

Clearinghouse Rule 02-064

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **create** NR 447.19 relating to citation authority for asbestos program violations.

AM-20-02

Analysis Prepared by the Department of Natural Resources

Authorizing statute: s. 285.86, Stats.
Statutes interpreted: ss. 23.50 to 23.99, Stats.

The Department has received statutory authority to create a citation system for the asbestos program. The system created allows the Department staff to document clear violations and assess a forfeiture. The citation system includes violations of certain asbestos program requirements that include pre-inspection, notification, asbestos emission control, waste disposal, and both active and inactive waste disposal site requirements.

SECTION 1. NR 447.19 is created to read:

NR 447.19 Penalties. (1) The department may take appropriate enforcement action against any owner or operator of a demolition or renovation activity or any owner or operator of an active or inactive landfill, to which this chapter applies, that violates this chapter. Appropriate enforcement action includes: letters of noncompliance, notices of violation, citations, referrals to the Wisconsin department of justice, and deferral or referrals to the United States environmental protection agency. Any enforcement action the department may take shall be based upon factors such as severity, duration, frequency and environmental or health risks of the violation.

(2) Citations may be issued for violations of the following regulatory requirements: s. NR 447.06 (1), the pre-inspection; s. NR 447.07 (1) and (3), notification; s. NR 447.08 (1), (2)(a) and (b), (3), (4)(a) and (b), (5), (6)(a), (b), (c) and (d), (9) and (10), asbestos emission control; s. NR 447.13 (1), (2), (3) and (4), waste disposal; s. NR 447.14 (1) and (2), inactive waste disposal sites; and s. NR 447.17 (1), (2), (3), (4), (5)(a), (6), (7) and (10), active waste disposal sites. A citation may be issued which requires a forfeiture of not less than \$500, nor more than \$5,000, for each violation. Each day of continued violation is a separate offense.

MIRRORS FEDERAL REQUIREMENTS
LIMITED TO EIGHT ENVIRONMENTAL WARRENS
CITATIONS NOT ISSUED ON SITE; RATHER
CONFERENCE CALL WILL BE MADE

• PRE-INSPECTION
• NOTIFICATION
• WASTE DISPOSAL } 3 MAJOR ITEMS
UNDER NR447

(3) When any owner or operator is found in violation of the regulatory requirements listed in sub. (2) by any court of this state, and the violation remains of record and unreversed, for any second or subsequent violation of the regulatory requirements listed in sub. (2) occurring within a five-year period from the date of the prior adjudication, the minimum and maximum citation forfeitures shall be doubled.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board adopts an order to create NR 447.19 relating to citation authority for asbestos program violations.

AM-20-02

Analysis Prepared by the Department of Natural Resources

Authorizing statute: s. 285.86, Stats.

Interpreting statutes: ss. 23.50 to 23.99, Stats.

The Department has received statutory authority to create a citation system for the asbestos program. The system created allows the Department staff to document clear violations and assess a forfeiture. The citation system includes violations of certain asbestos program requirements that include pre-inspection, notification, and active waste disposal site requirements. Pursuant to s. 285.86(3), Stats., all the provisions of this rule have been approved by the Department of Justice.

SECTION 1. NR 447.19 is created to read:

NR 447.19 Penalties. (1) The department may take appropriate enforcement action against any owner or operator of a demolition or renovation activity or any owner or operator of an active landfill, to which this chapter applies, that violates this chapter. Appropriate enforcement action includes letters of noncompliance, notices of violation, citations, referrals to the Wisconsin department of justice, and deferral or referrals to the United States environmental protection agency. Any enforcement action the department may take shall be based upon factors such as severity, duration, frequency and environmental or health risks of the violation.

(2) Citations may be issued for violations of any of the following regulatory requirements:

- (a) Failure to conduct a ~~The pre-inspection under requirements of s. NR 447.06 (1)~~ ^{ELIMINATE (a) AND SUB IN EPA REG} ~~requirements of s. NR 447.06 (1)~~ ^{OR LAIN'S}
- (b) Failure to follow ~~The notification requirements of s. NR 447.07 (1) and (3)(a), (b)~~ ^{INSPECTION TO HAVE A CERTIFIED ASBESTOS INSPECTOR PRIOR}
- and (c). ^{STATE OF WISCONSIN CERTIFIED}
- (c) Failure to follow ~~The active waste disposal site requirements of s. NR 447.17 (1) to~~ ^{TO RENOVATION OR DEMOLITION}

(4), (5)(a), (6), and (10).

(3) A citation may be issued which requires a forfeiture of not less than \$500, nor more than \$5,000, for each violation, except as provided in sub. (4). Each day of continued violation is a separate offense.

(4) When any owner or operator is found in violation of the regulatory requirements listed in sub. (2) by any court of this state, and the violation remains of record and unreversed, for any second or subsequent violation of the regulatory requirements listed in sub. (2) occurring within a five-year period from the date of the prior adjudication, the minimum and maximum citation forfeitures shall be doubled.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

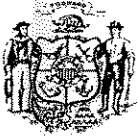
SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

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June 24, 2003

Michael D. Scott
Program Attorney
Department of Natural Resources
101 South Webster Street
Post Office Box 7921
Madison, WI 53707-7921


Re: Request for Approval of Amended Proposed Rule Regarding Asbestos
Citation Authority

Dear Mr. Scott:

The Department of Justice has received your letter dated June 19, 2003, written on behalf of the Department of Natural Resources requesting approval of the third draft of a proposed administrative rule regarding DNR citation authority for certain violations of our asbestos-handling regulations, No. AM-20-02. The Department has reviewed the proposed amended rule and the Department of Justice approves the promulgation of the amended rule as proposed pursuant to Wis. Stat. § 285.86(3).

Thank you for your attention to this matter.

Very truly yours,


Peggy A. Lautenschlager
Attorney General

PAL:JMG:msu
Enclosure

c: ✓ Pat Kirsop

RECEIVED

JUN 25 2003

AIR MANAGEMENT

Chronology of CR 02-064, asbestos citation rule

1/29/03 - Rule referred to SENRC

2/28/03 - 30-day review period expires

Clerk receives NO calls, letters, or e-mails or contact of any type in regards to this rule during first 30-day review period

2/28/03 - Clerk reports the rule with "no action taken" and delivers to the Senate Chief Clerk

2/28/03 - Clerk receives phone call from Walter Kolb asking for rule to be stopped

2/28/03 - Clerk requests rule back from Chief Clerk; sends letter to DNR asking for another 30 days (granted)

3/14/04 - Public hearing scheduled

3/26/03 - First contact with DNR to discuss rule

3/26/03 - First contact with Tim Hoven, Bill Scott (CEER) to discuss rule (2 months since rule referred to committee)

3/27/03 - Public hearing held; committee asks for 'unspecified modifications'

3/28/03 - DNR agrees to modify; clock stopped

4/01/03 to 5/9/03 - Meetings with DNR and CEER ensue; phone calls and e-mails, and letters bounce back and forth

4/08/03 CEER issues letter to members, stating:

"We want to thank all of you that supported our efforts to stop this potentially costly rule from becoming law."

"We are waiting to hear whether or not the DNR will try to revise the rule. Please let us know if you would like to be notified if the DNR tries to resurrect this proposed asbestos citation rule again."

Thus, I believe the intent of CEER all along was to kill this rule and not allow any rule to move forward.

4/30/03 to 5/9/03 - Several revisions made to rule and discussed with both DNR and CEER (met with CEER on 5/8/03 to make final revisions)

5/08/03 - Letter received from CEER; requests the following language: *"Failure to conduct any inspection under 447.06(1) prior to commencement of a demolition or renovation activity"*

Final rule reads: *"Failure to conduct any inspection under s. NR 447.06 (1)"*

5/08/03 - CEER also requests notes to express "intent". Leg. Council and DNR determine that such notes are not proper inclusion in rules. Rules must be free of interpretive language.

5/08/03 - CEER also requests that citations may not be issued for deficiencies of the content of the notice. However, Leg. Council determines that because the rule is silent on such deficiencies and because NR 447.06 (4) is not referred to in the rule, no such language is necessary.

5/09/03 - Clerk receives e-mail from Bill Scott:

*"Regarding the inspection language, **CEER accepts the DNR's shortened version** on the condition that the following note is attached:"*

"Note: For example, if prior to demolition or renovation, any type of an inspection for the presence of asbestos was performed of the part of the facility where the demolition or renovation operation was to occur, a citation could not be issued under s. 447.06(1)."

5/9/03 - Leg. Council and DNR determine that such notes are not proper inclusion in rules. Rules must be free of interpretive language.

5/9/03 Leg. Council issues the following statement regarding rule drafting:

1.09 Notes to rules. (1) EXPLANATORY MATERIAL. If it is necessary to clarify a rule by using examples, illustrations or other explanatory material or if an agency wishes to disclose where or how particular information can be obtained, the

explanatory material follows the applicable rule section and is labeled "Note:" or "Example". **Notes may not include substantive requirements and are not part of the substantive law created by rule.**

5/09/03 - Chair gives preliminary "green light" to DNR for rule to go to the NR Board

5/28/03 - NR Board adopts the rule

5/28/03 - Clerk receives call from Panzer office; Majority Leader contacted by Mr. Harenda to express concerns of the rule

6/03/03 - Clerk receives call from RPW; Party was contacted by a "big donor" who was concerned with the rule

6/04/03 No letter from Hassettt yet for review period for modifications to begin (but expecting it soon)

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter NR 447

CONTROL OF ASBESTOS EMISSIONS

NR 447.01	Applicability; purpose.	NR 447.11	Insulating materials.
NR 447.02	Definitions.	NR 447.12	Waste disposal for asbestos mills.
NR 447.03	Asbestos mills.	NR 447.13	Waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations.
NR 447.04	Roadways.	NR 447.14	Inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.
NR 447.05	Manufacturing.	NR 447.15	Air cleaning.
NR 447.06	Demolition and renovation; applicability.	NR 447.16	Reporting.
NR 447.07	Demolition and renovation; notification requirements.	NR 447.17	Active waste disposal sites.
NR 447.08	Demolition and renovation; procedures for asbestos emission control.	NR 447.18	Operations that convert asbestos-containing waste material into non-asbestos (asbestos-free) material.
NR 447.09	Spraying.		
NR 447.10	Fabricating.		

Note: Chapter NR 447 as it existed on October 31, 1992 was repealed and a new chapter NR 447 was created effective November 1, 1992. Correction made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1997, No. 493.

NR 447.01 Applicability; purpose. (1) APPLICABILITY. This chapter applies to all air contaminant sources which may emit asbestos, to their owners and operators and to any person whose action causes the emission of asbestos to the ambient air.

(2) PURPOSE. This chapter is adopted under ss. 285.11, 285.13, 285.17 and 285.27, Stats., to establish emission limitations for asbestos air contaminant sources, to establish procedures to be followed when working with asbestos materials and to create additional reporting and recordkeeping requirements for owners or operators of asbestos air contaminant sources in order to protect air quality.

Note: This chapter is based on the federal regulations contained in 40 CFR part 61, Subpart M.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

NR 447.02 Definitions. The definitions contained in chs. NR 400 and 445 apply to the terms used in this chapter. In addition, the following definitions apply to the terms used in this chapter:

(1) "ACM" means asbestos-containing material.

(a) "Category I nonfriable ACM" means asbestos-containing packings, gaskets, resilient floor covering and asphalt roofing products containing more than 1% asbestos as determined using the method specified in Appendix E to Subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, incorporated by reference in s. NR 484.04, that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure.

(b) "Category II nonfriable ACM" means any material, excluding Category I nonfriable ACM, containing more than 1% asbestos as determined using the method specified in Appendix E to 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.

(2) "Active waste disposal site" means any disposal site other than an inactive disposal site.

(3) "Adequately wet" means sufficiently mix or penetrate 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.

(5) "Asbestos-containing waste materials" means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this chapter. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing

material waste and materials contaminated with asbestos including disposable equipment and clothing.

(6) "Asbestos mill" means any facility engaged in converting, or in any intermediate step in converting, asbestos ore into commercial asbestos. Outside storage of asbestos material is not considered a part of the asbestos mill.

(7) "Asbestos tailings" means any solid waste that contains asbestos and is a product of asbestos mining or milling operations.

(8) "Asbestos waste from control devices" means any waste material that contains asbestos and is collected by a pollution control device.

(9) "Commercial asbestos" means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

(10) "Cutting" means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing or punching.

(11) "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

(12) "Emergency renovation operation" means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by non-routine failures of equipment.

(13) "Fabricating" means any processing, cutting, sawing or drilling, of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling or other similar operations performed as part of fabricating.

(14) "Facility" means 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 4 or fewer dwelling units; any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure or installation that contains a loft used as a dwelling is not considered a residential structure, installation or building. Any structure, installation or building that was previously subject to this chapter is not excluded, regardless of its current use or function.

(15) "Facility component" means any part of a facility including equipment.

(16) "Friable asbestos material" means any material containing more than 1% asbestos as determined using the method speci-

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fied in Appendix E to Subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, incorporated by reference in s. NR 484.04, that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure. If the asbestos content of the friable ACM is less than 10%, as determined by a method other than point counting by polarized light microscopy (PLM), the asbestos content shall be verified by point counting using PLM.

(17) "Fugitive source" means any source of emissions not controlled by an air pollution control device.

(18) "Glove bag" means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials.

Note: 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 OSHA's final rule on occupational exposure to asbestos in 29 CFR 1926.58, Appendix G, incorporated by reference in s. NR 484.04.

(19) "Grinding" means to reduce to powder or small fragments and includes mechanical chipping or drilling.

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

(21) "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.

(22) "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.

(23) "Leak-tight" means designed or constructed so that solids or liquids, including dust, cannot escape or spill out.

(24) "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. "Malfunction" does not include failures of equipment if they are caused in any way by poor maintenance, careless operation or any other preventable upset conditions, equipment breakdown or process failure.

(25) "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, including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

(26) "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.

(27) "Nonfriable ACM" means any material containing more than 1% asbestos as determined using the method specified in Appendix E to Subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, incorporated by reference in s. NR 484.04, that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure.

(28) "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.

(29) "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.

(30) "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.

(31) "Particulate asbestos material" means finely divided particles of asbestos or asbestos-containing material.

(32) "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. "Planned renovation operations" includes individual nonscheduled renovation operations if a number of such operations can be predicted to occur during a given period of time based on operating experience.

(33) "Regulated asbestos-containing material" or "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 chapter.

(34) "Remove" means to take out RACM or facility components that contain or are covered with RACM from any facility.

(35) "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.

Note: Operations in which load-supporting structural members are wrecked or taken out are demolitions.

(36) "Resilient floor covering" means asbestos-containing floor tile, including asphalt and vinyl floor tile and sheet vinyl floor covering containing more than 1% asbestos as determined using polarized light microscopy according to the method specified in Appendix E to Subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, incorporated by reference in s. NR 484.04.

(37) "Roadways" means surfaces on which vehicles travel. This term includes public and private highways, roads, streets, parking areas and driveways.

(38) "Strip" means to take off RACM from any part of a facility or facility component.

(39) "Structural member" means any load supporting member of a facility, such as beams and load supporting walls; or any non-load supporting member, such as ceilings and non-load supporting walls.

(40) "Visible emissions" means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing or fabricating operation. This does not include condensed, uncombined water vapor.

(41) "Waste generator" means any owner or operator of a source covered by this chapter whose act or process produces asbestos-containing waste material.

(42) "Waste shipment record" means the shipping document, required under s. NR 447.12 (5) (a), 447.13 (4) (a) or 447.17 (5) (a) to be originated and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.

(43) "Working day" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; am. (intro.), (1) (a), (16), (27), (36), r. (4), Register, December, 1995, No. 480, eff. 1-1-96; am. (3), Register, November, 1999, No. 527, eff. 12-1-99.

NR 447.03 Asbestos mills. (1) Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by s. NR 447.15 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

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(2) Each owner or operator of an asbestos mill shall meet all of the following requirements:

(a) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment and buildings that house equipment for material processing and handling, 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.

(b) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, 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 section, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

1. Maintenance schedule.
2. Recordkeeping plan.

(c) Maintain records of the results of visible emissions monitoring and air cleaning device inspections and include the following:

1. Date and time of each inspection.
2. Presence or absence of visible emissions.
3. Condition of fabric filters, including presence of any tears, holes and abrasions.
4. Presence of dust deposits on clean side of fabric filters.
5. Brief description of corrective actions taken, including date and time.
6. Daily hours of operation for each air cleaning device.

(d) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the department, all records required under this section.

(e) Retain a copy of all monitoring and inspection records for at least 2 years.

(f) Submit quarterly a copy of visible emission monitoring records to the department if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

NR 447.04 Roadways. (1) Except as provided in sub. (2) no person may construct or maintain a roadway with asbestos tailings or asbestos-containing waste material on that roadway.

(2) A person may use asbestos tailings in the construction or maintenance of a roadway only if any one of the following applies:

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine).

(b) It is a temporary roadway at an active asbestos mill site and is encapsulated with resinous or bituminous binder. The encapsulated road surface shall be maintained at a minimum frequency of once per year to prevent dust emissions.

(c) It is encapsulated in asphalt concrete meeting the specifications contained in section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-85, 1985, incorporated by reference in s. NR 484.06, or their equivalent.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; am. (2) (c), Register, December, 1995, No. 480, eff. 1-1-96.

NR 447.05 Manufacturing. (1) APPLICABILITY. This section applies to the following manufacturing operations using commercial asbestos:

(a) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap or other textile materials.

(b) The manufacture of cement products.

(c) The manufacture of fireproofing and insulating materials.

(d) The manufacture of friction products.

(e) The manufacture of paper, millboard and felt.

(f) The manufacture of floor tile.

(g) The manufacture of paints, coatings, caulks, adhesives and sealants.

(h) The manufacture of plastics and rubber materials.

(i) The manufacture of chlorine utilizing asbestos diaphragm technology.

(j) The manufacture of shotgun shell wads.

(k) The manufacture of asphalt concrete.

(2) STANDARD. Each owner or operator of any of the manufacturing operations to which this section applies shall:

(a) Control emissions by doing either of the following:

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 s. NR 447.15 to clean emissions from these operations containing particulate asbestos material before they escape to, or are vented to, the outside air.

(b) 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.

(c) 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 department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

1. Maintenance schedule.
2. Recordkeeping plan.

(d) Maintain records of the results of visible emission monitoring and air cleaning device inspections in a format acceptable to the department and include the following:

1. Date and time of each inspection.
2. Presence or absence of visible emissions.
3. Condition of fabric filters, including presence of any tears, holes and abrasions.
4. Presence of dust deposits on clean side of fabric filters.
5. Brief description of corrective actions taken, including date and time.
6. Daily hours of operation for each air cleaning device.

(e) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the department, all records required under this section.

(f) Retain a copy of all monitoring and inspection records for at least 2 years.

(g) Submit quarterly a copy of the visible emission monitoring records to the department if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

NR 447.06 Demolition and renovation; applicability.

(1) PRE-INSPECTION. To determine which requirements of this section and ss. NR 447.07 and 447.08 apply to the owner or operator of a demolition or renovation activity, the owner or operator shall, prior to the commencement of the demolition or renovation,

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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.

(2) APPLICABILITY. The requirements of ss. NR 447.07 and 447.08 apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

(a) In a facility being demolished, all the requirements of ss. NR 447.07 and 447.08 apply, except as provided in par. (c), if the combined amount of RACM meets any of the following:

1. At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components; or
2. At least one cubic meter (35 cubic feet) off of facility components where the length or area could not be measured previously.

(b) In a facility being demolished, only the notification requirements of ss. NR 447.07 (1), (2), (3) (a) and (d), and (4) (a) to (g), (i) and (p) apply if the combined amount of RACM meets all of the following:

1. Less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components; and
2. Less than one cubic meter (35 cubic feet) off of facility components where the length or area could not be measured previously or there is no asbestos.

(c) If the facility is being demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of ss. NR 447.07 (1), (2), (3) (c), (4) (a) to (g) and (i) to (q) and 447.08 (4) to (9) apply.

(d) 1. In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of ss. NR 447.07 and 447.08 apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled or similarly disturbed meets any of the following:

- a. At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components; or
- b. At least one cubic meter (35 cubic feet) off of facility components where the length or area could not be measured previously.

2. To determine whether this paragraph applies to planned renovation operations involving individual nonscheduled renovation operations, the owner or operator shall predict the combined additive amount of RACM to be removed or stripped during a calendar year.

3. To determine whether this paragraph applies to emergency renovation operations, the owner or operator shall estimate the combined amount of RACM to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; correction in (2) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1993, No. 449.

NR 447.07 Demolition and renovation; notification requirements. Each owner or operator of a demolition or renovation activity to which this chapter applies shall:

(1) Provide the department with written notice of intention to demolish or renovate. Delivery of the notice by U.S. postal service, commercial delivery service or hand delivery is acceptable.

(2) Update the notice, as necessary, including when the amount of asbestos affected changes by at least 20%.

(3) Postmark or deliver the notice as follows:

(a) At least 10 working days before asbestos stripping or removal work or any other activity begins, such as site preparation that would break up, dislodge or similarly disturb asbestos material, if the operation is described in s. NR 447.06 (2) (a) or (d) 1.

If the operation is as described in s. NR 447.06 (2) (b), notification is required 10 working days before demolition begins.

(b) At least 10 working days before the end of the calendar year preceding the year for which notice is being given for planned renovations referred to in s. NR 447.06 (2) (d) 2.

(c) As early as possible before, but not later than, the following working day if the operation is a demolition ordered according to s. NR 447.06 (2) (c) or if the operation is an emergency renovation referred to in s. NR 447.06 (2) (d) 3.

(d) For asbestos stripping or removal work in a demolition or renovation operation, described in s. NR 447.06 (2) (a) or (d) 1., and for demolition described in s. NR 447.06 (2) (b) that will begin on a date other than the one contained in the original notice, the owner or operator shall provide notice of the new start date to the department as follows:

1. When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin after the date contained in the notice:

a. Notify the department of the new start date by telephone as soon as possible before the original start date, and

b. Provide the department with a written notice of the new start date as soon as possible before, but no later than, the original start date. Delivery of the updated notice by the U.S. postal service, commercial delivery service or hand delivery is acceptable.

2. When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin on a date earlier than the original start date:

a. Provide the department with a written notice of the new start date at least 10 working days before asbestos stripping or removal work begins.

b. For demolitions covered by s. NR 447.06 (2) (b), provide the department written notice of a new start date at least 10 working days before commencement of demolition. Delivery of updated notice by U.S. postal service, commercial delivery service or hand delivery is acceptable.

3. In no event may an operation covered by this paragraph begin on a date other than the date contained in the written notice of the new start date.

(4) Include the following in the notice:

(a) An indication of whether the notice is the original or a revised notification.

(b) Name, address and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

(c) Type of operation: demolition or renovation.

(d) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age and present and prior use of the facility.

(e) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

(f) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.

(g) Location and street address, including building number or name and floor or room number, if appropriate, city, county and state of the facility being demolished or renovated.

(h) Scheduled starting and completion dates of asbestos removal work, or any other activity, such as site preparation that would break up, dislodge or similarly disturb asbestos material, in a demolition or renovation; planned renovation operations involv-

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ing individual nonscheduled operations shall only include the beginning and ending dates of the report period as described in s. NR 447.06 (2) (d) 2.

(i) Scheduled starting and completion dates of demolition or renovation.

(j) Description of planned demolition or renovation work to be performed and methods to be employed, including demolition or renovation techniques to be used and description of affected facility components.

(k) Description of work practices and engineering controls to be used to comply with the requirements of this chapter, including asbestos removal and waste-handling emission control procedures.

(L) Name and location of the waste disposal site where the asbestos-containing waste material will be deposited.

(m) A certification that at least one person trained as required by s. NR 447.08 (8) will supervise the stripping and removal described by this notification. This requirement shall become effective one year after November 1, 1992.

(n) For facilities described in s. NR 447.06 (2) (c), the name, title and authority of the state or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification.

(o) For emergency renovations referred to in s. NR 447.06 (2) (d) 3., the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden.

(p) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized or reduced to powder.

(q) Name, address and telephone number of the waste transporter.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; correction in (3) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1993, No. 449; am. (3) (a), (d) (intro.), Register, December, 1995, No. 480, eff. 1-1-96.

NR 447.08 Demolition and renovation; procedures for asbestos emission control. Each owner or operator of a demolition or renovation activity to whom this section applies, according to s. NR 447.06, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if any of the following apply:

(a) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(b) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition.

(c) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris shall be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(d) It is Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized or reduced to powder during demolition.

(2) When a facility component that contains, is covered with or is coated with RACM is being taken out of the facility as a unit or in sections:

(a) Adequately wet all RACM exposed during cutting or disjoining operations; and

(b) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding or otherwise damaging or disturbing the RACM.

(3) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

(a) In renovation operations, wetting is not required if:

1. The owner or operator has obtained prior written approval from the department based on a written application that wetting to comply with this subsection would unavoidably damage equipment or present a safety hazard; and

2. The owner or operator uses one of the following emission control methods:

a. A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system shall exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in s. NR 447.15.

b. A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

c. Leak-tight wrapping to contain all RACM prior to dismantlement.

(b) In renovation operations where wetting would result in equipment damage or a safety hazard, and the methods allowed in par. (a) cannot be used, another method may be used after obtaining written approval from the department based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in par. (a).

(c) A copy of the department's written approval shall be kept at the work site and made available for inspection.

(4) After a facility component covered with, coated with or containing RACM has been taken out of the facility as a unit or in sections pursuant to sub. (2), it shall be stripped or contained in leak-tight wrapping, except as described in sub. (5). If stripped, either:

(a) Adequately wet the RACM during stripping; or

(b) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system shall exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in s. NR 447.15.

(5) For large facility components such as reactor vessels, large tanks and steam generators, but not beams, which shall be handled in accordance with subs. (2) to (4), the RACM is not required to be stripped if the following requirements are met:

(a) The component is removed, transported, stored, disposed of or reused without disturbing or damaging the RACM.

(b) The component is encased in a leak-tight wrapping.

(c) The leak-tight wrapping is labeled according to s. NR 447.12 during all loading and unloading operations and during storage.

(6) For all RACM, including material that has been removed or stripped:

(a) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with s. NR 447.13; and

(b) Carefully lower the material to the ground and floor, not dropping, throwing, sliding or otherwise damaging or disturbing the material.

(c) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

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(d) RACM contained in leak-tight wrapping that has been removed in accordance with subs. (3) (a) 2. c. and (4) need not be wetted.

(7) When the temperature at the point of wetting is below 0°C (32°F):

(a) The owner or operator need not comply with sub. (2) (a) and the wetting provisions of sub. (3).

(b) The owner or operator shall remove facility components containing, coated with, or covered with RACM as unit or in sections to the maximum extent possible.

(c) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator shall record the temperature in the area containing the facility components at the beginning, middle and end of each working day and keep daily temperature records available for inspection by the department during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least 2 years.

(8) No RACM may be stripped, removed or otherwise handled or disturbed at a facility regulated by this chapter unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this chapter and the means of complying with them, is present. Every 2 years, the trained on-site individual shall receive refresher training in the provisions of this chapter. The required training shall include at a minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Each owner or operator shall post evidence that the required training has been completed and make such evidence available for inspection by the department at the demolition or renovation site.

(9) For facilities described in s. NR 447.06 (2) (c), adequately wet the portion of the facility that contains RACM during the wrecking operation.

(10) If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM shall be removed in accordance with this chapter before burning.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; correction in (9) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1993, No. 449; am. (2) (a), (3) (a) 1., (4) (intro.), (a) and (6) (a), Register, November, 1999, No. 527, eff. 12-1-99.

NR 447.09 Spraying. (1) Except as provided in sub. (2), the owner or operator of an operation in which asbestos-containing materials are spray applied shall comply with the following requirements:

(a) For spray-on application on buildings, structures, pipes and conduits, the owner or operator may not use material containing more than 1% asbestos as determined using the method specified in Appendix E to Subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, incorporated by reference in s. NR 484.04.

(b) For spray-on application of materials that contain more than 1% asbestos as determined using the method specified in Appendix E to Subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, on equipment and machinery, the owner or operator shall:

1. Notify the department at least 20 days before beginning the spraying operation. Include the following information in the notice:

- a. Name and address of owner or operator.
- b. Location of spraying operation.
- c. Procedures to be followed to meet the requirements of this section.

2. Discharge no visible emissions to the outside air from spray-on application of the asbestos-containing material or use the methods specified by s. NR 447.15 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(2) The requirements of sub. (1) do not apply to the spray-on application of materials where the asbestos fibers in the materials are encapsulated with a bituminous or resinous binder during spraying and the materials are not friable after drying.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; am. (1) (a), Register, December, 1995, No. 480, eff. 1-1-96.

NR 447.10 Fabricating. (1) APPLICABILITY. This section applies to the following fabricating operations using commercial asbestos:

(a) The fabrication of cement building products.

(b) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

(c) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture, bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.

(2) STANDARD. Each owner or operator of any of the fabricating operations to which this section applies shall:

(a) Control emissions by doing either of the following:

1. Discharge no visible emissions to the outside air from any of the 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 s. NR 447.15 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(b) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment and buildings that house equipment for material processing and handling, 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.

(c) 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 section, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

1. Maintenance schedule.
2. Recordkeeping plan.

(d) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format acceptable to the department and include the following:

1. Date and time of each inspection.
2. Presence or absence of visible emissions.
3. Condition of fabric filters, including presence of any tears, holes and abrasions.
4. Presence of dust deposits on clean side of fabric filters.
5. Brief description of corrective actions taken, including date and time.
6. Daily hours of operation for each air cleaning device.

(e) Furnish upon request and make available at the affected facility during normal business hours for inspection by the department, all records required under this section.

(f) Retain a copy of all monitoring and inspection records for at least 2 years.

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(g) Submit quarterly a copy of the visible emission monitoring records to the department if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

NR 447.11 Insulating materials. No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this section do not apply to spray-applied insulating materials regulated under s. NR 447.09.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

NR 447.12 Waste disposal for asbestos mills. Each owner or operator of an asbestos mill shall comply with all of the requirements of this section.

(1) An owner or operator shall deposit all asbestos-containing waste material at a waste disposal site operated in accordance with the provisions of s. NR 447.17.

(2) An owner or operator shall discharge no visible emissions to the outside air from the transfer of control device asbestos waste to the tailings conveyor, or use the methods specified by s. NR 447.15 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with s. NR 447.13 (1) or sub. (3).

(3) An owner or operator shall discharge no visible emissions to the outside air during the collection, processing, packaging or on-site transporting of any asbestos-containing waste material, or use one of the disposal methods specified in par. (a) or (b), as follows:

(a) Use a wetting agent as follows:

1. Adequately mix all asbestos-containing waste material with a wetting agent recommended by the manufacturer of the agent to effectively wet dust and tailings, before depositing the material at a waste disposal site. Use the agent as recommended for the particular dust by the manufacturer of the agent.

2. Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by s. NR 447.15 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

3. Wetting may be suspended when the ambient temperature at the waste disposal site is less than -9.5°C (15°F), as determined by an appropriate measurement method with an accuracy of $\pm 1^{\circ}\text{C}$ ($\pm 2^{\circ}\text{F}$). During periods when wetting operations are suspended, the temperature shall be recorded at least at hourly intervals, and records shall be retained for at least 2 years in a form suitable for inspection.

(b) Use an alternative emission control and waste treatment method that has received prior written approval by the administrator under 40 CFR 61.149 (c) (2).

Note: To obtain approval for an alternative method, a written application must be submitted to the administrator demonstrating that the following criteria are met:

1. The alternative method will control asbestos emissions equivalent to currently required methods.
2. The suitability of the alternative method for the intended application.
3. The alternative method will not violate other regulations.
4. The alternative method will not result in increased water pollution, land pollution or occupational hazards.

(4) When waste is transported by vehicle to a disposal site, an owner or operator shall:

(a) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of the waste so that the signs are visible. The markings shall:

1. Be displayed in such a manner and location that a person can easily read the legend.

2. Conform to the requirements for 51 cm \times 36 cm (20 in \times 14 in) upright format signs specified in 29 CFR 1910.145 (d) (4), incorporated by reference in s. NR 484.03, and this paragraph.

3. Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
DANGER	2.5 cm (1 inch) Sans Serif, Gothic or Block
ASBESTOS DUST HAZARD	2.5 cm (1 inch) Sans Serif, Gothic or Block
CANCER AND LUNG DISEASE HAZARD	1.9 cm ($3/4$ inch) Sans Serif, Gothic or Block
Authorized Personnel Only	17 Point Gothic

Spacing between any 2 lines shall be at least equal to the height of the upper of the 2 lines.

(b) For off-site disposal, provide a copy of the waste shipment record, described in sub. (5) (a), to the disposal site owner or operator at the same time as the asbestos-containing waste material is delivered to the disposal site.

(5) For all asbestos-containing waste material transported off the facility site, an owner or operator shall:

(a) Maintain asbestos waste shipment records using a format acceptable to the department and include the following information:

1. The name, address and telephone number of the waste generator.
2. The name and address of the department staff person responsible for administering this chapter.
3. The quantity of the asbestos-containing waste material in cubic meters (cubic yards).
4. The name and telephone number of the disposal site operator.
5. The name and physical site location of the disposal site.
6. The date transported.
7. The name, address and telephone number of the transporters.

8. A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked and labeled, and are in all respects in proper condition for transport by highway according to applicable international, federal, state and local regulations.

(b) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter or the owner or operator of the designated disposal site or both to determine the status of the waste shipment.

(c) Report in writing to the department if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report all of the following information:

1. A copy of the waste shipment record for which a confirmation of delivery was not received.
2. A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(d) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(6) An owner or operator shall furnish upon request, and make available for inspection by the department, all records required under this section.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; am. (4) (a) 2., Register, December, 1995, No. 480, eff. 1-1-96.

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NR 447.13 Waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations.

Each owner or operator of any source covered under the provisions of ss. NR 447.05 to 447.10 shall comply with the following provisions:

(1) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in pars. (a) to (d).

(a) Adequately wet asbestos-containing waste material as follows:

1. Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material.

2. Discharge no visible emissions to the outside air from collection, mixing, wetting and handling operations, or use the methods specified by s. NR 447.15 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

3. After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping.

4. Label the containers or wrapped materials specified in subd. 3. using warning labels specified by occupational safety and health standards of the U.S. department of labor, occupational safety and health administration (OSHA) under 29 CFR 1910.1001 (j) (2) or 1926.58 (k) (2) (iii), incorporated by reference in s. NR 484.03. The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

5. For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(b) Process asbestos-containing waste material into nonfriable forms as follows:

1. Form all asbestos-containing waste material into nonfriable pellets or other shapes.

2. Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the methods specified by s. NR 447.15 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(c) For facilities demolished where the RACM is not removed prior to demolition according to s. NR 447.08 (1) (a) to (d) or for facilities demolished according to s. NR 447.08 (9), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this subsection do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(d) Use an alternative emission control and waste treatment method that has received prior approval by the administrator as described under s. NR 447.12 (3) (b).

(1m) As applied to demolition and renovation operations, the requirements of sub. (1) do not apply to Category I nonfriable ACM waste and Category II nonfriable ACM waste that did not become crumbled, pulverized or reduced to powder.

(2) (a) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

1. A waste disposal site operated in accordance with the provisions of s. NR 447.17.

2. An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of s. NR 447.18.

(b) The requirements of this subsection do not apply to Category I nonfriable ACM that is not RACM.

(3) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings shall conform to the requirements of s. NR 447.12 (4) (a) 1. to 3.

(4) For all asbestos-containing waste material transported off the facility site:

(a) Maintain waste shipment records, using a format acceptable to department, and include the following information:

1. The name, address and telephone number of the waste generator.

2. The name and address of the department staff person responsible for administering this chapter.

3. The approximate quantity in cubic meters (cubic yards).

4. The name and telephone number of the disposal site operator.

5. The name and physical site location of the disposal site.

6. The date transported.

7. The name, address and telephone number of the transporters.

8. A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked and labeled, and are in all respects in proper condition for transport by highway according to applicable international, federal, state and local regulations.

(b) Provide a copy of the waste shipment record, described in par. (a), to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site.

(c) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter or the owner or operator of the designated disposal site or both to determine the status of the waste shipment.

(d) Report in writing to the department if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

1. A copy of the waste shipment record for which a confirmation of delivery was not received.

2. A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(e) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(5) Furnish upon request, and make available for inspection by the department, all records required under this section.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; am. (1) (a) 4., Register, December, 1995, No. 480, eff. 1-1-96; am. (1) (a) 4., Register, November, 1999, No. 527, eff. 12-1-99.

NR 447.14 Inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

Each owner or operator of any inactive waste disposal site that was operated by sources covered under s. NR 447.03, 447.05 or 447.10 and received deposits of asbestos-containing waste material generated by the sources, shall:

(1) Comply with any of the following:

(a) Discharge no visible emissions to the outside air from an inactive waste disposal site subject to this section.

(b) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing

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material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material. In desert areas where vegetation would be difficult to maintain, at least 8 additional centimeters (3 inches) of well-graded, nonasbestos crushed rock may be placed on top of the final cover instead of vegetation and maintained to prevent emissions.

(c) Cover the asbestos containing waste material with at least 60 centimeters (2 feet) of compacted nonasbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste.

(d) For inactive waste disposal sites for asbestos tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used instead of the methods in pars. (a) to (c). Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent to achieve and maintain dust control. Obtain prior written approval of the department to use other equally effective dust suppression agents. For purposes of this paragraph, any used, spent or other waste oil is not considered a dust suppression agent.

(2) Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with sub. (1) (b).

(a) Display warning signs at all entrances and at intervals of 100 m (328 feet) or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs shall conform with all the following:

1. Be posted in such a manner and location that a person can easily read the legend.
2. Conform to the requirements for 51 cm x 36 cm (20" x 14") upright format signs specified in 29 CFR 1910.145 (d) (4), incorporated by reference in s. NR 484.03, and this paragraph.
3. Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Site	2.5 cm (1 inch) Sans Serif, Gothic or Block
Do Not Create Dust	1.9 cm (3/4 inch) Sans Serif, Gothic or Block
Breathing Asbestos is Hazardous to Your Health	14 point Gothic

Spacing between any 2 lines shall be at least equal to the height of the upper of the 2 lines.

(b) Fence the perimeter of the site in a manner adequate to deter access by the general public.

(c) When requesting a determination on whether a natural barrier adequately deters public access, supply information enabling the department to determine whether a fence or a natural barrier adequately deters access by the general public.

(3) The owner or operator may use an alternative control method that has received prior approval of the administrator rather than comply with the requirements of sub. (1) or (2).

(4) Notify the department in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section, and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date shall be provided to the department at least 10 working days before excavation begins and in no event may excavation begin earlier

than the date specified in the original notification. Include the following information in the notice:

- (a) Scheduled starting and completion dates.
- (b) Reason for disturbing the waste.
- (c) Procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the department may require changes in the emission control procedures to be used.
- (d) Location of any temporary storage site and the final disposal site.
- (5) After November 1, 1992, within 60 days of a site becoming inactive, record, in accordance with ch. 706, Stats., a notation on the deed to the facility property and on any other instrument that would normally be examined during a title search; this notation shall in perpetuity notify any potential purchaser of the property that:

(a) The land has been used for the disposal of asbestos-containing waste material.

(b) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in s. NR 447.17 (6) have been filed with the department.

(c) The site is subject to this chapter.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; am. (2) (a) 2., Register, December, 1995, No. 480, eff. 1-1-96.

NR 447.15 Air cleaning. (1) The owner or operator who uses air cleaning, as specified in ss. NR 447.03 (1), 447.05 (2) (a) 2., 447.08 (3) (a) 2. a., or (4) (b), 447.09 (1) (b) 2., 447.10 (2) (a) 2., 447.12 (2) or (3) (a) 2., 447.13 (1) (a) 2. or (b) 2., and 447.18 (5) shall:

(a) Use fabric filter collection devices, except as noted in sub. (2), doing all of the following:

1. Ensuring that the airflow permeability, as determined by ASTM Method D737-96, incorporated by reference in s. NR 484.10, does not exceed 9 m³/min/m² (30 ft³/min/ft²) for woven fabrics or 11 m³/min/m² (35 ft³/min/ft²) for felted fabrics, except that 12 m³/min/m² (40 ft³/min/ft²) for woven and 14 m³/min/m² (45 ft³/min/ft²) for felted fabrics is allowed for filtering air from asbestos ore dryers.

2. Ensuring that felted fabric weighs at least 475 grams per square meter (14 ounces per square yard) and is at least 1.6 millimeter (one-sixteenth inch) thick throughout.

3. Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.

(b) Properly install, use, operate and maintain all air-cleaning equipment authorized by this section. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the particulate asbestos material.

(c) For fabric filter collection devices installed after January 10, 1989, provide for easy inspection for faulty bags.

(2) There are the following exceptions to sub. (1) (a):

(a) If the use of fabric creates a fire or explosion hazard, or the department determines that a fabric filter is not feasible, the department may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(b) Use of a High Efficiency Particulate Air (HEPA) filter that is certified to be at least 99.97% efficient for 0.3 micron particles.

(c) Use of an alternative filtering equipment that has received prior authorization from the administrator.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; am. (1) (a) 1., Register, December, 1995, No. 480, eff. 1-1-96; am. (1) (a) 1., Register, November, 1999, No. 527, eff. 12-1-99.

NR 447.16 Reporting. (1) Any new source to which this chapter applies, with the exception of sources subject to ss. NR

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447.04, 447.06, 447.07, 447.08, 447.09 and 447.11, which has an initial startup date preceding November 1, 1992, shall provide the information required in this subsection to the department postmarked or delivered within 90 days of November 1, 1992. In the case of a new source that does not have an initial startup date preceding November 1, 1992, the information shall be provided, postmarked or delivered, within 90 days of the initial startup date. Any owner or operator of an existing source shall provide the following information to the department within 90 days of November 1, 1992 unless the owner or operator of the existing source has previously provided this information to the department. Any changes in the information provided by any existing source shall be provided to the department, postmarked or delivered, within 30 days after the change. The information shall include:

(a) A description of the emission control equipment used for each process;

(b) If a fabric filter device is used to control emissions,

1. The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$) if the fabric filter device uses a woven fabric and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and

2. If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ ($\text{ft}^3/\text{min}/\text{ft}^2$);

(c) If a High Efficiency Particulate Air (HEPA) filter is used to control emissions, the certified efficiency of the filter.

(d) For sources subject to s. NR 447.12 or 447.13 the shall include all of the following:

1. A brief description of each process that generates asbestos-containing waste material.

2. The average volume of asbestos-containing waste material disposed of, measured in m^3/day (yd^3/day).

3. The emission control methods used in all stages of waste disposal.

4. The type of disposal site or incineration site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

(e) For sources subject to s. NR 447.14 or 447.17, the information shall include all of the following:

1. A brief description of the site.

2. The method or methods used to comply with the standard or alternative procedures to be used.

(2) The information required by sub. (1) shall accompany the information required by 40 CFR 61.10 as in effect on January 1, 1998. Active waste disposal sites subject to s. NR 447.17 shall also comply with this provision. Roadways, demolition and renovation, spraying and insulating materials are exempted from the requirements of 40 CFR 61.10 (a). The information described in this section shall be reported using the format of Appendix A of 40 CFR part 61, incorporated by reference in s. NR 484.04, as a guide.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; am. (2), Register, December, 1995, No. 480, eff. 1-1-96; am. (2), Register, December, 1996, No. 492, eff. 1-1-97; am. (2), Register, November, 1999, No. 527, eff. 12-1-99.

NR 447.17 Active waste disposal sites. Each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under s. NR 447.12, 447.13 or 447.18 shall meet the following requirements:

(1) Either there shall be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of sub. (3) or (4) shall be met.

(2) Unless a natural barrier exists, either warning signs and fencing shall be installed and maintained as follows, or the requirements of sub. (3) (a) shall be met.

(a) Warning signs shall be displayed at all entrances and at intervals of 100 m (330 ft) or less along the property line of the site

or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs shall:

1. Be posted in such a manner and location that a person can easily read the legend;

2. Conform to the requirements of 51 cm \times 36 cm (20" \times 14") upright format signs specified in 29 CFR 1910.145 (d) (4), incorporated by reference in s. NR 484.03, and this paragraph; and

3. Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Site	2.5 cm (1 inch) Sans Serif, Gothic or Block
Do Not Create Dust	1.9 cm ($3/4$ inch) Sans Serif, Gothic or Block
Breathing Asbestos is Hazardous to Your Health	14 point Gothic

Spacing between any 2 lines shall be at least equal to the height of the upper of the 2 lines.

(b) The perimeter of the disposal site shall be fenced in a manner adequate to deter access by the general public.

(c) Upon request and supply of appropriate information, the department shall determine whether a fence or a natural barrier adequately deters access by the general public.

(3) Rather than meet the no visible emission requirement of sub. (1), at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material that has been deposited at the site during the operating day or previous 24-hour period shall:

(a) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos containing material, or

(b) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the department. For purposes of this paragraph, any used, spent or other waste oil is not considered a dust suppression agent.

(4) Rather than meet the no visible emission requirement of sub. (1), use an alternative emissions control method that has received prior written approval by the administrator as described under s. NR 447.12 (3) (b).

(5) For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

(a) Maintain waste shipment records, using a format acceptable to the department, and include the following information:

1. The name, address and telephone number of the waste generator.

2. The name, address and telephone number of the transporters.

3. The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

4. The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in leak-tight containers. Report in writing to the department staff person identified in the waste shipment record, by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.

5. The date of the receipt.

(b) As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator.

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(c) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to the department staff person identified in the waste shipment record. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

(d) Retain a copy of all records and reports required by this subsection for at least 2 years.

(6) Maintain, until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(7) Upon closure, comply with all the provisions of s. NR 447.14.

(8) Submit to the department, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

(9) Furnish upon request, and make available during normal business hours for inspection by the department, all records required under this section.

(10) Notify the department in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date shall be provided to the department at least 10 working days before excavation begins and in no event may excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(a) Scheduled starting and completion dates.

(b) Reason for disturbing the waste.

(c) Procedures to be used to control emissions during the excavation, storage, transport and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the department may require changes in the emission control procedures to be used.

(d) Location of any temporary storage site and the final disposal site.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92; am. (2) (a) 2., Register, December, 1995, No. 480, eff. 1-1-96.

NR 447.18 Operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material. Each owner or operator of an operation that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

(1) Obtain the prior written approval of the administrator to construct the facility.

Note: The information which must be submitted to obtain approval of the administrator is specified in 40 CFR 61.155(a). This includes the performance test protocol, including provisions for obtaining information required under sub. (2).

(2) Conduct a startup performance test. Test results shall include:

(a) A detailed description of the types and quantities of nonasbestos material, RACM and asbestos-containing waste material processed, e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc. The tests shall be conducted using the full range of materials that will be encountered in actual operation of the process.

(b) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(c) Results of analyses, using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis shall be collected as 8-hour composite samples, one 200-gram (7-ounce) sample per hour, beginning with

the initial introduction of RACM or asbestos-containing waste material and continuing until the end of the performance test.

(d) A description of operating parameters, such as temperature and residence time, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(e) The length of the test.

(3) During the initial 90 days of operation:

(a) Continuously monitor and log the operating parameters identified during startup performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(b) Monitor input materials to ensure that they are consistent with the test feed materials described during startup performance tests in sub. (2) (a).

(c) Collect and analyze samples taken as 10-day composite samples. Samples shall consist of one 200-gram (7-ounce) sample collected every 8 hours of operation, of all output material for the presence of asbestos. Composite samples may be for fewer than 10 days. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos. During the initial 90-day period, all output materials shall be stored on-site until either analysis shows the material to be asbestos-free or the material is disposed of as asbestos-containing waste material according to s. NR 447.13.

(4) After the initial 90 days of operation:

(a) Continuously monitor and record the operating parameters identified during startup performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output materials shall be:

1. Disposed of as asbestos-containing waste material according to s. NR 447.13.

2. Recycled as waste feed during process operation within the established range of operating conditions, or

3. Stored temporarily on-site in a leak-tight container until analyzed for asbestos content.

(b) Collect and analyze monthly composite samples, one 200-gram (7-ounce) sample collected every 8 hours of operation, of the output material. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos.

(5) Discharge no visible emissions to the outside air from any part of the operation, or use the methods specified by s. NR 447.15 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(6) Maintain records on-site and include the following information:

(a) Results of startup performance testing and all subsequent performance testing, including operating parameters, feed characteristic and analyses of output materials.

(b) Results of the composite analyses required during the initial 90 days of operation under sub. (3).

(c) Results of the monthly composite analyses required under sub. (4).

(d) Results of continuous monitoring and logs of process operating parameters required under subs. (3) and (4).

(e) The information on waste shipments received as required in s. NR 447.17 (5).

(f) For output materials where no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which the output materials were sold or deposited and the date of sale or disposal.

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(g) Retain records required by this subsection for at least 2 years.

(7) Submit the following reports to the department:

(a) A report for each analysis of product composite samples performed during the initial 90 days of operation.

(b) A quarterly report, including the following information concerning activities during the report period:

1. Results of analyses of monthly product composite samples.
2. A description of any deviation from the operating parameters established during performance testing, the duration of the deviation and steps taken to correct the deviation.
3. Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbes-

tos-containing waste material or stored temporarily on-site until analyzed for asbestos content.

4. The information on waste disposal activities as required in s. NR 447.17 (6).

(8) Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this chapter. Output materials in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the startup performance testing, unless shown by transmission electron microscopy analysis to be asbestos-free, shall be considered to be asbestos-containing waste and shall be handled and disposed of according to ss. NR 447.13 and 447.17 or reprocessed while all of the established operating parameters are being met.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.



State Senator
Neal J. Kedzie
11th Senate District

February 28, 2003

Scott Hassett, Secretary
Department of Natural Resources
101 S. Webster Street
Madison, WI 53707-7921

SUBJECT: Meeting Request on Clearinghouse Rule 02-064

Dear Secretary Hassett,

By this letter, I am requesting a meeting with the Department regarding Clearinghouse Rule 02-064, relating to citation asbestos program violations.

Per Wisconsin Statutes 227.19 (4)(b) 1a, this will extend our 30-day review period another 30 days from today's date.

I will contact your office to schedule this meeting. Thank you.

Sincerely,

Neal Kedzie
Chair, Senate Environment and Natural Resources Committee
State Senator
11th Senate District

NJK: dj

**Senate Environment and Natural Resources Committee
Public Hearing
330 SW, State Capitol
March 27, 2003, 11:00**

Agenda

1. Call of the Role
2. Agenda
 - **Senate Bill 29**, relating to immunity for certain solid wastes in public works projects
 - **Senate Bill 61**, relating to an environmental improvement and results program
 - **Senate Bill 63**, relating to removing feathers and non-edible parts from upland game birds
 - **Clearinghouse Rule 02-064**, relating to citation authority for asbestos program violations

Clearinghouse Rule 02-064; citation authority for asbestos program violations

RULE SUMMARY

Proposed rule gives the department the authority to issue citations for violating certain asbestos program requirements.

The rule will allow DNR environmental wardens to issue the citations under certain circumstances with forfeitures ranging from \$500 to \$5000 each day a violation occurs and is not remedied.

The DNR may issue citations under the following circumstances:

1. Violation of the pre-inspection requirements under NR 447.06(1)
2. Violation of the notification requirements under NR 447.07 (1) and (3)
3. Violation of the active waste disposal site requirements under NR 447.17(1) to (4), (5)(a), (6) and (10).

FISCAL EFFECT

The rule will affect demolition and asbestos abatement contractors and their customers. All businesses that perform asbestos demolition and renovation work will be faced with more stringent enforcement of the existing rule

SUPPORTORS

Four individuals appeared in support at NR Board hearings.

OPPOSITION

Three individuals appeared at NR Board hearings in opposition.

INTEREST

Twenty-five individuals appeared at NR Board hearing "in interest only"

Senate Environment and Natural Resources Committee
Executive Session
330 SW, State Capitol
March 27, 2003

Agenda

1. Call of the Role
2. Agenda

(Asbestos)

If you are so inclined, we may take action on CR 02-064, the asbestos rule

tomorrow is LAST DAY

That action could be:

1. Object to the rule in its entirety
2. Request specific modifications
- ③ Request general modifications - *nicest approach*
4. Do nothing

IS DNR ANSWERABLE TO MAKING MODIFICATIONS?

- Requesting general modifications would be similar to what we did with the aquatic plant management rule.
- It would stop the clock and allow the department and opposition parties to discuss the rule and their concerns.
- Requesting specific modifications would have to be done by the committee and may inevitably be rejected by the department.
- An outright objection sends it back to the department. But, keep in mind that if we object, then the Assembly Natural Resources committee loses their ability to act on the rule.

The committee should also discuss CR 02-061, the aquatic plant management rule.

- We should not take action on it today as the paperwork from the department has yet to arrive. Instead, discuss the modifications, invite the DNR to the table if they are present, and if there is agreement on the modifications, we could paper ballot on Friday.**
- That paper ballot motion would probably be to relinquish our jurisdiction over the rule and allow the department to start promulgating.**
- Recall, when modifications come back to the committee, we have 10 days to review. But, the department needs to get moving on this rule in order to have it implemented by May 1.**
- If we held the rule for the full 10 days, we would upset that timeline. Thus, the reasonable motion to make is a relinquishment of jurisdiction so long as the committee is amenable to the modifications and we have an assurance from the department that no further substantive modifications will be made.**

Committee Meeting Attendance Sheet
Committee on Environment and Natural Resources

Date: 3/27/03

Meeting Type: EXEC. SESSION

Location: 330 SW

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Senator Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cathy Stepp	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Zien	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Fred Risser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Wirch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 5 0 _____

Vote Record

Committee on Environment and Natural Resources

Date: 3/27/03
Bill Number: CR 02-064
Moved by: STEPP Seconded by: ZIEN
Motion: REQUEST GENERAL, NON-SPECIFIC MODIFICATIONS
To CR 02-064

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cathy Stepp	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Zien	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Fred Risser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Wirch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 5 0 _____

Motion Carried

Motion Failed

MAR 24 2003



March 21, 2003

Donald P. Gallo, Esq.
Direct Dial: (262) 951-4555
dgallo@reinhartlaw.com

Senator Neal Kedzie
Room 313 South
State Capitol
P.O. Box 7882
Madison 53707-7882

Dear Senator Kedzie:

Re: Senate Committee on Environment and
Natural Resources Public Hearing March
27, 2003 - Wisconsin Department of
Natural Resources – Proposed Asbestos
Citation Authority

This letter is written on behalf of Balestrieri Environmental & Development, Inc., Sigma Environmental Services, Inc., North Shore Environmental Construction, Inc., The Tyler Company, Delahey Industries, Inc, Milwaukee Lead Asbestos Information Center, Wisconsin Laborers District Council, AFL-CIO, Micro Analytical, Inc., Trans Environmental LLC, Occupational Training & Supply, Inc., Environmental Hazard Control, Inc., AP Environmental and myself and is intended to provide support for the proposed asbestos citation rule.

We were initially concerned with the proposed asbestos citation rule, and we expressed our concerns to Mark Davis. These issues were further discussed in the work group sessions among some of the corporations and addressed in the final rule package. We appreciate the efforts of Patrick Kirsop, Mark Davis and Joe Brehm, and we support the final proposed citation rule.

Yours very truly,

A handwritten signature in black ink that reads 'Donald P. Gallo'. The signature is written in a cursive style with a large, prominent 'D' and 'G'.

Donald P. Gallo

Waukesh\4820DPG:SJA

Senator Neal Kedzie

March 21, 2003

Page 2

Mr. Patrick Kirsop

Mr. Mark Davis

Mr. Joseph Brehm

Mr. Kenneth Balestrieri, Balestrieri
Environmental & Development, Inc.

Mr. David Scherzer, Sigma Environmental

Mr. John Hey, Delahey Industries, Inc.

Ms. Ada Duffey, Milwaukee Lead and
Asbestos Information Center

Mr. Michael Ryan, Wisconsin Laborers
District Council

Ms. Beth Levi, AFL-CIO

Mr. Jon Yakish, Micro Analytical, Inc.

Mr. Keith Hitzke, North Shore Environmental
Construction, Inc.

Mr. Troy Mews, Tyler Company, Inc.

Ms. Jennifer Anderson, Trans Environmental
Construction, Inc.

Ms. Kathy Nicholson, Occupational Training
& Supply, Inc.

Mr. Frank Ottolino, Environmental Hazard
Control, Inc.

Mr. Anthony Kaprelian, AP Environmental

Appendix 3.

Draft

DATE: March 21, 2003

TO: Larry Weix – NER, Robin Capen – NOR, Bob Gothblad – NOR, Phyllis Holmbeck – NOR, Maria Hill – SCR, Saji Villoth – SER, Denese Helgeland – WCR, Rhonda O’Leary – WCR, Tom Stibbe – WCR, Regional Air Management Supervisors

FROM: Lloyd Eagan – AM/7

SUBJECT: Guideline’s for Using Asbestos Citation Authority s. NR 447.19.

The purpose of this document is to provide guidance for Air Management staff to be used in implementing the new Asbestos Citation Authority under section NR 447.19, Wis. Adm. Code. NR 447.19 is anticipated to take effect in June of 2003.

Asbestos citations are an enforcement tool that can be used for addressing violations of a limited amount of requirements delineated in the asbestos regulations. Other violations may occur that can not have a citation issued. These violations must go through the stepped enforcement process. Only an Environmental Warden may only issue citations.

Background

For all asbestos violations, regardless of whether the violation is subject to citation authority, the Air Management Asbestos Inspector will consult with their supervisor and the Asbestos Coordinator to determine the proper course of enforcement action for all violations discovered. Options include: (1) issue citation(s) if violations of requirements that can be cited were the only violations found; (2) issue citation(s) and pursue stepped enforcement action for the other violations; or (3) pursue stepped enforcement action for all violations.

Air Management staff will contact the Environmental Enforcement Program to discuss the options for using citation authority and the need to set up an enforcement conference. The enforcement conference will then be held to begin the process for addressing all types of violations. An Environmental Warden will issue the citation(s) during the enforcement conference.

Once a citation has been issued for a violation, further enforcement actions can not be taken for that particular occurrence of the violation. Environmental Enforcement Specialists will assist in case development, issuance of a Notice of Violation (NOV), managing an Enforcement Conference or other requests. Environmental Wardens will be responsible for issuing citations. The Air Management Inspector will be responsible for providing evidence sufficient for the Environmental Warden to establish reasonable belief that a violation has been committed. A second or subsequent violation of the requirements that can be issued a citation could instead be included in the enforcement action at that time. Stepped Enforcement may be used in conjunction with the issuance of a citation(s) to maximize the effectiveness of the enforcement action. The use of Stepped Enforcement can help ensure that all

Appendix 3.

violations in a particular situation are addressed and not simply those that fall within the citation authority.

Regulatory requirements that may be issued citations.

The following types of violations may be issued a citation:

1. Pre-Inspection under s. NR 447.06(1)

A citation may be issued for not conducting a pre-inspection prior to any renovation or demolition work.

2. Notifications under s. NR 447.07(1) and (3)

A citation may be issued for failure to provide the Department of Natural Resource's Air Management program notification of the intention to demolish or renovate at least 10 working days before work begins. This notification must be received at one of the Departments Regional Offices or the Central Office.

3. Active Waste Disposal Sites under s. NR 447.17(1), (2), (3), (4), (5)(a), (6), and (10)

A citation may be issued for:

- (A.) Discharging visible emissions and not meeting sub. (3), covering material with 6 inches of compacted non-asbestos material within a 24 hour period or be covered with a resinous or petroleum based dust suppression agent.
- (B.) Failure to place warning signs at all entrances and at intervals of 100m (330 ft.) or less along the property line of the site or along the perimeter of the sections where asbestos containing waste material is deposited if no natural barrier exists.
- (C.) Failure to maintain waste shipment record according to the Departments waste manifest requirements.
- (D.) Failure to maintain, until closure, records of location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.
- (E.) Failure to notify the department at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material. Failure to provide at least 10 working days prior to a new start date.

Pursuant to s. NR 447.19, only violations of the above listed sections are subject to the citation authority. Other, more severe violations, such as failure to adequately wet the regulated asbestos containing material (RACM), failure to remove RACM prior to disturbance of material, and failure to contain RACM in leak-tight containers will be processed utilizing the Stepped Enforcement system and referral to the Department of Justice.

Procedures for Requesting an Asbestos Citation.

- 1. Complete Asbestos Inspection Form, and submit this and all documentation to your Air Management Supervisor and the Asbestos Coordinator.
- 2. Arrange a conference call with your supervisor and the Asbestos Coordinator to discuss violations and how each will be addressed.

Appendix 3.

3. Complete Environmental Enforcement Investigation worksheet (needs to be modified) Form 4100-189 that requests citation(s).
4. Contact Environmental Enforcement Program and Environmental Warden to discuss the need for an enforcement conference. Provide documentation for violations and modified Form 4100-189 Environmental Enforcement Investigation worksheet.
5. Work with Environmental Enforcement staff to hold enforcement conference.
6. Request the issuance of a citation from an Environmental Warden. An Environmental Warden would issue the citation during the enforcement conference if necessary and appropriate.

If you have any questions about asbestos citation authority or this memorandum, please contact Mark Davis, Asbestos Coordinator at (608) 266-3658.

DNR Disclaimer - This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

Cc: Jeff Gabrysiak – DOJ
Mark Davis – AM/7
Tom Krsnich – LE/5
Steve Sisbach – LE/5

Mike Scott – LS/5
Marcia Penner – LS/5
Bill Baumann – AM/7
Colin Duffy – AM/7

Nathan Luedke – AM/7
Patrick Kirsop – AM/7

Johnson, Dan (Legislature)

From: Dan Feldt [tristar@execpc.com]
Sent: Monday, March 24, 2003 6:11 PM
To: Sen.Kedzie@legis.state.wi.us
Subject: PROPOSED WDNR ASBESTOS RULE

Senator Kedzie,

I respectfully recommend that you **oppose the DNR asbestos citation rule.**

Thank you very much.

Dan Feldt, MPH, CIH
TriStar Consulting Group, Inc.
200 S. Executive Dr., Ste. 101
Brookfield, WI 53005
262-789-7192/FAX 262-789-7193

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CENTER FOR EQUITABLE ENVIRONMENTAL REGULATION, INC.

March 25, 2003

OPPOSE "ASBESTOS CITATION AUTHORITY" FOR DNR (CR-02-064 / AM-20-02)

CEER opposes this rule and any other rule that creates basic inequity in the way it is written or enforced. Our mission is to strive for better environmental laws that increase intended benefits without exposing the regulated public to enforcement abuse. Our positions are supported by building owners, construction contractors, asbestos contractors, environmental consultants, asbestos trainers and managers of public and private facilities.

Our Position: We oppose this rule for the following reasons:

- Violations are not clear. If the DNR wants to improve compliance, then the DNR should develop a 'bright line' standard of compliance so the regulated community can know how to comply.
- The existing asbestos rules are flawed and this rule makes a bad situation worse.
- The proposed rule is drafted much more broadly than what the DNR states it will use.
- It is inequitable to transfer the burden of proof to the alleged violator without a 'bright line' standard to measure compliance.
- The existing stepped enforcement process already offers opportunity to resolve matters that are not important enough to refer to DOJ.

The Problem: The rule has several problems, most stemming from the fact that not all of the violations addressed by the rule are "clearly defined."

- The excessively broad grant of authority allows DNR to expand its citation program without Legislative oversight by merely revising its guidance
- This rule is like removing the posted speed limits and telling the troopers to issue tickets for 'unreasonable speed' without first defining 'reasonable speed.'
- DNR's objective in enforcing the law is to eliminate all demolition of asbestos containing materials, but the asbestos rules were not written that way.

- Citations will almost always be disputed, driving up the cost of living and doing business in Wisconsin.

Realistic Scenario: Without a 'bright line' standard of compliance, a building owner or construction company cannot determine whether it is in compliance, it must wait to see whether DNR finds it in violation. Under this rule, a proper pre-inspection could be performed, the appropriate number of samples could be properly collected from the appropriate locations, the test results from an accredited lab could find no asbestos, a renovation job could move forward based on those test results, the DNR could inspect the job numerous times but after the job is nearly complete the DNR's lab could detect asbestos, and then multiple citations would issue for "clear" violations of the "thorough inspection" this rule purports to address.

Our Suggestion:

Narrow the grant of citation authority to only those specific violations on which the DNR has stated it will use the authority, by requiring that certain key 'guidance' provisions be written into the rule, so DNR cannot change these important provisions by changing its guidance. For example:

a) Only an Environmental Warden may issue citations (DNR Guidance Memorandum, Lloyd Eagan to Larry Weix, et. al., March 21, 2003, p. 1, last sentence of second paragraph) and such citations may only be issued during an Enforcement Conference (Id. at p. 1, last sentence of fourth paragraph).

b) Citations may only be issued in the following circumstances:

(i) A citation under NR 447.06(1) may be issued for not conducting a pre-inspection prior to any renovation or demolition work (Id. at p. 2, second full paragraph).

(ii) A citation under NR 447.07(1) and (3) may be issued for failure to provide notification of the intention to renovate or demolish to the Department of Natural Resources Air Management Program at least 10 working days before renovation or demolition begins (Id. at p. 2, third full paragraph).

Our Request: Either reject the rule "in whole" or make our suggested revisions.

Johnson, Dan (Legislature)

From: Bil Schaller [wschaller@mcts.org]
Sent: Tuesday, March 25, 2003 9:35 AM
To: Sen.Kedzie@legis.state.wi.us
Subject: proposed DNR asbestos enforcement ruling

Senator:

I wish to go on record as **OPPOSED** to any new ruling on this matter....past experience with DNR has demonstrated their lack of restraint in enforcing clear and concise rules....if given the opportunity, the DNR will run roughshod over most everyone. Thank you for hearing this concern.

W.A. Schaller

Johnson, Dan (Legislature)

From: TS Franks [aaes@vbe.com]
Sent: Tuesday, March 25, 2003 12:17 PM
To: Sen.Kedzie@legis.state.wi.us
Subject: Please Oppose s. 227.22

Dear Senator:

Please ~~oppose~~ the proposed rule s. ⁴⁴⁷~~227.22~~ as it is currently written. The proposed rule is burdensome and unnecessary and will give untrained enforcement personal undue authority to issue citations that are unfair and unjust to building owners and contractors. We have never needed this type of enforcement in the past nor do we now. It will clog the courts with issues that can normally be solved in an enforcement hearing that is currently available to building owners and contractors.

Thank you for your time regarding this important matter.

Thomas S. Franks
President, American Air Environmental Services, Inc. Oshkosh.

Johnson, Dan (Legislature)

From: Smith, Heather
Sent: Tuesday, March 25, 2003 10:15 AM
To: Johnson, Dan (Legislature)
Subject: phone message

Tony Balestreri
W5121 Plantation Rd
Elkhorn, WI 53121-2727

In favor of asbestos rule

Home: 262-742-3663
Cell: 262-215-9568

CENTER FOR EQUITABLE ENVIRONMENTAL REGULATION, INC.

March 26, 2003

FOR IMMEDIATE RELEASE

Contact: Katie Ostrander
414-270-3000 ext.231

**Proposed Asbestos Citation Rule Could Cost Wisconsin Businesses
Thousands of Dollars**
State Senate Committee Set to Hold Hearing Tomorrow

Milwaukee — A state Senate committee will be holding a hearing tomorrow on a new asbestos citation rule proposed by the Wisconsin Department of Natural Resources that could cost building owners and contractors thousands of dollars on remodeling projects.

If passed, the updated citation rule would allow inspectors to issue on-site citations to companies in violation of asbestos codes even though the DNR does not offer building owners and contractors specific guidelines for safe removal. The proposed DNR rule also would allow DNR office staff to issue citations after the fact based on the field notes of inspectors. Building owners and contractors can be fined between \$500 and \$5,000 for a first citation, and fines double for subsequent citations.

"This rule would make every contractor and building owner guilty until proven innocent," said William P Scott, Executive Director for the Center for Equitable Environmental Regulation. "This rule is like removing the posted speed limits and telling state troopers to issue tickets for 'unreasonable speed' without first defining 'reasonable speed.'"

Under the current system of "stepped enforcement", inspectors must prove that companies are intentionally violating asbestos codes. The adoption of the newly proposed rules, however, would shift the burden of proof to the individual building owner or contractor, forcing them to prove they are innocent.

"We would like to keep stepped enforcement in place," said Scott. "Stepped enforcement allows people who break the law to be punished, but doesn't hurt contractors and building owners that are trying to do the right thing and do their jobs safely."

The Senate Committee on Environment and Natural Resources hearing on the proposed rule will be 11 a.m., tomorrow, Room 300 Southwest in the State Capitol in Madison. For more information on the proposed rule, go to <http://www.dnr.state.wi.us/org/aw/air/reg/AM-20-02.pdf>.

-# # #-

Johnson, Dan (Legislature)

From: Dean Jacobson [dj1@execpc.com]
Sent: Wednesday, March 26, 2003 3:23 PM
To: Sen.Kedzie@legis.state.wi.us
Subject: DNR Asbestos Citation Rule

I am writing to ask you to oppose the WDNR proposed asbestos citation rule at the public hearing. Thank you.

Dean Jacobsen
Harenda Enterprises, Inc.

Senator Kedzie:

As a former long term (12 year) employee of WDNR in management positions within their environmental programs, I oppose authorizing the Department of Natural Resources expansion of citation authority to include environmental programs, specifically Clearing House rule 02-064 relating to asbestos removal and citation writing authority.

Before leaving State service in 1987, I was deeply involved as the SE District's Staff Specialist for Solid & Hazardous Waste in the Agency's first attempt to obtain citation authority in multiple environmental programs. That effort was unsuccessful in establishing such authority. The basis for the previous attempt was similar to the justifications being expressed by the Agency today. The expressed desire is to provide "ticketing authority" to deal with the more routine and administrative violations. The reason for requesting such change is that these fundamental violations (mostly administrative in nature) do not typically rise to a level deemed important enough by the Dept. of Justice to pursue via the current phased enforcement process. A worthy goal, but fraught with vast potential for mis-use and abuse.

The problem lies with lack of appropriate training given to those who would be initiating the writing of citations, i.e. field level environmental investigators further exacerbated by applying the process to regulations not based on clear empirical criteria. It is not determining whether you are speeding (traveling at a speed above the posted limit) but rather whether you are traveling too fast. Those personnel do not possess enforcement credentials nor are they schooled in the legal processes involved in prosecuting such violations. Therefore, those personnel routinely fail to perform consistently when called upon to render judgments on compliance involving subjective standards. To compensate for the lack of credentials the Agency will designate the Environmental Warden in the Region to actually write the citation. However, he/she will be asked to do so based on the account of the violation by environmental field staff, a process which will take place after the fact and be mostly based on judgments made by the staff and not witnessed by the Warden.

Citations in environmental programs can work as long as they are limited to those areas where physical evidence is present to document and substantiate the determination of violation.

Sincerely:

Arthur H. Glor Jr.
2556 North 83rd Street
Wauwatosa, WI 53213

Johnson, Dan (Legislature)

From: Ludas, Lori [LLudas@covhealth.org]
Sent: Wednesday, March 26, 2003 3:32 PM
To: 'Sen.Kedzie@legis.state.wi.us'
Subject: Oppose DNR asbestos citation rule.

Dear Senate Kedzie,

Please oppose the DNR asbestos citation rule.

Thank you,

Lori Ludas
Safety Officer
St. Joseph Regional Medical Center
5000 W. Chambers St.
Milwaukee, WI 53210-1688
414-447-3204 phone
414-447-3203 fax

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Adoption of Revisions to Chapter NR 447, Wis. Adm. Code creating Asbestos Citation Authority, NR 447.19

Good morning. I'm Patrick Kirsop, the Small Business Section Chief in the Bureau of Air Management. I'm here today to provide some information on the Asbestos Citation Rule that the Natural Resources Board adopted in January 2003.

Asbestos causes three major respiratory diseases: (1) Asbestosis – Scarring of lung tissue, (2) Lung Cancer – tumors in the respiratory system and (3) Mesothelioma – tumor of the pleural lining that surrounds the lungs. All of the diseases have long latency periods i.e. the time from first exposure to diagnosis is many years. 15 to 30 years is the latency period for Asbestosis, 30 years for Lung cancer (the most common health problem), and 30 to 40 years for the rarest problem, Mesothelioma.

Federal asbestos regulation was first created in 1973 to control the exposure of the public to asbestos emissions to the air. These asbestos emissions regulations were incorporated into state requirements and effective in July 1975. The original rule controlled asbestos air emissions from demolition abatement work, required abatement work notification and also regulated waste disposal sites for asbestos, mining, manufacturing or remanufacturing operations, such as brake relining. Renovation abatement work was included in our regulations in 1984. The current state rule requirements, Chapter NR447, effective in 1992, are the same as the current federal National Emission Standards for Hazardous Air Pollutants (NESHAP) from the 1990 Clean Air Act Amendments.

A state statute (s.285.86) enacted in 1999 provides the authority to create the citation system. The rule creates an asbestos citation system in Chapter NR 447, Wis. Adm. Code. The citation system provides the Department another tool that for dealing with violations that are significant from an enforcement perspective, but may not rise to the level of referral to the Department of Justice. The Department of Justice, as required by the state statute, approved the citation authority rule.

After four well-attended public hearings, additional comments on the proposed rule came from a small group discussion with asbestos abatement contractors, environmental consultants, general and demolition contractors, and building owners in July 2002. The Department also made a presentation on the proposed rule last November at the Annual DNR Asbestos Conference. As a result of the comments received, asbestos citations will only be used for addressing a very limited number of rule requirements. Since the Natural Resources Board meeting, we have worked with the Mr. William Scott of the Center for Equitable Environmental Regulations (CEER) and Mr. William Guis to address their concerns.

The citation system now pertains to only three items. They are: pre-inspection, notification, and active waste disposal site requirements. ~~Specific guidance for staff will be provided as to when a citation would be issued to avoid subjective language in the regulation.~~ If no pre-inspection report exists, a citation can be written. If the Department received no notification of abatement work, a citation can be written. ~~THEY COPY INTO THE RULE~~

An important aspect is that only an Environmental Warden may issue citations. There will be no "on-the-spot" issuance of citations by an air management inspector. The decision to issue a citation will be a joint decision made with the inspector, their supervisor, the Asbestos Coordinator and Environmental Enforcement staff. The citation would be issued at an enforcement conference that is part of the normal Stepped Enforcement Process. The enforcement conference is with the owner or operator or their designee and Department staff. The Environmental Warden would issue the citation only if the citation was necessary and appropriate.

We believe that the asbestos citation system is another important tool to use to insure compliance with Chapter NR 447. We believe that asbestos citation authority will:

- Provide a more level playing field within the Asbestos/ Demolition Industry for those Owners and Operators who consistently comply with the NR 447 rule. Pre-inspection and notification provide the core of the asbestos program. Without a pre-inspection report, no one can really know the extent of asbestos present prior to renovation or demolition work. Without a notification, complaints are really the only way for our inspectors to find out about asbestos removal work and protect public health through an inspection.
- Decrease the amount of exposure of asbestos to the general public and the environment because of the increased awareness generated through penalties that the Department is serious about the assuring compliance with the provisions of NR 447.
- Enhance the current Stepped Enforcement system by allowing us to address violations that are important, but don't rise to the level of referral to the Department of Justice.

CENTER FOR EQUITABLE ENVIRONMENTAL REGULATION, INC.

March 27, 2003

OPPOSE: "ASBESTOS CITATION AUTHORITY" FOR DNR (CR-02-064 / AM-20-02)

CEER opposes this rule and any other rule that creates basic inequity in the way it is written or enforced. Our mission is to strive for better environmental laws that increase intended benefits without exposing the regulated public to enforcement abuse. Our positions are supported by building owners, construction contractors, asbestos contractors, environmental consultants, asbestos trainers and managers of public and private facilities.

CEER OPPOSES CR-02-064 FOR THE FOLLOWING REASONS:

1. The rule is far broader than necessary to accomplish the objectives DNR has set for itself in its guidance. This rule allows DNR to get its "toe in the door" and then expand its use of citations without legislative oversight.

Violations are not clear. If the DNR wants to improve compliance, then the DNR should develop a 'bright line' standard of compliance so the regulated community can know how to comply.

It is inequitable to transfer the burden of proof to the alleged violator without a 'bright line' standard against which to measure compliance.

The excessively broad grant of authority allows DNR to expand its citation program without Legislative oversight by merely revising its guidance.

This rule is like removing the posted speed limits and telling the troopers to issue tickets for 'unreasonable speed' without first defining 'reasonable speed.'

2. The rule lacks a definition of a key term and without defining this key term, the rule is arbitrary and capricious. It is like removing the posted speed limits and telling the troopers to issue tickets for 'unreasonable speed' without first defining 'reasonable speed.'

The rule allows citations under NR 447.06(1) for failure to "thoroughly inspect" a facility prior to renovation or demolition, but does not define the meaning of "thoroughly inspect." A person has no way of knowing whether any inspection is thorough. How thorough is thorough? The DNR can easily abuse its enforcement discretion and selectively single out individuals for enforcement, doling out punishment at will.

3. The rule creates undue hardship for anyone trying to comply with the law and drives up the cost of living and conducting business in Wisconsin. The citation system will transfer the burden of proof to the alleged violator, who must then prove it's innocence over the meaning of the undefined term "thoroughly inspect" or the absence of some information due to clerical error. The presiding judge will grant great weight to the opinion of the DNR inspector. The alleged violator will be "guilty until proven innocent."

4. The rule adds cost and complexity to the enforcement process. The DNR has said the rule will result in greater efficiency, speeding up the enforcement process. That is simply untrue. Read the six steps of the DNR's internal procedure that collectively provide for 3 forms, 2 rounds of correspondence, 4 conversations or conference calls, one meeting that must be documented, and time from a minimum of 5 DNR staff and the alleged violator and it's attorney, all before it goes to court. That does not sound simple or rapid, it sounds like empire building.

OUR REQUEST: Reject the rule in whole.

If you don't want to reject the rule, and want to modify the rule, then require the modifications listed below. These are consistent with DNR's guidance.

TO FIX THE RULE: The rule should be modified to limit the grant of citation writing authority to only those circumstances where DNR has said it will use citations, namely:

a) Only an Environmental Warden may write citations and such citations will be written only as part of the stepped enforcement process.

b) Only the failure to perform any pre-inspection will result in a citation under NR 447.06(1).

c) Only the failure to notify any DNR Air Management office at least 10 days prior to commencement of renovation or demolition will result in a citation under NR 447.07(1) or (3).

(o) Competent Person - General

“On all construction worksites covered by this standard, the employer shall designate a competent person, having the qualifications and authorities for ensuring worker safety and health required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).”

(o) Competent Person - Frequency of Inspections

- Required inspections - frequent and regular inspections of job sites, materials, and equipment
- Additional inspections
 - Class I jobs
 - At least once during each work shift
 - At any time at employee request
 - Class II, III, and IV jobs
 - At intervals sufficient to assess whether conditions have changed
 - At any reasonable time at employee request

(o) Competent Person - Duties

- For Class I or II jobs, the competent person must perform or supervise
 - Set up of regulated area, enclosure, or other containment
 - Ensuring integrity of enclosure or containment
 - Set up of procedures to control entry to and exit from the enclosure and/or area
 - Supervision of employee exposure monitoring
 - Ensuring that employees working within enclosure and/or using glove bags wear required protective clothing and respirators

(o) Competent Person - Duties (cont'd)

- Ensuring that employees set up remove/engineering controls, and use work practices and PPE as required
- Ensuring that employees use hygiene facilities and decontamination procedures as required
- Ensuring that engineering controls are functioning properly and employees are using proper work practices
- Ensuring that notification requirements are met

(o) Competent Person - Training

- For Class I and II jobs
 - Comprehensive course for supervisors meeting criteria of EPA Model Accredited Plan (40 CFR 763, subpart E, Appendix C) for stringency, content, and length
 - Contents - all aspects of asbestos removal and handling
 - Abatement, installation, removal, and handling
 - Contents of the standard
 - Identification of asbestos
 - Removal procedures
 - Other practices for reducing the hazard