited. The alternative certification that may substitute for the survey is a seldom-used option and will not be discussed. The requirement to obtain evidence of the survey or certification applies only to municipalities that have chosen to require permits for such activities. Evasion of these local permit requirements is not within the scope of control of section 1954.259(b) or DSHS.

### **Analysis**

The requirements of state asbestos law primarily apply to persons licensed or registered to conduct asbestos-related activities; however, TAHPA sections 1954.351 and 1954.401 provide penalties for others who violate the TAHPA or the TAHPR. Section 1954.351 provides that "The commissioner may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter." Section 1954.401 permits DSHS to "bring a civil suit for injunctive relief, the assessment and recovery of a civil penalty, or both, against a person who: (1) appears to have violated, is violating, or is threatening to violate this chapter or a

<sup>8</sup> INTERGOVERNMENTAL RELATIONS, BILL ANALYSIS, TEX. S.B. 509, 77th Leg., R.S. (2001), available at <http://www.legis.state.tx.us/tlodocs/77R/analysis/doc/SB00509F.doc>.

<sup>9</sup> TEX. OCC. CODE ANN. § 1954.259 (Vernon 2004); originally, TEX. S.B. 509, 77th Leg. R.S. (2001), Act of May 3, 2001, Ch. 37, § 1, 2001 Tex. Gen. Laws, *amending* TEX. REV. CIV. STAT. art. 4477-3a (2002); art. 4477-3a *repealed by* Act of June 1, 2003, Ch. 1421, § 13(a), 2001 TEX. GEN. LAWS; *recodified by* Act of June 1, 2003, Ch. 1421, § 4, 2001 TEX. GEN. LAWS; § 1954.259 *added by* Act of Sept. 1, 2003, Ch. 1276, § 14A.456(b), 2003 TEX. GEN. LAWS 4395.

rule adopted or order issued under this chapter . . . .” A “person” may be a government.<sup>10</sup>

The legislature did not specifically provide an enforcement mechanism against municipalities that violate section 1954.259(b) by failing to require evidence of an asbestos survey before issuing a permit. In contrast, under the TAHPA a building owner (or contractor or other agents) who fails to obtain a survey by an asbestos licensee may face the following potential penalties upon conducting the unlawful renovation or demolition:

- No asbestos survey - \$5,000
- No notification to DSHS of renovation or demolition activity - \$5,000
- Failure to remove regulated asbestos-containing material prior to renovation or demolition - \$5,000
- Failure to maintain asbestos-containing material in an adequately wet condition during renovation or demolition (to prevent spread of fibers) - \$5,000
- Releasing visible emissions of asbestos - \$5,000
- Illegal disposal of asbestos-containing material - \$5,000

A building owner or agents may incur these additional penalties because, if the person is unaware of the survey requirement, that person is likely to be non-compliant with the obligation to *notify* DSHS of the activities and is likely to *conduct* those activities without the proper safeguards that would be required upon discovering asbestos-containing materials during a survey by a licensee. Thus, the burden imposed upon municipalities to require evidence of a survey was intended to increase compliance with the survey requirement, but it may also operate to *prevent* a number of additional violations and to *protect* workers and the public from exposure to uncontrolled releases of asbestos.

Given that the person applying for a building permit may not be knowledgeable about asbestos law, such as a small business owner or demolition contractor, the requirement to produce evidence of an asbestos survey before the permit is issued may be the first - and is probably the last - opportunity to make that person aware of the requirement and to prevent the unlawful disturbance or removal of asbestos from occurring. Unfortunately, the initiation of enforcement action against property owners is too often the first notice they receive that there are legal requirements with which they have failed to comply. As described, the consequences include not only large penalties for building owners or their agents but the exposure to asbestos of the workers and the public and the improper disposal of the asbestos waste. The speed with which demolition and removal of debris ordinarily take place makes enforcement difficult, and of course the exposure to asbestos fibers already will have occurred. Renovations generally are completed less quickly and present more opportunities for enforcement, but exposure to asbestos may occur over a longer period of time.

DSHS routinely pursues asbestos enforcement actions in which local building permits were obtained and no survey had been conducted. Persons conducting renovations or demolitions are alternately unaware of legal requirements or purposely seek to evade them. DSHS investigators have not typically collected evidence regarding the municipality's duty in these cases because DSHS enforcement authority against municipalities is unclear and therefore DSHS has not

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<sup>10</sup> 25 TEX. ADMIN. CODE § 295.32(75) (West 2008); Code Construction Act, TEX. GOV'T CODE ANN. § 311.005(2) (Vernon 2005).

attempted to enforce this requirement.

Enforcement staff report that noncompliance with the requirement for evidence of an asbestos survey is widespread and common within the state of Texas. It should be noted that, while the law specifically requires "evidence . . . that an asbestos survey . . . has been completed by a person licensed under this chapter,"<sup>11</sup> renovation or demolition permit application forms often require only that the applicant sign or check a box next to a general statement that the applicant has complied with state and/or local law. Clearly, such a statement does not serve to specifically notify the applicant or the person accepting the form and issuing the permit that *an asbestos survey is required*. In addition, applicants and municipalities often do not understand the scope of activities that require compliance with Occupations Code section 1954.259(b). For example, regulated renovation activities may encompass seemingly minor tasks such as removing flooring or replacing sections of wallboard. Finally, municipal employees tasked with issuing permits may not fulfill the municipality's own requirements. For example, violations have occurred even when the municipality does have written requirements that the asbestos survey must be presented for inspection to the municipal employee or that a copy of the survey must be submitted to the municipality. DSHS is prepared to supply examples of various permit application forms, including those for municipalities in which the municipality does issue permits but demolition or renovation activities took place without asbestos surveys having been conducted, resulting in recent DSHS enforcement actions against building owners or their agents.

When section 1954.259(b) was enacted, DSHS conducted rulemaking and included the text of the statute in its rules. DSHS also initiated education and outreach activities, including individual mailings to Texas municipalities informing them about the new requirement. While education and outreach will continue to be the preferred approach to achieving compliance, experience clearly supports that the ability to pursue enforcement action is also necessary.

### Questions

1. Does the scope of the term "person" in the TAHPA sections 1954.351 and 1954.401 encompass any person not licensed or registered under TAHPA that appears to have violated, is violating, or is threatening to violate the TAHPA or a rule adopted or an order issued under the TAHPA?
2. Is the scope of the term "person" in the TAHPA sections 1954.351 and 1954.401 consistent with the meaning of "person" in the Code Construction Act, such that it encompasses municipalities violating the TAHPA section 1954.259?
3. If a municipality requires permits for renovation or demolition of public or commercial buildings and issues a permit without requiring the applicant to provide evidence acceptable to the municipality that an asbestos survey of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under the TAHPA to perform the survey, or without requiring a certification as provided by section 1954.259(b)(2), may DSHS pursue enforcement action against that municipality as provided in the TAHPA?

<sup>11</sup> TEX. OCC. CODE ANN. § 1954.259(b)(1).

4. Is DSHS authorized to pursue enforcement action against municipalities to collect administrative penalties from them?
5. If DSHS is not authorized to pursue enforcement action against municipalities, may the Attorney General or any other entity enforce the TAHPA section 1954.259?

Attached are copies of documents, statutes, and rules referenced herein.

Please address any questions concerning this request to Laura Pfefferle, Assistant General Counsel, at 512-458-7236, [Laura.Pfefferle@dshs.state.tx.us](mailto:Laura.Pfefferle@dshs.state.tx.us). Thank you for your attention to this matter.

Sincerely,



David L. Lakey, M.D.  
Commissioner  
Texas Department of State Health Services

Attachments: List of Exhibits  
Exhibits 1-9

**DEPARTMENT OF STATE HEALTH SERVICES  
S.B. 509 OPINION REQUEST EXHIBIT LIST**

- EXHIBIT 1.**    **TEX. S.B. 509, 77<sup>th</sup> Leg. R.S. (2001), Act of May 3, 2001**
- EXHIBIT 2.**    **S.B. 509 BILL ANALYSIS, June 21, 2001**
- EXHIBIT 3.**    **NATIONAL EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANTS,  
40 C.F.R. § 61.141 Definitions re: Regulation of Asbestos Containing Materials  
40 C.F.R. § 61.145(a) Standard for Demolition and Renovation**
- EXHIBIT 4.**    **TEX. OCC. CODE ANN. § 1954.259 - Survey Required**
- EXHIBIT 5.**    **TEX. OCC. CODE ANN. § 1954.351 - Imposition of Administrative Penalty**
- EXHIBIT 6.**    **TEX. OCC. CODE ANN. § 1954.401 - Injunctive Relief – Civil Penalty**
- EXHIBIT 7.**    **TEX. GOV'T CODE ANN. § 311.005 - Code Construction Act Definitions**
- EXHIBIT 8.**    **25 TEX. ADMIN. CODE § 295.32 - Asbestos Definitions**
- EXHIBIT 9.**    **25 TEX. ADMIN. CODE § 295.34 - Asbestos Management in Facilities and Public  
Buildings, subsection (l)**

**DEPARTMENT OF STATE HEALTH SERVICES  
S.B. 509 OPINION REQUEST  
EXHIBIT 1**

**EXHIBIT 1. TEX. S.B. 509, 77th Leg. R.S. (2001), Act of May 3, 2001**



## AN ACT

relating to an asbestos survey before issuance of a building permit to renovate or demolish certain buildings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Texas Asbestos Health Protection Act (Article 4477-3a, Vernon's Texas Civil Statutes) is amended by adding Section 13 to read as follows:

Sec. 13. SURVEY REQUIRED. (a) In this section, "permit" means a license, certificate, approval, registration, consent, permit, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought.

(b) ~~A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides:~~

~~(1) evidence acceptable to the municipality that an asbestos survey, as required by this Act, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this Act to perform a survey; or~~

~~(2) a certification from a licensed engineer or architect, stating that:~~

~~(A) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this Act; and~~

~~(B) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.~~

SECTION 2. This Act takes effect September 1, 2001.

SECTION 3. This Act applies only to a permit for renovation or demolition of a public or commercial building issued on or after January 1, 2002. A permit for renovation or demolition of a public or commercial building issued before January 1, 2002, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

\_\_\_\_\_  
President of the Senate

I hereby certify that S.B. No. 509 passed the Senate on March 22, 2001, by a viva-voce vote.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate  
I hereby certify that S.B. No. 509 passed the House on April 20, 2001, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

**DEPARTMENT OF STATE HEALTH SERVICES**  
**S.B. 509 OPINION REQUEST**  
**EXHIBIT 2**

**EXHIBIT 2. S.B. 509 BILL ANALYSIS, June 21, 2001**

## BILL ANALYSIS

Senate Research Center

S.B. 509  
By: Moncrief  
6/21/2001  
Enrolled

### DIGEST AND PURPOSE

Currently, the Texas Department of Health regulates asbestos abatement in public and commercial buildings in Texas. The Texas Asbestos Health Protection Act and rules require a survey for asbestos-containing building materials to be completed and any existing asbestos to be abated before any demolition or renovation of a public or commercial building. However, the compliance rate is low, as contractors claim to be unaware of the requirement and building permit offices do not always inform the permit applicant of the requirement. S.B. 509 prohibits a municipality that issues a renovation or demolition permit for a public or commercial building from doing so unless the applicant provides acceptable evidence that an asbestos survey of the affected parts of the building has been completed by a licensed asbestos surveyor or an engineer or architect has certified the lack of asbestos in the affected parts of the building.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Texas Asbestos Health Protection Act (Article 4477-3a, V.T.C.S.), by adding Section 13, as follows:

Sec. 13. SURVEY REQUIRED. Defines "permit." Prohibits a municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building from issuing the permit unless the applicant provides evidence acceptable to the municipality that an asbestos survey of all parts of the building affected by the planned renovation has been completed by a person licensed under this Act to perform a survey, or a certification from a licensed engineer or architect, stating that: the material safety data sheets for the material used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this Act have been reviewed and in the engineer's or architect's professional opinion, all affected parts of the building do not contain asbestos.

SECTION 2. Effective date: September 1, 2001.

SECTION 3. Makes application of this Act prospective to January 1, 2002.

**DEPARTMENT OF STATE HEALTH SERVICES  
S.B. 509 OPINION REQUEST  
EXHIBIT 3**

**EXHIBIT 3. NATIONAL EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANTS,  
40 C.F.R. § 61.141 Definitions re: Regulation of Asbestos Containing Materials  
40 C.F.R. § 61.145(a)-Standard for Demolition and Renovation**

NESHAP  
40 CFR § 61.141

§61.141

Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

*Fugitive source* means any source of emissions not controlled by an air pollution control device.

*Glove bag* means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration's (OSHA's) final rule on occupational exposure to asbestos (appendix G to 29 CFR 1926.58).

*Grinding* means to reduce to powder or small fragments and includes mechanical chipping or drilling.

*In poor condition* means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

*Inactive waste disposal site* means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.

*Installation* means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

*Leak-tight* means that solids or liquids cannot escape or spill out. It also means dust-tight.

*Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operation, or any other preventable upset conditions, equipment breakdown, or process failure.

*Manufacturing* means the combining of commercial asbestos—or, in the case of woven friction products, the combining of textiles containing commercial asbestos—with any other material(s), including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

*Natural barrier* means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

*Nonfriable asbestos-containing material* means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

*Nonscheduled renovation operation* means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

*Outside air* means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open air ferry dock.

*Owner or operator of a demolition or renovation activity* means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

*Particulate asbestos material* means finely divided particles of asbestos or material containing asbestos.

*Planned renovation operations* means a renovation operation, or a number of such operations, in which some RACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

*Regulated asbestos-containing material (RACM)* means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

*Remove* means to take out RACM or facility components that contain or are covered with RACM from any facility.

*Renovation* means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

*Resilient floor covering* means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than 1 percent asbestos as determined using polarized light microscopy according to the method

NESHAP  
40 CFR § 61.145

§61.144

§61.144 Standard for manufacturing.

(a) *Applicability.* This section applies to the following manufacturing operations using commercial asbestos.

- (1) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.
- (2) The manufacture of cement products.
- (3) The manufacture of fireproofing and insulating materials.
- (4) The manufacture of friction products.
- (5) The manufacture of paper, millboard, and felt.
- (6) The manufacture of floor tile.
- (7) The manufacture of paints, coatings, caulks, adhesives, and sealants.
- (8) The manufacture of plastics and rubber materials.
- (9) The manufacture of chlorine utilizing asbestos diaphragm technology.
- (10) The manufacture of shotgun shell wads.
- (11) The manufacture of asphalt concrete.

(b) *Standard.* Each owner or operator of all of the manufacturing operations to which this section applies shall either:

- (1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or
- (2) Use the methods specified by §61.152 to clean emissions from these operations containing particulate asbestos material before they escape to, or are vented to, the outside air.
- (3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.
- (4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:
  - (i) Maintenance schedule.
  - (ii) Recordkeeping plan.
- (5) Maintain records of the results of visible emission monitoring and air cleaning device in-

spections using a format similar to that shown in Figures 1 and 2 and include the following.

- (i) Date and time of each inspection.
- (ii) Presence or absence of visible emissions.
- (iii) Condition of fabric filters, including presence of any tears, holes and abrasions.
- (iv) Presence of dust deposits on clean side of fabric filters.
- (v) Brief description of corrective actions taken, including date and time.
- (vi) Daily hours of operation for each air cleaning device.
- (6) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.
- (7) Retain a copy of all monitoring and inspection records for at least 2 years.
- (8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

[49 FR 13661, Apr. 5, 1984, as amended at 55 FR 48419, Nov. 20, 1990; 56 FR 1669, Jan. 16, 1991]

§61.145 Standard for demolition and renovation.

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

- (1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is
  - (i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or
  - (ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.
- (2) In a facility being demolished, only the notification requirements of paragraphs (b)(1), (2), (3)(i) and (iv), and (4)(i) through (vii) and (4)(ix) and (xvi) of this section apply, if the combined amount of RACM is

**DEPARTMENT OF STATE HEALTH SERVICES**  
**S.B. 509 OPINION REQUEST**  
**EXHIBIT 4**

**EXHIBIT 4. TEX. OCC. CODE ANN. § 1954.259 - Survey Required**

§ 1954.259. SURVEY REQUIRED. (a) In this section, "permit" means a license, certificate, approval, registration, consent, permit, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought.

(b) A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides:

(1) evidence acceptable to the municipality that an asbestos survey, as required by this chapter, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this chapter to perform a survey; or

(2) a certification from a licensed engineer or registered architect, stating that:

(A) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this chapter; and

(B) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.

Added by Acts 2003, 78th Leg., ch. 1276, § 14A.456(a), eff. Sept. 1, 2003.



**DEPARTMENT OF STATE HEALTH SERVICES  
S.B. 509 OPINION REQUEST  
EXHIBIT 5**

**EXHIBIT 5. TEX. OCC. CODE ANN. § 1954.351 - Imposition of Administrative Penalty**

§ 1954.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The Commissioner may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, § 4, eff. June 1, 2003.

**DEPARTMENT OF STATE HEALTH SERVICES**  
**S.B. 509 OPINION REQUEST**  
**EXHIBIT 6**

**EXHIBIT 6. TEX. OCC. CODE ANN. § 1954.401 - Injunctive Relief – Civil Penalty**

1954.401. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring a civil suit or injunctive relief, the assessment and recovery of a civil penalty, or both, against a person who:

(1) appears to have violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter; or

(2) owns a public building or is the owner's agent and has contracted with or otherwise permitted a person who is not licensed or registered under this chapter to perform in the building an activity for which a license or registration is required.

(b) A civil penalty may not exceed \$10,000 a day for each violation. Each day a violation occurs or continues to occur is a separate violation for purposes of imposing a penalty.

(c) In determining the amount of a civil penalty, the court shall consider:

- (1) the seriousness of the violation;
- (2) any hazard created to the health and safety of the public;
- (3) the person's history of previous violations; and
- (4) the demonstrated good faith of the person charged with the violation.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

Added by Acts 2001, 77th Leg., ch. 1421, § 4, eff. June 1, 2003.

**DEPARTMENT OF STATE HEALTH SERVICES**  
**S.B. 509 OPINION REQUEST**  
**EXHIBIT 7**

**EXHIBIT 7. TEX. GOV'T CODE ANN. § 311.005 - Code Construction Act Definitions**

§ 311.005. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

(1) "Oath" includes affirmation.

(2) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(3) "Population" means the population shown by the most recent federal decennial census.

(4) "Property" means real and personal property.

(5) "Rule" includes regulation.

(6) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.

(7) "State," when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.

(8) "Swear" includes affirm.

(9) "United States" includes a department, bureau, or other agency of the United States of America.

(10) "Week" means seven consecutive days.

(11) "Written" includes any representation of words, letters, symbols, or figures.

(12) "Year" means 12 consecutive months.

(13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Acts 1985, 69th Leg., ch. 479, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 340, § 1, eff. Aug. 28, 1989.

**DEPARTMENT OF STATE HEALTH SERVICES  
S.B. 509 OPINION REQUEST  
EXHIBIT 8**

**EXHIBIT 8. 25 TEX. ADMIN. CODE § 295.32 - Asbestos Definitions**

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<u>TITLE 25</u>	HEALTH SERVICES
<u>PART 1</u>	DEPARTMENT OF STATE HEALTH SERVICES
<u>CHAPTER 295</u>	OCCUPATIONAL HEALTH
<u>SUBCHAPTER C</u>	TEXAS ASBESTOS HEALTH PROTECTION
<u>RULE §295.32</u>	<b>Definitions</b>

The following words and terms, when used with these sections, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited person--A person who has attended and passed, within the last year, the appropriate asbestos course, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses) offered by an asbestos training provider licensed by the department or one that has been approved by another state, that has the authority from EPA to approve courses, or that has been approved directly by EPA.

(2) Act--The Texas Asbestos Health Protection Act, as amended, Chapter 1954, Texas Occupations Code, effective June 1, 2003, formerly, Texas Civil Statutes, Article 4477-3a.

(3) Adequately wet--Sufficiently mixed or penetrated with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

(4) AHERA--Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519. The act amends the Federal Toxic Substances Control Act, 15 United States Code, §2641, et seq., by requiring an inspection of all school buildings (Grades K-12), all school administrations to develop plans for controlling asbestos in or removing asbestos from school buildings, and providing penalties for non-compliance.

(5) AIHA--The American Industrial Hygiene Association.

(6) Airlock--A system for permitting ingress and egress to and from the containment, consisting of doors and/or curtains that control air-flow patterns in the doorway such that no air escapes to the outside of the containment.

(7) Air monitoring--The collection of airborne samples for analysis of fibers.

(8) Asbestos--The asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(9) Asbestos abatement--The removal, the encapsulation or the enclosure of asbestos for the purpose of, or that has the effect of, reducing or eliminating airborne concentrations of asbestos fibers or amounts of asbestos-containing building material.

(10) Asbestos abatement activity--Asbestos abatement, or any on-site preparations or clean-up related to the abatement.

(11) Asbestos abatement contractor--A person who undertakes to perform asbestos removal, enclosure, or encapsulation for others under contract or other agreement.

(12) Asbestos abatement supervisor--An individual who is in direct charge of and responsible for the personnel,





(23) Building owner--The owner of record of any building. A building owner may hire a contractor or other agents an architect, engineer, or property manager who may assume certain tasks as outlined in §295.34(b)(5) - (6) of this title (relating to Asbestos Management in Facilities and Public Buildings). (See also the definition of facility owner.)

(24) Category I nonfriable asbestos-containing material (ACM)--Asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using Polarized Light Microscopy.

(25) Category II nonfriable asbestos-containing material (ACM)--Any material, excluding Category I nonfriable asbestos-containing material, containing more than 1.0% asbestos as determined using Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(26) CFR--The Code of Federal Regulations.

(27) Commissioner--The Texas Commissioner of Health.

(28) Commercial asbestos--Any material containing asbestos that is extracted from ore and has value because of its asbestos content (National Emissions Standards for Hazardous Air Pollutant definition, 1990).

(29) Commercial Building--The interior space of any industrial, federal-government-owned building, or residential structure, installation or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units). Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

(30) Competent person--The individual designated as the competent person by the United States Occupational Safety and Health Administration regulations in 29 CFR §1926.1101. For an asbestos National Emissions Standards for Hazardous Air Pollutant (NESHAP) project, this is a person with asbestos NESHAP training.

(31) Containment--A portion of the regulated area that has been sealed and placed under negative air pressure with air machines using high-efficiency particulate air (HEPA) filters.

(32) Contractor--A person who constructs, repairs, or maintains a public building as an independent contractor, or is under contract to perform a service with wage or income reporting and tax responsibility to the state or federal government. The term includes a subcontractor.

(33) Demolition--The wrecking or removal of any load-supporting structural member of a public building or facility or the intentional burning of any public building or facility.

(34) Department--The Texas Department of Health or its successor.

(35) Designated person--The individual designated under 40 CFR Part 763 Subpart E to oversee all asbestos activities including compliance with all laws, regulations, and rules.

(36) Disturbance--Activities that disrupt the matrix of ACM, render ACM friable, or generate visible debris from

(37) Employee--A person who is paid a salary, wage, or remuneration by an entity for services performed and has a relationship with the entity that would result in the entity being liable for that person's acts or judgments.

(38) Encapsulation--A method of control of asbestos fibers in which the surface of asbestos-containing material is coated by or covered with a liquid coating prepared for that purpose.

(39) Enclosure--The construction of an airtight, impermeable, permanent barrier surrounding asbestos to prevent the release of asbestos fibers into the air.

(40) Environmental Protection Agency regulations--Regulations found in 40 Code of Federal Regulations at 40 CFR Parts 61-62 and Parts 700-789.

(41) EPA--The United States Environmental Protection Agency.

(42) Facility--Any institutional, commercial, public, industrial or residential structure installation or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive disposal site. Any structure, installation or building that was previously subject to 40 CFR Part 61, Subpart M is not excluded, regardless of its current use or function.

(43) Facility owner--The owner of record of any facility or any person who exercises control over a facility to the extent that said person contracts for or permits renovation to or demolition of said facility. (See also the definition of building owner.)

(44) Federal-government owned building--Any building, which is not a school building as defined by 40 CFR 763.83, owned by the United States Federal Government.

(45) Friable material--Materials that when dry can be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that, when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure.

(46) HEPA--A high-efficiency particulate air filter, capable of trapping and retaining 99.97% of mono-dispersed airborne particles 0.3 micron or larger in diameter.

(47) HVAC--Heating, ventilation, and air conditioning systems.

(48) Independent third-party air monitor--A person retained to collect area air samples to be analyzed for the owner of the building or facility being abated. The person must not be employed by the abatement contractor to analyze any area samples collected during the abatement projects being monitored or the clearance samples subject to the provisions of §295.37 of this title (relating to Licensing and Registration: Conflicts of Interests).

(49) Individual--A person acting on his or her own behalf.

(50) Industrial building--Any building where industrial or manufacturing operations or processes are conducted and to which access is limited principally to employees and contractors of the facility operator or to invited guests under controlled conditions.

(51) Inspection--An activity undertaken in a school building, public building, or commercial building to determine the quantity, presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material or suspected asbestos-containing building material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed asbestos-containing building material which has been previously identified. The term does not include the following:

(A) periodic surveillance of the type described in 40 CFR §763.92(b) solely for the purpose of recording or  
ing a change in the condition of known or assumed asbestos-containing building material;

(B) inspections performed by employees or agents of federal, state, or local government solely for the purpose of  
determining compliance with applicable statutes or regulations; or

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**TITLE 25**

**HEALTH SERVICES**

**PART 1**

**DEPARTMENT OF STATE HEALTH SERVICES**

**CHAPTER 295**

**OCCUPATIONAL HEALTH**

**SUBCHAPTER C**

**TEXAS ASBESTOS HEALTH PROTECTION**

**RULE §295.32**

**Definitions**

(C) visual inspections of the type described in 40 CFR §763.90(i) solely for the purpose of determining completion of response actions.

(52) Installation--A building or structure, or group of buildings or structures, at a single demolition or renovation site controlled by the same owner or operator (National Emissions Standards for Hazardous Air Pollutant definition, 1990).

(53) Layer--Any constituent of an asbestos bulk sample that exhibits different physical properties such as color or composition and can be separated from the rest of the sample with an instrument such as a modeler's knife.

(54) License--Any license or registration, or any provisional license or registration, issued under this chapter.

(55) Licensee--A person who meets all qualifications and has been issued a license or registration by the Texas Department of Health in accordance with these sections.

(56) Local Education Agency (LEA)--means:

(A) a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools;

(B) the term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school;

(C) the term includes an elementary or secondary school funded by the Bureau of Indian Affairs but only to the extent that such inclusion makes such school eligible for programs for which specific eligibility is not provided to such school in another provision of law and such school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that such school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs; and

(D) the owner or governing authority of any nonpublic, nonprofit elementary, or secondary school building.

(57) Major Fiber Release Episode--Any uncontrolled or unintentional disturbance of ACBM, resulting in a visible emission, which involves the falling or dislodging of more than 3 square or linear feet of friable asbestos-containing material.

(58) Management plan--A written plan describing appropriate actions for surveillance and management of asbestos-containing material.

- (59) Minor Fiber Release Episode--Any uncontrolled or unintentional disturbance of ACBM, resulting in a visible ion, which involves the falling or dislodging of 3 square or linear feet or less of friable asbestos-containing building material.
- (60) Model accreditation plan--A United States Environmental Protection Agency plan which provides standards for initial training, examinations, refresher training courses, applicant qualifications, decertification, and reciprocity, as described in Title 40, CFR, Part 763, Subpart E, Appendix C.
- (61) Municipality--A general-law, home-rule or special-law municipality as defined in the Texas Local Government Code §1.005. A legally created body politic providing local government functions in a community.
- (62) NESHAP--The United States Environmental Protection Agency National Emissions Standards for Hazardous Air Pollutants, as described in Title 40 CFR, Part 61.
- (63) NIOSH--The National Institute for Occupational Safety and Health.
- (64) Nonfriable material--Material which, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.
- (65) NVLAP--The National Voluntary Laboratory Accreditation Program.
- (66) Operations and maintenance (O&M)--Operations and maintenance activities are repairs, maintenance, renovation, installation, replacement, or cleanup of building materials or equipment.
- (67) Operations and maintenance (O&M) contractor--A person who holds an Asbestos Operations & Maintenance Contractor (Restricted) license for general asbestos operations and maintenance work in a public building, as a building owner or agent, or as a contractor, if working for others.
- (68) Operations and maintenance (O&M) manual--A record of operations and maintenance activities in a public building.
- (69) OSHA--The Occupational Safety and Health Administration of the United States Department of Labor.
- (70) OSHA Regulations--Regulations found in 29 Code of Federal Regulations, particularly 29 CFR §1926.1101, which governs asbestos in construction.
- (71) Owner or operator of a demolition or renovation activity--Any person who owns, leases, operates, controls, or supervises a commercial building or facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation or both.
- (72) PAT--Proficiency Analytical Testing.
- (73) PCM--Phase-contrast microscopy, a method of analysis for overall airborne fiber counts using an optical microscope.
- (74) PEL--Permissible Exposure Limit as defined by Occupational Safety and Health Administration regulations (29 §1926.1101).
- (75) Person--A person is:

(A) an individual;

(B) an organization such as a corporation, partnership, sole proprietorship, governmental subdivision, or agency; or

(C) any other legal entity recognized by law as having rights and duties.

(76) Plans and specifications--Site-specific asbestos abatement description which includes drawings, floor plans or equivalent of sufficient size and detail, that display the location of asbestos abatement activities, the location of regulated area(s), and a clear and understandable written description of the work to be performed.

(77) PLM--Polarized-light microscopy, a method of analysis for detection of the presence and type of asbestos.

(78) Preparation--preparation for asbestos abatement activity which includes, but not limited to, the following activities:

(A) pre-cleaning; sweeping; wet wiping; high-efficiency particulate air filter vacuuming; sealing penetrations and openings; installing polyethylene; installing isolation barriers (critical barriers, dividing walls, etc.); installing any part of a decontamination system or any part of the water line connections to the showers, drains, and/or filtration; set-up or use of any load-out/bag-out systems, selection, installation, or maintenance of respiratory systems or fiber reduction systems such as misting, spraying, etc., positioning of warning signs; or

(B) installation of engineering controls (local exhaust ventilation equipped with HEPA filter dust collection systems, construction of containments or isolation mechanisms to control processes producing asbestos dust, ventilation of the regulated area to move contaminated air away from the breathing zone of employees and toward a collection or collection device equipped with a high-efficiency particulate air filter); installation of scaffolding (in an area in which asbestos maybe disturbed during the installation); installation, set-up, and calibration of monitoring devices (including sampling systems and manometers); or

(C) removal of any item from a space within a public building, once an asbestos abatement contractor takes control of that space for the purpose of asbestos abatement. Control occurs when the area has been established by the asbestos abatement contractor as a regulated area.

(79) Public building--The interior space of a building used or to be used for purposes that provide for public access or occupancy, including schools, hospitals, prisons and similar buildings. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space. The term includes any such interior space during a period of vacancy, including the period during preparations prior to actual demolition. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation (civilian or military);

(C) a private residence;

(D) an apartment building with no more than four dwelling units;

(E) a manufacturing facility or building that is limited to workers and invited guests under controlled conditions;

(F) a building, facility, or any portion of which, prior to demolition, has been determined to be structurally unsound

and in danger of imminent collapse by a professional engineer, registered architect, or a city, county, or state government official; or

(G) the portion of a building which has become structurally unsound due to demolition.

(80) Public school--Any elementary or secondary school operated by publicly elected or appointed school officials in which the program and activities are under the control of these officials and which is supported primarily by public funds.

(81) Regulated area--The demarcated area in which asbestos abatement activity takes place, and in which the possibility of exceeding the permissible exposure limits for the concentrations of airborne asbestos exists.

(82) Regulated asbestos-containing material (RACM)--means:

(A) Friable asbestos material;

(B) Category I nonfriable ACM that has become friable;

(C) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading; or

(D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of the demolition or renovation operations regulated by 40 CFR Part 61, Subpart M.

(83) Renovation--Additions to or alterations of a building by removal, repairing, and rebuilding.

(84) Response action--A method, including removal, encapsulation, enclosure, repair, and operations and maintenance, that protects human health and the environment from friable asbestos-containing building material.

(85) Responsible person--The individual that is designated by the licensed asbestos abatement contractor, asbestos operations and maintenance contractor, asbestos laboratory, asbestos consultant agency, or asbestos management planner agency, as responsible for their operations and compliance with these rules.

(86) School--Any public or private, non-profit, elementary or secondary (kindergarten through grade 12) school as defined in the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(87) School building--Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food. Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education. Any other facility used for the instruction or housing of students or for the administration of educational or research programs. Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building." Any portico or covered exterior hallway or walkway. Any exterior portion of a mechanical system used to condition interior space.

(88) Small-scale, short-duration activities (SSSD)--Tasks such as, but not limited to, removal of asbestos-containing insulation on pipes; removal of small quantities of asbestos-containing insulation on beams or above ceilings; replacement of an asbestos-containing gasket on a valve; installation or removal of a small section of drywall; or installation of electrical conduits through or proximate to asbestos-containing materials. Small-scale, short-duration activities can be further defined as the following.



(A) Removal of small quantities of asbestos-containing material only if required in the performance of another maintenance activity not intended as asbestos abatement.

(B) Removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag.

(C) Minor repairs to damaged thermal system insulation which do not require removal.

(D) Repairs to a piece of asbestos-containing wallboard.

(E) Repairs, involving encapsulation, enclosure, or removal, to small amounts of friable asbestos-containing building material only if required in the performance of emergency or routine maintenance activity and not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-containment. Such a containment shall conform spatially and geometrically to the localized work areas, in order to perform its intended containment function.

(89) Start date--The dates defined as:

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**TITLE 25****HEALTH SERVICES****PART 1****DEPARTMENT OF STATE HEALTH SERVICES****CHAPTER 295****OCCUPATIONAL HEALTH****SUBCHAPTER C****TEXAS ASBESTOS HEALTH PROTECTION****RULE §295.32****Definitions**

(A) asbestos abatement start date--For the purpose of notification to the department in accordance with §295.61 of this title (relating to Operations: Notifications), the date on which the actual disturbance of asbestos begins. Preparation that does not disturb asbestos is not the asbestos abatement start date;

(B) demolition/renovation start date--The date on which the demolition or renovation process begins.

(90) Stop date--The dates defined as:

(A) asbestos abatement stop date (completion date)--For the purpose of notification to the department in accordance with §295.61 of this title (relating to Operations: Notifications), the date on which air monitoring clearance of asbestos abatement is achieved. For removal of the resilient floor covering material in accordance with §295.36 of this title (relating to Licensing and Registration: Emergency), the date that the asbestos-containing building materials are removed from the substrate and properly containerized as specified for the project. For National Emissions Standards for Hazardous Air Pollutant projects, the date that all regulated asbestos-containing building material is removed from substrate and properly containerized.

(B) demolition/renovation stop date--For demolition, the last date on which the wrecking and/or removal operations of load-bearing structural components are completed. For renovation, the last date that interior surfaces are altered or final clearance is obtained.

(91) Survey--An activity undertaken in a school building, public building, or commercial building to determine the quantity, presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material or suspected asbestos-containing building material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and non-friable known or assumed asbestos-containing building material which has been previously identified. The term does not include the following:

(A) periodic surveillance of the type described in 40 CFR §763.92(b) solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing building material;

(B) inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(C) visual inspections of the type described in 40 CFR §763.90(i) solely for the purpose of determining completion of response actions.

(92) TEM--Transmission electron microscopy. A method of analysis for detection of the presence and type of asbestos.

(93) Transportation of asbestos-containing material (ACM)--Moving asbestos materials from one site to another or from one site to an off-site storage facility or disposal site, but not to temporary storage or staging area within the

same site.

Working days--Monday through Friday including holidays which fall on those days.

**Source Note:** The provisions of this §295.32 adopted to be effective October 20, 1992, 17 TexReg 6901; amended to be effective September 22, 1994, 19 TexReg 7098; amended to be effective December 13, 1998, 23 TexReg 12353; amended to be effective June 13, 1999, 24 TexReg 4235; amended to be effective August 16, 2000, 25 TexReg 7715; amended to be effective March 27, 2003, 28 TexReg 2549; amended to be effective January 1, 2005, 29 TexReg 11987

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**DEPARTMENT OF STATE HEALTH SERVICES**  
**S.B. 509 OPINION REQUEST**  
**EXHIBIT 9**

**EXHIBIT 9.** 25 TEX. ADMIN. CODE § 295.34 - Asbestos Management  
in Facilities and Public Buildings, subsection (l)

# Texas Administrative Code

**TITLE 25** HEALTH SERVICES

**PART 1** DEPARTMENT OF STATE HEALTH SERVICES

**CHAPTER 295** OCCUPATIONAL HEALTH

**SUBCHAPTER C** TEXAS ASBESTOS HEALTH PROTECTION

## **RULE §295.34 Asbestos Management in Facilities and Public Buildings**

### **(1) Survey Required.**

(1) In this section, "permit" means a license, certificate, approval, registration, consent, permit, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought.

(2) A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides:

(A) evidence acceptable to the municipality that an asbestos survey, as required by this Act, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this Act to perform a survey; or

(B) a certification from a licensed engineer or architect, stating that:

(i) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this Act; and

(ii) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.

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**Source Note:** The provisions of this §295.34 adopted to be effective October 20, 1992, 17 TexReg 6901; amended to be effective September 22, 1994, 19 TexReg 7098; amended to be effective December 13, 1998, 23 TexReg 12353; amended to be effective March 27, 2003, 28 TexReg 2549; amended to be effective January 1, 2005, 29 TexReg 11987