

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

- For Class III and IV jobs
 - Contents - aspects of asbestos handling appropriate to the work
 - Procedures for setting up glove bags and mini-enclosures
 - Practices for reducing asbestos exposures
 - Use of wet methods
 - Contents of the standard
 - Identification of asbestos
 - Must include course equivalent in stringency, content, and length to EPA requirements for training local education agency maintenance and custodial workers (40 CFR 763.92(a)(2))

Summary

It is our hopes that this presentation has provided a real world approach to dealing with safety issues in general. We must continue to support employee safety as an enhancement to jobsite productivity. It is true, that a safe workplace provides the employees with some of the tools they need to perform their work correctly the first time around. In the world of asbestos contracting, predictable, unavoidable and previously experienced set-backs rarely have a positive impact on the overall project(s).

Direction/Advice on creating a safe and productive workplace needs to start with the appropriate training. This training must be ongoing. You have the support you need from the government agencies, consulting firms, training providers, as well as your internal personnel. Use them wisely and you will benefit greatly from start to finish.

Closing Statements

Remember; our work is very important!! This industry assists in cleaning the air the world breathes. We will accomplish this together starting first with a safe workplace. The "Competent Person" has a tremendous responsibility. When their job is done completely and correctly we can all breath easier!!

Thank You



Steve Herbst

APR 04 2003 ✓



1703 PEARL STREET, WAUKESHA, WISCONSIN 53186 USA
PHONE (262) 524-2424 • FAX (262) 524-7898

April 3, 2003

Senator Neal Kedzie
P.O. BOX 7882
Madison, WI. 53707

Ref: "Asbestos Citation Authority for DNR (CR-02-064/AM-20-20)


Dear Neal,

Thank you for listening to some of the problems that concern me about the DNR. It is my understanding that they want additional citation power in dealing with removal of asbestos. What has always concerned me in the past and is concerning me now, is that a higher level of this kind of enforcement shall most definitely increase the amount of harassment from the inspector. I would urge you to leave the present policy for enforcement to stand as is, or (at least require the modifications to grant citation writing authority only to the Environmental Warden, which would be written only as a part of a step enforcement process. Only the failure to perform and pre-inspect would result in a citation and/or the failure to notify the DNR Air Management office at least 10 days prior to commencement of renovation or demolition, will result in a citation order. I do understand the thinking of the DNR in this matter, the more enforcement they have, the easier they feel it is to do their job.

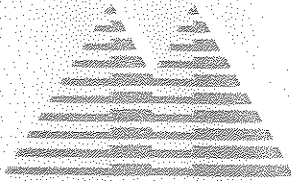
Being a Waukesha County Supervisor, we have just gone through some of the same changes for enforcement with the park and planning staff here at the county. What I have observed in some of the long term employees, that have a higher maturity and responsibly, use the powers they need to achieve their goals of enforcement prudently. However, I feel that some of the younger and less mature department employees can create a very untenable situation bordering on the lines of harassment. With this continued enforcement powers through the citation process, I am very concerned that it will continue to expand to more areas and departments for their enforcement process. Example: lead paint, possible mercury, and other substances that are considered hazardous.

Neal, there has to be a balance between government and business. This seems to be slipping away more every day. If you have any questions regarding my feelings on this matter, please give me a call, and as always, thanks for your help with some of the problems that we have to deal with in business.

Very Truly Yours,


Walter L. Kolb

APR 24 2003



MEGAL

DEVELOPMENT CORPORATION

April 23, 2003

Senator Neal Kedzie
Chairman Environmental & Natural Resource Committee
Room 313 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Kedzie:

Thank you for expressing your displeasure with the proposed DNR rule relating to asbestos abatement.

Although we are not in that area of commerce, I am of the belief that any safeguards that can be incorporated into rule making which causes the rules to be more capable of objective application, as opposed subjective whim, should be enthusiastically endorsed.

I suspect also that many rules might not have achieved the level of support which the DNR claims if citizens and their elected officials alike actually realized how "far out" the DNR interpretations of those Rules were likely to be. Two examples which come readily to mind are: "navigable waters" and the Butler garter snake conundrum.

Very truly yours,

MEGAL DEVELOPMENT CORPORATION

Michael C. Chmurski
Attorney

MCC:ds

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CENTER FOR EQUITABLE ENVIRONMENTAL REGULATION, INC.

April 28, 2003

VIA ELECTRONIC MAIL

Dan Johnson
Office of State Senator Neal Kedzie
Room 313 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Mr. Johnson:

The proposed revision to the proposed asbestos citation rule recently offered by the Department of Natural Resources is not acceptable to CEER for the following reasons:

1. With regard to proposed NR 447.19(2)(a): The phrase "pre-inspection" is not a defined term. Consequently, the meaning of the requirement to "conduct a pre-inspection under NR 447.06(1)" will be open to debate. This raises the likelihood that if asbestos is found during the demolition or renovation, the owner/operator will be cited for not having conducted a pre-inspection. Any legal examination of the meaning of the phrase "pre-inspection" will look to the remainder of the entire subparagraph of NR 447.06(1), which will focus on the undefined phrase "thoroughly inspect." The lack of definitions of key terms, both in the rule and the underlying law, is a fatal flaw of the proposed asbestos citation rule.
2. With regard to proposed NR 447.19(2)(b): Unless the rule specifically states that no citation may be issued based on the inadequacy, inaccuracy or insufficiency of the content of the notice, the content of the notice will become an issue. This is because this notice provision is used to add penalties for the instances where asbestos is found unexpectedly after the start of demolition or renovation. Even if a notice was provided, if it did not include all the correct facts, it is determined to be insufficient. This typically happens after the start of a demolition, when an interior portion of a wall or a patch on a wall is discovered to contain previously unknown and un-noticed asbestos. This situation creates opportunity for DNR to find a notice violation based on inadequate or inaccurate content of the notice that was provided. It is likely that unknown pockets of asbestos will be found after commencement of demolition or renovation. Consequently, the DNR should be precluded from using the content of the notice against any party. Such preclusion serves as inducement to the operator to do the right thing and stop the job to properly abate the newly discovered asbestos.

3. With regard to proposed NR 447.19(2)(c): CEER has not analyzed and takes no position on the landfill aspects of the proposed rule.
4. DNR's proposed language does not require that only environmental wardens will issue citations, as provided by DNR guidance. Additional language must be written into the rule to state that all citations issued under this section will be processed and issued by environmental wardens.
5. DNR's proposed language does not address the lack of any training and experience requirement for investigating asbestos violations or issuing citations. Additional language must be written into the rule to state that: "Any inspection and any case investigation leading to any citation issued under this section may only be performed by staff persons that have held the credentials of "Asbestos Inspector" and "Asbestos Supervisor" for a minimum of three years and have been actively employed in those capacities for at least three years."
6. If DNR continues to concentrate its enforcement efforts on people that file notices, then DNR is free to harass any of those people that are trying to comply with the law. CEER suggests that the Senate require a that DNR spend a minimum of 50% percent of its asbestos enforcement budget focusing on people that do not submit any notice or do not perform any pre-inspection prior to renovation or demolition. In addition, the DNR should be required to issue biennial enforcement plans, containing measurable criteria of achievement, that show how DNR intends to accomplish the 50% percent asbestos enforcement requirement. Finally, the Senate should make continued asbestos enforcement funding contingent upon DNR meeting the 50% percent "no notice / no pre-inspection" asbestos enforcement requirement.

Sincerely,

William P. Scott
Executive Director

Johnson, Dan (Legislature)

From: William P. Scott [geolaw@execpc.com]
Sent: Tuesday, April 29, 2003 10:56 AM
To: Johnson, Dan (Legislature)
Cc: Loomans, Scott
Subject: Re: comments on Asbestos Citation

April 29, 2003

Dan Johnson:

I offer these responses to you recent e-mail.

1. The difference is that my suggestion was expressly limited in scope, "Only the failure to perform any pre-inspection" is more limited than the DNR's suggested, "Failure to conduct a pre-inspection under NR 447.06(1)." Under my wording, the DNR and Court would look to see whether any pre-inspection was performed. Under the DNR's wording, because the term pre-inspection is not defined, the DNR and Courts will look to the entire section to derive meaning, and that is when they will encounter the concept of "thoroughly inspect", which is also not defined. So, the DNR and Courts will deduce that an inspection that was less than thorough does not qualify as a "pre-inspection" for the purposes of the section.
2. You are correct that section 4 contains all of the specific content requirements of notice. I agree it is possible to interpret the law the way you have done. However, the DNR generally interprets the law in its favor, and against the private sector. That is how it demonstrates toughness to the EPA, to continue the grant funding EPA doles out to DNR. It would be safer for the private sector not to take the risk, to make the rule specify that content of notice will not impact the decision whether to issue the citation.
3. Thank you for your help with confining this to the wardens. They are trained and experienced.
4. Regarding the points 5 and 6, these points were addressed in my oral presentation to the Assembly Environment Committee, but not to the Senate. It seems odd to me that DHFS has standards that apply to the private sector, but that DNR does not need to meet the same standards to go out find the duly certified private person in violation. Also, I believe that much of the trouble between the private sector and DNR on asbestos issued arises because the inspectors have no concept of what it takes to actually perform the work. The inspectors are too theoretical and one-sided in their approach and could benefit by a requirement of actual experience prior to serving as an inspector.

Thanks for your questions. Let me know if I can help you further understand the needs of Wisconsin's private sector with regard to these issues.

Bill Scott.

"Johnson, Dan (Legislature)" wrote:

Bill,

I've had a chance to review your comments and I would like to offer my thoughts.

1. In your March 27, 2003 written testimony to the committee you state under 'To Fix The Rule': "Only the failure to perform any pre-inspection will result in a citation under NR 447.06(1)." The modified rule states that citations may be issued for, "Failure to conduct a pre-inspection under s. NR 447.06 (1). Neither "pre-inspection" nor "thoroughly inspect" are defined anywhere in NR 447, thus those terms will probably always be open to debate, with or without this rule. I guess my question is, what is the difference between what you originally suggested as a fix and the modifications made by the DNR?

2. In your March 27, 2003 written testimony to the committee you state under 'To Fix The Rule': "Only the failure to notify any DNR Air Management office at least 10 days prior to commencement or renovation or demolition will result in a citation under NR 447.07.(1) or (3). The modified rule states that citations may be issued for, "Failure to follow notification requirements of s. NR 447.07 (1) and (3)(a), (b), and (c). Nowhere under those sections does it discuss anything related to the sufficiency or adequacy of the notice, rather that it is essentially provided, delivered and postmarked at least 10 working days before work begins. NR 447.07(4) provides the parameters for the content of the notice and because 447.07(4) is not a part of the citation rule, then I do not believe the DNR could cite for inadequate content of the notification. Again, (1) and (3) only relates to a notification being physically delivered within 10 days to the DNR, thus I don't believe you could be cited for the content of that notification.

3. I concur with you regarding a specificity needed in the rule to ensure that only "environmental wardens" will issue citations. I will discuss that point with the DNR.

4. In regards to point 5 and 6, I'm really not in a position to comment on those as this was not brought to our attention until now. My gut feeling, though, is that it might be a bit of overkill. Using your previous analogy of state troopers from your testimony, it's like saying that only a trooper with certain accreditation or a trooper's supervisor and three years experience may issue a speeding ticket. And point 6 is well beyond anything we've discussed regarding this rule and I don't know if this rule is the place to address those concerns.

This is just my opinion, but just looking at the modified rule and the suggestions you made previously to fix the rule, they seem to be relatively close to what you suggested in your March 27 letter. I'll have to discuss this with the Senator and let you know where we are at with all of this.

Thanks Bill.

Dan Johnson
Office of State Senator Neal Kedzie
11th Senate District
266-2635

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Johnson, Dan (Legislature)

From: William P. Scott [geolaw@execpc.com]
Sent: Thursday, May 08, 2003 10:46 AM
To: Johnson, Dan (Legislature)
Subject: Re: comments on asbestos citation rule - May 7 meeting

Dan: Thank you for your timely response and hard work on this matter. I will now call a number of CEER supporters and will get back to you today, hopefully early afternoon at the latest. Bill Scott.

"Johnson, Dan (Legislature)" wrote:

Hi Bill,

Thanks for taking time yesterday to discuss the asbestos citation rule with us. I hope we are close to getting this done. I spoke with Leg. Council regarding the ability for individuals other than environmental wardens and conservation wardens to issue citations. As of yesterday, they were 90% sure that anyone other than those specified wardens in the DNR do not have the ability to issue citations. I also spoke with DNR staff and they assure me that only the wardens have the ability to issue citations. Leg. Council will be getting me some more information today regarding this which should move that 90% to 100%. I will share that information with you when I receive it.

In regards to a change of NR 447.19(2)(a), you suggested:

"Failure to perform an inspection by a state certified asbestos building inspector prior to commencement of a demolition or renovation activity"

I forwarded that suggestion to DNR, and they have responded with this suggestion:

"Failure to conduct any inspection prior to commencement of a demolition or renovation activity under 447.06(1)"

DNR is not comfortable with limiting it to "state certified asbestos building inspectors" as they have encountered people who have done some type of inspection but not been certified. Thus, in those instances, they would have to immediately cite. Under their language, they could not cite so long as some type of inspection was done and they're only asking for the ability to cite someone if no inspection at all is done. They do not wish to cite people if they are not certified, although they might raise the issue later when examining the content of the inspection.

Please let me know as soon as possible if you have any thoughts about this. Again, Senator Kedzie needs to make a decision about this within the next 24 hours. Thanks Bill.

Dan Johnson
Office of State Senator Neal Kedzie
11th Senate District
266-2635

CENTER FOR EQUITABLE ENVIRONMENTAL REGULATION, INC.

May 8, 2003

VIA ELECTRONIC MAIL

Dan Johnson
Office of State Senator Neal Kedzie
Room 313 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Dan:

I have been unable to contact certain key supporters that have taken a very hard-nosed approach to the citation authority. CEER remains distrustful of DNR's true motives. CEER does not believe DNR will feel constrained by any limitation that is not expressly provided in the rule. Consequently, CEER's response to your e-mails of earlier today is as follows.

First, CEER is comfortable with the research by the Legislative Council that concludes that only people trained and credentialed as wardens can issue citations under state statutes. Consequently, a special provision to this effect is not necessary in the new rule. However, CEER reiterates its concern that DNR's inspectors are required to have far less training than that required in other states, and consequently, to eliminate the "garbage in, garbage out" phenomenon, CEER believes additional training should be a prerequisite to filling any DNR inspector position.

Second, with regard to inspections, CEER suggests a minor wording change to the DNR's language. DNR said: "Failure to conduct any inspection prior to commencement of a demolition or renovation activity under 447.06(1)" CEER would rewrite that as follows: "Failure to conduct any inspection under 447.06(1) prior to commencement of a demolition or renovation activity". CEER would also add a note to clarify that inadequacy of the inspection is not grounds for issuing a citation, as follows: "Note: It is contrary to the intent of this rule to issue a citation based on the adequacy or completeness of inspection."

Third, with regard to notice, CEER is still not reassured that typographical and content errors will not result in citations. Consequently, CEER believes that an explanatory note should be attached to the rule, as follows: "Note: It is contrary to the intent of this rule to issue a citation because a notice is deficient for reasons of content or typographical error."

Finally, CEER believes the rewritten rule is still contentious enough to ask that the Senate Environment Committee specifically request the DNR establish an ad hoc rule implementation and oversight committee to oversee DNR's implementation and use of the rule. Jay Hochmuth, DNR's division administrator, previously offered to establish such a committee, but has not yet done so. CEER believes the committee should consist of three members nominated by CEER, three nominated by DNR and one nominated by Senator Kedzie. The duration of the committee should be as long as the Senate Environment Committee deems necessary.

Thank you for the opportunity to comment on DNR's suggested revision.

Sincerely,

William P. Scott
Executive Director

Johnson, Dan (Legislature)
From: Johnson, Dan (Legislature)
Sent: Monday, May 12, 2003 9:46 AM
To: 'William P. Scott'
Subject: CEER and modified asbestos rule

Bill,

I will discuss your question regarding an intent statement with Leg. Council. I am disappointed to learn that CEER has sent out an e-mail to its members stating that Senator Kedzie has not taken the CEER position on this matter. As you know, we have been working diligently over the last couple of weeks to find a compromise position on the rule. Thus, the proposed language change is the result of many discussions between both CEER and the DNR. I believe this rule has moved significantly towards the CEER position from citations may be issued for violations of the "The pre-inspection requirements of 447.06(1)" to "Failure to conduct any inspection under 447.06(1)".

Adding notes to the rule as CEER has suggested is not acceptable to us, as notes 1. do not have the force of law, and 2. may not be used to express the intent of the rule. In addition, the rule makes no mention of violations of 447.06(4), thus explicitly stating in the rule that the intent is not to cite for the adequacy or content of the notification is unnecessary.

And finally, while we have given the DNR preliminary approval to move forward with the rule, that is in no way absolute support for the rule by either the Chair or the committee as we will have one more opportunity to review any modifications.

Thank you.

Dan Johnson
Office of State Senator Neal Kedzie
11th Senate District
266-2635

-----Original Message-----

From: William P. Scott [mailto:geolaw@execpc.com]
Sent: Friday, May 09, 2003 4:26 PM
To: Dan Johnson
Subject: CEER

Dan:

I am sorry to hear that the Senator gave DNR the green light to move forward with a rule CEER cannot support. I will alert the CEER supporters of the need to take action. I myself have registered to speak to the Natural Resources Board on the topic, again.

I am curious to know what the Leg. Council said regarding the ability to insert a lead paragraph devoted to the 'intent' of the rule. Will you please let me know their response?

Thank you for your assistance.

Bill Scott.

*(No) Discussion of
Kedzie/Kedzie
His Brother is Ken*

*Wants intent
built into the
rule.
Wants the NOTES.*

Concerned with being cited for - failure to
RV at inspection from correctly or failure to
identify asbestos & DNA finds it.

Wants to go to stopped enforcement

if there is a screw up.

STATE OF WISCONSIN

To Neal

Date 5-12 Time _____

WHILE YOU WERE OUT

M Don Taylor

of no. DNR → Keith Herenda

Phone 414/647-1530

Telephoned		Please Call	
Called to See You		Rush	
Returned Your Call		Will Call Again	

Message (H) 262-542-2221

before 11 am

(W) 262-549-8500

after 2 pm



Party Receiving Call

From: on behalf of Sen. Kedzie
To: Kirsop, Patrick L.
Cc: Scott, Michael D; Heinen, Paul H
Subject: Modified Asbestos Citation Rule Order CR 02 064

May 12, 2003

Patrick Kirsop
WI Department of Natural Resources
Small Business Section Chief
Bureau of Air Management

Dear Patrick,

Please accept this correspondence as a preliminary acceptance of agreed upon modifications to Clearinghouse Rule 02-064, relating to asbestos citation authority. On March 27, 2003, the Senate Environment and Natural Resources Committee requested unspecified modifications to CR 02-064. Since that time, we have discussed specific modifications relating to the department's ability to issue citations under certain circumstances.

We have worked closely with both the department and the affected regulated community on this issue. The suggested modified language of the rule now reads as follows:

NR 447.19 (2) Citations may be issued for any of the following:

- (a) Failure to conduct any inspection under s. NR 447.06 (1).
- (b) Failure to follow notification requirements of s. NR 447.07 (1) and (3)(a), (b), and (c).
- (c) Failure to follow active waste disposal site requirements of s. NR 447.17 (1) to (4), (5)(a), (6), and (10).

This preliminary acceptance is being offered only to allow the agency to advance the rule to the Natural Resources Board meeting later this month. This correspondence should not be interpreted as a formal approval of the rule by either the Chair or other members of the Senate Environment and Natural Resources Committee. The modifications – if approved by the Natural Resources Board – are still subject to a 10 day review period by the Committee.

Thank you for your willingness and commitment to modify this rule to address concerns raised by the Committee.

Sincerely,

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



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR NEAL KEDZIE

FROM: John Stolzenberg, Staff Scientist

RE: Proposed Modifications to the Asbestos Citation Rule, Clearinghouse Rule 02-064

DATE: June 6, 2003

This memorandum responds to your request for comments on proposed modifications to the Department of Natural Resources' (DNR) rule relating to the conditions under which the DNR may issue a citation for violation of its asbestos program, as set forth in Clearinghouse Rule (CHR) 02-064. In particular, you have asked for comment on the following:

- The appropriateness of adding an intent statement to proposed s. NR 447.19 that explains or gives examples of the grounds for issuing a citation under s. NR 447.19 (2).
- Interpretation of the language in the proposed modification that would establish that one of the grounds for the DNR to issue such a citation is "the failure to conduct any inspection under s. NR 447.06 (1)."

Use of Intent Statements in Rules

Based upon my experience reviewing draft administrative rules under s. 227.15 (2), Stats., as part of the Legislative Council Administrative Rules Clearinghouse, the preferred drafting style is to not include statements of legislative intent within specific provisions in a rule. There are a number of reasons for this preference. One is that the text of a rule should include all the provisions that are necessary to carry out the rule's purpose. A statement of intent that mirrors the substantive text is thus redundant and unnecessary. If such a statement does not mirror the text, those differences could lead to ambiguity and varying interpretations of the provision.

Failure to Conduct any Inspection

One of the modifications to CHR 02-064 would result in the DNR being able to issue a citation for "failure to conduct any inspection under s. NR 447.06 (1)." Existing s. NR 447.06 states:

(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, 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.

An issue raised by the modified text in CHR 02-064, identified above, is whether the DNR may issue the citation for failure to conduct an inspection, irrespective of the content or thoroughness of the inspection prior to the commencement of the demolition or renovation activity, or if the citation may be issued when such an inspection was conducted but the DNR determines that the inspection was not "thorough." One may argue that, given that the apparent purpose of s. NR 447.06 (1) is to require an inspection prior to the demolition or renovation activity, the use of the adjective "any" in this provision implies that an inspection conducted prior to the commencement of the demolition or renovation activity, irrespective of the thoroughness of the inspection, meets the criterion of being "any inspection under s. NR 447.06 (1)." On the other hand, it may be argued that the only type of inspection that is an inspection under s. NR 447.06 (1) is a "thorough" inspection that is conducted prior to the demolition or renovation activity. Since a plausible case can be made for either interpretation, there appears to be some ambiguity in this text.

If you wish to proceed with the promulgation of CHR 02-064, with the modification discussed above, and you would like a commitment from the DNR on how it will interpret this criterion for issuing citations under the rule in the future, you could request the DNR to provide to you by letter a statement of how the department intends to interpret it and place that letter in the rule jacket and provide copies to interested parties.

If you have any additional questions on CHR 02-064, please feel free to direct them to me at the Legislative Council staff offices.

JES:ksm:wu;wu



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

June 18, 2003

Representative DuWayne Johnsrud
Room 323 North
State Capitol
Madison, WI 53703

Dear Representative Johnsrud,

The Department of Natural Resources agrees to consider modifications to CR – 02064, the asbestos citation rule.

The Natural Resources Board will consider your request at its June 25, 2003 meeting in Waupaca.

Thank you for your work on this important issue.

Sincerely,

Scott Hassett
Secretary

cc. Pat Kirsop AM-7
Jay Hochmuth AD-5
Carol Turner LC-5



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

June 30, 2003

The Honorable Neal Kedzie, Chair
Senate Committee on Environment and Natural Resources
Room 313 South
State Capitol

The Honorable DuWayne Johnsrud, Chair
Assembly Committee on Natural Resources
Room 323 North
State Capitol

Re: Clearinghouse Rule No. 02-064
Citation authority for asbestos program violations

Gentlemen:

On June 18, 2003, the Assembly Committee on Natural Resources requested the Department of Natural Resources to make additional modifications to Clearinghouse Rule No. 02-064 relating to citation authority for asbestos program violations. At its June 25, 2003 meeting the Natural Resources Board approved modifications to proposed s. NR 449.19(2)(a) to read:

NR 447.19(2)(a) Failure to conduct any inspection under s. NR 447.06(1). The department may not issue a citation under this paragraph on the grounds that an inspection was not thorough.

A copy of Natural Resources Board Order No. AM-20-02 containing the approved modifications is attached. Also attached is a copy of the letter from the Department of Justice approving the amended rule.

Under s. 227.19(4)(b)2., Stats., the Department of Natural Resources refers this action to your Committees for an additional 10 working day review. If the Department does not hear from you within 10 working days of the receipt of this letter, the Department will continue processing this rule.

Sincerely,

Scott Hassett
Secretary

cc: Patrick Kirsop – AM/7
Michael Scott – LS/5
Carol Turner – LS/5

Attach.

Asbestos Rule

Pre-Inspection:

"Thoroughly" inspect is outside of this rule and is in NY 47 as a whole.

- What does "failure to conduct a pre-inspection mean?"
under NY 47.061

- Regulated entities feel DPR always tries to find fault w/ pre-inspect

(763 sub m)

★ Eliminate Pre-Inspection & ticket authority?
Go to stepped process

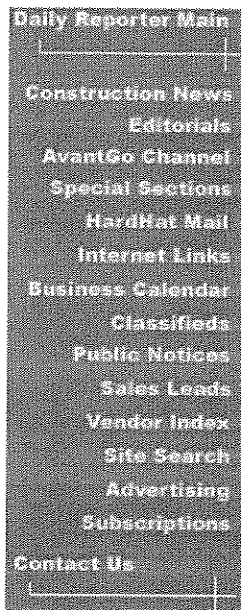
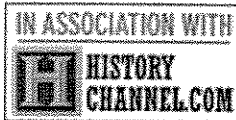
Training:

Pre Inspect

3
2

1-800-813-2358
TRAVIS
5:30

Perform w/ substantial ~~performance~~
Conformity of Fed



THE DAILY REPORTER

CONSTRUCTION NEWS

Printer Friendly F

Committee questions asbestos citations

DNR proposal targets unlawful contractors

By Jeremy Harrell
Daily Reporter Staff

March 28, 2003

The state Department of Natural Resources' push to gain authority to issue citations improper asbestos abatement met with some resistance in the state Legislature on Thursday.

In January, the Natural Resources Board unanimously approved an administrative rule giving the DNR the citation authority, but the Legislature must approve the rule before it becomes law. Patrick Kirsop, the agency's Small Business Section chief in the Bureau of Management, said the DNR wants to use the citation authority to establish "a level playing field" for demolition and asbestos-abatement contractors.

Under current rules, the DNR must refer cases to the Department of Justice for prosecution. But Kirsop said many alleged violations fall through the cracks because the attorney general's office typically takes on only the biggest cases.

"(Citation authority) provides the department with another tool to deal with violations that might not rise to the level of referral to the Department of Justice," Kirsop told the Senate Environment and Natural Resources Committee on Thursday, the first legislative panel to review the proposed rule.

With this new authority, DNR environmental wardens can issue some citations without going through the referral process, according to the rule's provisions. The fines, ranging from \$5,000 per violation, will help the DNR target the most obvious cases of improper abatement and put some teeth into the state asbestos-abatement laws, Kirsop said.

But Sen. Neal Kedzie, R-Elkhorn, the Environment Committee chairman, said the rule leaves out the procedures DNR staff would use in deciding whether to issue citations. Kedzie's office has fielded "a number of telephone calls" from people objecting to the rule, and he said he worried that omitting the procedural steps that precede a citation could leave the rule open to misinterpretation.

"What's to keep the guideline from being changed?" Kedzie said. "We are the gatekeepers here as legislators. I don't like to leave loose ends. I like to tie things down."

Stepped enforcement

Since the DNR first presented its proposal at public meetings last summer, Kirsop said the agency shaved down the rule to eliminate the more subjective criteria for issuing a citation. The rule now spells out three sources of potential violations:

- failure to notify the DNR of an intent to demolish or renovate a building;
- failure to have a state-certified inspector check the site for asbestos prior to demolition; and
- failure by a landfill to properly dispose of asbestos.

Kirsop added that a roundtable discussion among DNR staff, conservation wardens and alleged violators would precede any citation. That would prevent a DNR staff inspector from simply showing up on a work site, not liking what he saw and issuing a citation on the spot, he said.

But Sen. Cathy Stepp, R-Sturtevant, said she saw loopholes in the citation proposal that could come back to hurt honest contractors. If a demolition contractor got a certified inspection saying there was no asbestos on site, then proceeded to tear down a building only to find out there really was asbestos there, the contractor could be cited for improper abatement even after following the letter of the law, she said.

"It's this punitive thing that it looks like the DNR is out to say 'gotcha,'" Stepp said. "It doesn't need to be that way."

Opponents of the rule have sounded similar concerns, saying there's enough gray in the rule to keep the DNR and the attorney general's office clogged with lawsuits. Rather than quicken the enforcement process, the rule is vague enough that every small violation will be subject to legal wrangling, opponents have said.

Proponents, however, maintained that the DNR's proposal - with its three requirements - paints a black-and-white picture of what needs to be done to remain in compliance.

The committee was not expected to vote on the rule Thursday. The proposal will get a second hearing on Wednesday before the Assembly Natural Resources Committee.

Jeremy Harrell can be reached at 608-260-8570 or by [email](mailto:jeremy.harrell@dailyreporter.com).

☞-TOO Mentioned in this Article

Wisconsin Department of Natural Resources

Representatives

**Sen. Neal Kedzie,
R-Elkhorn**

**Sen. Cathy Stepp,
R-Sturtevant**

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certified Failure to perform an inspection by a state
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individual certified under HFS 1159
prior to commencement of renovation or demolition.

Failure to perform any inspection

~~by a state certified~~

~~"Asbestos Building Inspector"~~

prior to commencement of demolition or renovation.

ACTIVITY UNDER 447.06(1)

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THE DAILY REPORTER
CONSTRUCTION NEWS

Printer Friendly Format

Lawmakers order asbestos rule rewrite

DNR board could challenge mandate

By Jeremy Harrell
Daily Reporter Staff

April 1, 2003

A state Senate committee on Thursday asked the state Department of Natural Resources to rewrite its proposal seeking authority to issue citations for improper asbestos abatement.

At a public hearing last week, Sen. Neal Kedzie, R-Elkhorn, and other members of his Environment and Natural Resources Committee expressed their displeasure with aspects of the proposed rule. The Natural Resources Board approved the rule unanimously in January, but it must gain legislative approval before becoming final.

The rule would allow DNR officials to cite demolition contractors and asbestos-abatement consultants \$500 to \$5,000 for failure to notify the agency of intent to tear down a building, failure to have the site inspected before demolition and failure to properly dispose of asbestos. Before the committee voted to send the rule back to the DNR, Kedzie said the agency didn't include the instructions field agents would use in determining whether to cite contractors, and the omissions could lead to misinterpretations and protests of unfair treatment.

And because the directions aren't included in the language of the rule itself, the instructions could change at any time, committee members said.

"It's all about intent," said Dan Johnson, an aide to Sen. Kedzie. "It's way too open for interpretation."



The panel's action Thursday effectively stops the clock on the rule-making process, Johnson said. The DNR and members of Kedzie's committee will now work on drafting a compromise rule that could include the modifications the panel is seeking.

On Wednesday, the Assembly Natural Resources Committee, led by Rep. DuWayne Johnsrud, R-Eastman, will also review the rule at a public hearing. If that committee follows the Senate's lead in asking for revisions, lawmakers from both houses would be included in the modification process.

Seeking agreement

Milwaukee attorney William Scott, who formed the Center for Equitable Environmental Regulation Inc. to oppose the proposed rule, said the Senate's request for modifications represented a "victory for building owners and contractors operating with lawful intent." Agreeing with Kedzie's committee, Scott said the proposed rule, as it's currently written, is too open-ended, and it could get better if the DNR codified its instructions for field staff.

"I think, given the opportunity, we can improve the rule and make it protective of the environment and the people who need to use it," he said. "But that's not what the DNR has been doing."

Scott added that it's important for the DNR to be as clear as possible with the rule because it carries large consequences for building owners and asbestos consultants.

Not only are the rule's proposed fines large, but the citations would be added to a contractor's permanent record, which could increase forfeitures down the road, he said.

Patrick Kirsop, the DNR's Small Business Section chief in the Bureau of Air Management, said the agency could accommodate the committee's requested modifications by including the instructions in the rule itself.

"Then we'd be able to have the rule move forward," he said. "They're asking us to be as specific as possible."

By sending the rule back to the DNR, Kedzie's panel has started a chain reaction of events that could ultimately pit the Legislature against Gov. Jim Doyle's administration. Before the DNR starts reworking its proposal, the Natural Resources Board must vote to allow

UNLIKELY

e-TOOLS

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Wisconsin Department of Natural Resources

Representatives

Rep. DuWayne Johnsrud, R-Eastman

Sen. Neal Kedzie, R-Elkhorn

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modifications, said **Lloyd Eagan**, director of the DNR's Air Management Bureau.

If the Natural Resources Board doesn't vote to allow modifications, however, the Legislature would eventually have to pass a bill - signed by the governor - to block implementation of the asbestos rule, she said. If the legislative effort fails, Eagan said, the rule would become law.



She said **she's never had an administrative rule returned to the Natural Resources Board**, as the Senate committee did last week. Still, she said the agency is open to some form of compromise, although **consensus runs the risk of "making both sides angry."**

REALLY?

HUH?

"We felt we had large support for the rule going forward," Eagan said. "We thought there were objections from a small number of people."

Jeremy Harrell can be reached at 608-260-8570 or by email.

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if the binding material is losing its integrity, exhibited by peeling, cracking or crumbling; and is also friable. When Category I non-friable ACM has become friable it is subject to the NESHAP.

If Category I or II ACM is sanded, ground, cut or abraded it is also covered by the NESHAP. Category II non-friable ACM which is damaged to the extent that it has or will become crumbled, pulverized or reduced to powder due to demolition/ renovation activities, is subject to the Asbestos NESHAP.

Miscellaneous materials are wetted in manners similar to those used to wet other categories of RACM.

Coverings are saturated with a wetting agent before removal and the asbestos-containing portions fully penetrated with the agent prior to, during and after their removal, while stored in the removal area, and while being placed into disposal containers.

Miscellaneous materials that don't absorb water readily (e.g., asbestos-concrete products, and floor tiles) are only required to have wetted surfaces. A misting sprayer may be used to diminish airborne asbestos fiber levels.

8. INSPECTION PROCEDURES

The intent of the following guidelines is to provide GUIDANCE ONLY, to the regulated community regarding the inspection procedures recommended to Asbestos NESHAP inspectors for determining compliance with the "Adequately Wet" requirements of the Asbestos NESHAP. The purpose of the wetting provisions is to require as much wetting as is necessary to prevent airborne emissions of asbestos fibers. In order to achieve this result, RACM and ACWM must be wetted and maintained wet until collected for disposal. The determination of whether RACM or ACWM has been adequately wetted is

generally based on observations made by the inspector at the time of inspection. Observations probative of whether a material is adequately wet include but are not limited to, the following:

- Is there a water supply in place?
- Is water or a wetting agent observed being sprayed onto the RACM or ACWM both during stripping or removal and afterwards while the material awaits proper disposal? If yes, carefully note the method of application used (e.g., misting, fogging, spraying of surface area only or drenching to penetrate the ACM throughout).
- If water or a wetting agent is being used, what equipment is used to apply it (e.g., garden hose, plant mister)?
- If water or a wetting agent is not being used, determine why it is not and document the reason. Possible (although not necessarily valid) reasons include:

- prior permission obtained from the Administrator (safety hazard, potential equipment damage);
- no water source at the facility;
- temperature at the point of wetting below 32 degrees F;
- portable water supply ran out and contractor continued to work; or
- contractor prepared the area earlier, etc.

- Examine a stripped or removed piece of ACWM or RACM which wets readily. Does it appear to be wetted throughout? If it does not, adequately wet the sample. Describe and photograph how the physical characteristics of the material change upon wetting (e.g., color, weight, texture, etc.).

Take samples, as necessary, to document the presence of asbestos in the suspect material.

- When examining materials that do not readily absorb water or a wetting agent (e.g., premolded thermal system insulation, ceiling tiles, floor tiles) inspectors should note whether all exposed surfaces of these materials have been wetted as required.
- Is there visible dust (airborne or settled), or dry ACWM debris in the immediate vicinity of the operation? Inspectors should collect samples of such materials for analysis of their possible asbestos content.
- Examine ACWM in bags or other containers using the procedures that follow, to determine if the material has been adequately wetted?

8. Randomly select bags (or containers) for inspection.

- Lift the bag or container and assess its overall weight. (A bag of dry ACWM can generally be lifted easily with one hand, whereas a bag filled with well-wetted material is substantially heavier.)

- If the bag or other container is transparent:

-----Visually inspect the contents of the unopened bag for evidence of moisture (e.g., water droplets, water in the bottom of the bag, a change in the color of the material due to water).

-----Without opening the bag, squeeze chunks of debris to ascertain whether moisture droplets are emitted.

-----If the material appears dry or not penetrated with liquid or a wetting agent, open the bag using the additional steps described in step 9 below a collect a bulk sample of each type of material in the bag noting variations in size, patterns, color and textures.

- If the waste material is contained in an opaque bag or other container, or if the material is in a transparent bag which appears to be inadequately wetted:

-----Carefully open the bag (in the containment area, if possible). If there is no containment area at the site, a glove bag may be used to enclose the container prior to opening it to minimize the risk of any fiber release.

-----Examine the contents of the bag for evidence of moisture as in 8 above, and if the material appears dry or it is not fully penetrated with water or a wetting agent, collect a bulk sample.

-----Reseal the bag immediately after evaluating and sampling its contents.

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URL= <http://www.epa.gov/region04/air/asbestos/awet.htm>

Role of the Competent Person

"Class I & II Asbestos Work"

Presented by: S.A. Herbst & Assoc., LLC
Presenters: Steve Herbst & Shawn Christon

Introduction

The purpose of this presentation is to provide the asbestos industry with the most current data regarding the responsibilities of the "Competent Person" as stated in the following related construction standards:

1. Construction 1926.32
2. Construction 1926.1101

Definition of "Competent Person" 1926.32.

"Competent Person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

Definition of "Competent Person" 1926.1101.

"Competent Person" means, in addition to the definition in 29 CFR 1926.32 (f), one who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, who has the authority to take prompt corrective measures to eliminate them, as specified in 29 CFR 1926.32 (f): in addition, for class I and class II work who is specially trained in a training course which meets the criteria of EPA's Model Accreditation Plan (40 CFR 763) for supervisors, or its equivalent and, for class III and IV work, who is trained in a manner consistent with EPA requirements for training local education agency maintenance and custodial staff as set forth at 40 CFR 763.92 (a)(2).

Multi-Employer Worksites:

On multi-employer worksites, an employer performing work requiring the establishment of a regulated area shall inform other employers on-site the nature of the employer's work pertaining to asbestos and/or PACM, the existence of and requirements pertaining to regulated areas, and that measures are taken to ensure that employees of other employer are not exposed to asbestos.

Comments and interpretations are derived from both the intent of these standards and practical applications, field experience and historic data. Though it is likely that there are varied opinions, it should be understood that good work practices and common sense play a vital role in safety at the worksite.

Asbestos abatement contracting has a potentially enormous liability attached to it. The competent person must be capable of performing his or her duties without distractions.

It is our intent that this presentation assist in the defining and development of policies and procedures consistent with maintaining optimal worker safety. The attached pages are excerpts from the OSHA website. These documents can be accessed at www.osha.gov.

Effective Date: January 22, 1995

STATE OF WISCONSIN
CLASSIFICATION SPECIFICATION

ENVIRONMENTAL WARDEN

GET A CLARIFICATION
ON STAFF IN LE DIVISION
↓

I. INTRODUCTION

A. Purpose of This Classification Specification

This classification specification is the basic authority [under Wis. Adm. Code ER 2.04] for making classification decisions relative to present and future Environmental Warden positions found in the Department of Natural Resources (DNR). Positions allocated to this classification are responsible for conducting and coordinating investigations of complex criminal and civil violations of environmental laws for a majority (greater than 50%) of the time.

B. Exclusions

Excluded from this classification are the following types of positions:

1. Supervisory, managerial, or confidential positions as defined in s. 111.81, Wis. Stats.;
2. Law enforcement positions found in other state agencies;
3. Positions within the DNR that have law enforcement credentials but do not perform the full range of resource and environmental law enforcement activities and do not have the law enforcement authority outside of DNR lands for a majority (greater than 50%) of the time;
4. Positions functioning as Conservation Wardens which may assist in environmental investigations and/or may be assigned criminal and civil environmental law violations but these activities are not performed the majority of time or as an on-going assignment.
5. All positions better identified through other classifications.

II. DEFINITIONS

Conduct and coordinate investigations of extremely complex criminal and civil violations of environmental laws. Investigate complaints. Interview witnesses and suspects. Conduct interrogations. Obtain and execute search warrants. Make arrests with or without warrant, seize equipment with or without warrant, seize samples of hazardous materials, wastewater, hazardous wastes and solid wastes. Develop reports, preserve evidence and prosecute individuals, municipalities and corporations through the judicial system. Maintain an effective communications and public relations program. Initiate and assist in the program development of environmental law investigation by conservation wardens. Train field wardens and other environmental enforcement and environmental standards personnel for the DNR and other government agencies in identifying and handling violations. Perform as lead worker in these investigations. Work with Chief Executive Officers of multi-state/national corporations, high ranking municipal officials, Assistant Attorneys General, state inspectors in other departments. Interact and conduct joint investigations with supervisors and agents of the United States EPA, FBI, IRS, Wisconsin Division of Criminal Investigation, and Environmental Regulatory Officials within other states and Canada.

III. QUALIFICATIONS

The qualifications required for these positions will be determined at the time of recruitment. Such determinations will be made based on an analysis of the goals and worker activities performed, and by an identification of the education, training, work, or other life experience which would provide reasonable assurance that the knowledge and skills required upon appointment have been acquired. 1/95

TH
65160

Effective Date: January 22, 1995

STATE OF WISCONSIN
CLASSIFICATION SPECIFICATION

CONSERVATION WARDEN I.

INTRODUCTION

A. Purpose of This Classification Specification

This classification specification is the basic authority [under Wis. Adm. Code ER 2.04] for making classification decisions relative to present and future Conservation Warden positions found in the Department of Natural Resources (DNR). Positions allocated to this classification are responsible for performing natural resources and environmental protection law enforcement activities in an assigned geographic area for a majority (greater than 50%) of the time.

B. Exclusions

Excluded from this classification are the following types of positions:

1. Supervisory, managerial, or confidential positions as defined in s. 111.81, Wis. Stats.;
2. Law enforcement positions found in other state agencies;
3. Positions within the DNR that have law enforcement credentials but do not perform the full range of resource and environmental law enforcement activities and do not have the law enforcement authority outside of DNR lands for a majority (greater than 50%) of the time;
4. All positions better identified through other classifications.

II. DEFINITIONS

Plan, direct and control a comprehensive law enforcement program within the assigned geographic area including enforcement authority of wildlife, fish, boating, snowmobile, all terrain vehicle, environmental, water regulation and zoning, and forestry laws. Conduct investigations. Investigate complaints. Interview witnesses and suspects. Conduct interrogations. Develop reports. Obtain and execute arrest/search warrants. Make arrests with or without warrant. Seize equipment with or without warrant. Seize illegal fish and game. Preserve evidence and prosecute individuals, municipalities and corporations through the judicial system. Enforce snowmobile, boat, all terrain vehicle and hunter safety regulations and perform and promote safety practices education. Investigate hunting, boating snowmobile and all terrain vehicle accidents and make detailed reports. Investigate and enforce laws pertaining to the protection of public health, safety and water supplies. Enforce pollution, poisons, pesticides, explosives, oil, toxic, and other hazardous violations. Direct emergency, rescue or disaster operations. Act as lead worker and monitor use of special conservation wardens in assigned territory. Function as court officer by processing DNR cases through court. Perform spill control activities including identifying, locating, monitoring, containing, removing, and disposing of discharged substances. Maintain an effective communications and public relations program. Exercise full police powers on state lands and expanded authority throughout the state.

III. QUALIFICATIONS

The qualifications required for these positions will be determined at the time of recruitment. Such determinations will be made based on an analysis of the goals and worker activities performed, and by an

identification of the education, training, work, or other life experience which would provide reasonable assurance that the knowledge and skills required upon appointment have been acquired. 1/95

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Form 1100-1
Rev. 5-91

NATURAL RESOURCES BOARD AGENDA ITEM

Item No.

SUBJECT: Adoption of Order AM20-02 - revision of Chapter NR 447, Wis. Adm. Code, pertaining to creating an asbestos citation system
FOR: January 2003 BOARD MEETING

TO BE PRESENTED BY: Patrick Kirsop

SUMMARY: A statutory change in s. 285.86, Stats., has given the Department authority to create an asbestos citation system and to collect forfeitures. The proposed rule revision creates citations and forfeiture amounts for asbestos abatement and demolition operation violations. This provides the Department a tool that addresses violations that are significant for enforcement action but may not rise to the level of referral to the Department of Justice. Currently the Department is devoting significant time in dealing with violations of ch. NR 447 through the stepped enforcement program. The majorities of these violations are significant for enforcement action and would result in case overload situations for the Department of Justice. This change would speed up the enforcement process, result in better compliance with the ch. NR 447 rule and provide less risk of exposure to the public and the environment. The citation rule would also create a more level playing field for the asbestos abatement and demolition contractors who are complying with the rule.

Public hearings were held in Eau Claire, Appleton, Milwaukee and Madison in June of 2002. A 30-day public comment period ended on June 28, 2002. In addition, a discussion was held in July 2002 with a small group of stakeholders.

June 2002 public hearings and a July small group discussion revealed that the asbestos abatement and demolition contractors expressed concern that the rule was overly broad. The proposed rule has been amended according to comments received. The pre-inspection and notification requirements along with various active landfill waste disposal requirements were the only sections supported by the public hearings and a small group discussion meeting. The proposed rule includes these pre-inspection, notification and active landfill waste disposal site requirements.

RECOMMENDATION: That the Board adopt Order AM-02-02, creating s. NR 447.19, Wis. Adm. Code.

LIST OF ATTACHED MATERIALS:

No <input type="checkbox"/>	Fiscal Estimate Required	Yes <input checked="" type="checkbox"/>	Attached
No <input checked="" type="checkbox"/>	Environmental Assessment or Impact Statement Required	Yes <input type="checkbox"/>	Attached
No <input type="checkbox"/>	Background Memo	Yes <input checked="" type="checkbox"/>	Attached

APPROVED:

Lloyd L. Eagan
Bureau Director, Lloyd L. Eagan

12/18/02
Date

Jay G. Hochmuth
Administrator, Jay G. Hochmuth

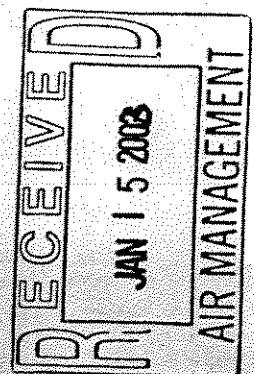
12/19/02
Date

Darrell Bazzell
Secretary, Darrell Bazzell

12/26/02
Date

cc: Linda Jahns - AD/5
C. Turner - LS/5
M. Davis - AM/7
Patrick Kirsop - AM/7

L. Eagan - AM/7
R. Park - AM/7
M. Scott - LS/5



TO

CORRESPONDENCE/MEMORANDUM

DATE: December 18, 2002 FILE REF: 4533

TO: Members of the Natural Resources Board

FROM: Darrell Bazzell ^{DB} -AD/5

SUBJECT: Adoption of Order # AM-20-02 Pertaining to the Proposed Revision to Chapter NR 447, Wis. Adm. Code, for Asbestos Citation Authority.

BACKGROUND

The authority to issue citations for violating certain asbestos program requirements was part of 1999 Wisconsin Act 9, effective October 29, 1999. ^{BUDGET BILL} The purpose of this rule change is to implement this authority in accordance with s. 285.86, Wis. Stats.

The Wisconsin asbestos program requirements are the same as the federal asbestos requirements found in 40 CFR part 61, subpart M. The federal requirements are known as National Emission Standards for Hazardous Air Pollutants (NESHAPs). USEPA Region 5 has delegated the WDNR authority to enforce the Asbestos NESHAP through ch. NR 447.

Asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is considered a hazardous air pollutant. Asbestos is a known carcinogenic material and well-documented public health issue causing diseases such as mesothelioma, lung cancer and asbestosis. It is estimated that 3000 different types of commercial products contain asbestos. Asbestos was first used in the United States in the early 1900's, and its use intensified in the early 1940's until the late 1970's.

As part of building demolition and renovation work, owners or operators have a pre-inspection performed by an environmental consultant or asbestos contractor to determine the extent of asbestos present for removal and abatement. Owners or operators notify the Department of demolition and abatement work at least 10 working days prior to abatement or demolition work starting to allow Department staff to review the project and determine if additional asbestos is present. Rule requirements also include provisions to control asbestos emissions to the ambient air.

These rule revisions will allow Department environmental wardens to issue citations for clearly defined violations of the asbestos program. These would include: failure to do the required pre-inspection prior to a renovation or demolition and, failure to provide the 10 working day notice prior to demolition or renovation involving at least 160 square feet or 260 linear feet of friable or regulated asbestos containing materials or failure to comply with certain active waste disposal site requirements. A copy of the guidance to be used when issuing the citations is attached as Appendix 3.

Department asbestos staff created this proposed rule jointly with the assistance of the Department's Environmental Enforcement Program and the Wisconsin Department of Justice (DOJ). Section 285.86, Wis. Stats., requires that the final rule be approved by the DOJ. The Attorney General has approved this proposed rule. A copy of this approval will be attached as an addendum to this memo when it is received.

SUMMARY OF PROPOSED REVISIONS

The proposed revisions to the asbestos rule allow citation authority for a limited number of requirements to the asbestos program. The proposed citation system allows Department staff to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls. Only clearly documented violations will be assessed a forfeiture. As a result of comments received on the proposed rule, the rule requirements included in the citation system have been reduced. (See Table 1 in Appendix 2 to see an explanation of the entire rule, the original proposal and the final rule proposed for adoption.)

The citation system includes violations of certain asbestos program requirements that include pre-inspection, notification, and active waste disposal site requirements. The forfeiture ranges from \$500 to \$5000. The forfeiture amount will be assigned based on the severity of the violation by the environmental warden issuing the citation. A second or subsequent violation within five years of the first violation, allows for the range of forfeitures to be doubled, to \$1000 and \$10,000, respectively.

The Air Management Program and the Environmental Enforcement Program will work jointly on the issuance of asbestos citations. The Air Management Asbestos Staff will confer with their Program Supervisor and the Asbestos Program Coordinator when a violation has occurred and a citation is warranted. After concurrence and approval to issue a citation in the Air Management Program, the request to issue the citation will go to an Environmental Warden to carry out during an enforcement conference. See Attachment 3 for the memorandum "Guidelines for Using Asbestos Citation Authority". This memo describes the actual procedures that the Air Management Program will use to coordinate and issue citations.

RECOMMENDATION

The recommendation is that the Natural Resources Board adopt the proposed rule, understanding that the Air Management Program will do the following:

- (1) Report to the Board annually on the asbestos citation system. This report will include, but not be limited to, the date of citation issued, reason for citation, number of citations issued, dollar amount of citations issued, and the names of the parties that received citations. The annual reporting will start in March 2004, for the previous calendar year.
- (2) In addition to employing citation authority as a new enforcement tool, the Air Management Program will continue to work with owners and operators and all regulated parties through a variety of efforts. Such outreach would be through various educational and similar programs, including professional meetings, such as the Annual DNR Asbestos Seminar.

EFFECTS ON EXISTING POLICY

The purpose of the proposed revision is to enhance enforcement and promote compliance with the current requirements without altering the stringency of the ch. NR 447. The asbestos program relies upon proper notification and abatement techniques. With over 3000 notifications processed per year, staff resources are not sufficient to perform an inspection at every site. Currently, if violations are discovered, a series of

letters are written documenting the violation and situation with the final action being an enforcement case referral to the Department of Justice. Citation authority will provide the department a tool that addresses violations that are significant for enforcement action but may not rise to the level of referral to the DOJ. Asbestos citation authority will provide better protection of the public from the impact of certain asbestos program violations and also allow the department to better manage the asbestos program with limited resources.

PUBLIC HEARING AND ADDITIONAL STAKEHOLDER INVOLVEMENT SYNOPSIS

Four public hearings were held (June 11 – Eau Claire, June 12 – Appleton, June 13 – Milwaukee, and June 18 – Madison). There were a total of 33 people that made an appearance at the public hearings. During the public hearings no one made formal verbal comments. However, the discussion sessions following each public hearing provided information and comments on the draft rule proposal. In addition, a small group discussion was held on July 10 and a presentation at the Annual DNR Asbestos Conference, November 2002, provided additional comments on the proposed rule. The proposed rule was revised in response to comments received. All significant comments and the Department's responses to them are summarized in Appendix 1.

POTENTIAL CONTROVERSY

During the final stages of preparing this rule package approval, Air Management staff discovered that a group was forming to oppose the adoption of the rule. After a discussion with the attorney representing this group, we learned their concerns were with certain features of the proposed rule taken to the public hearings. The group now has the revised rule that is part of this package. The group may still be concerned with what is considered a thorough pre-inspection. Air Management staff believe this issue has been addressed because the Department does not intend to issue a citation for an inadequate pre-inspection. A citation would only be issued when no pre-inspection was performed.

Concerns were raised as to the enforcement of the asbestos requirements defaulting to using citations rather than to continue working with the regulated community. As mentioned in the Recommendation Section, the Air Management Program will continue to educate and work with the regulated community about the asbestos requirements. Also, as mentioned in the Summary of Proposed Revisions Section, Air Management Program staff will work with his/her supervisor, and the Asbestos Coordinator to reach a decision on issuing a citation. The Air Management Program would then coordinate with the Environmental Enforcement Program to hold an enforcement conference allowing for additional education/outreach on the rule requirements. An Environmental Warden would issue the citation during the environmental enforcement conference.

ENVIRONMENTAL ANALYSIS

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis would not be needed because this proposal is considered a Type III Action. A Type III Action is one that normally does not have the potential to cause significant environmental effects, normally does not significantly affect energy usage and normally does not involve unresolved conflicts in the use of available resources.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rule revision will affect demolition and asbestos abatement contractors and their customers. As a result of the citation system, all business, including small businesses, who do asbestos demolition and renovation work will be faced with more prompt and effective enforcement of the existing rules.

NEW LEGISLATION

Wisconsin Statutes Chapter 285

285.86 Asbestos Citations. (1) The department may follow procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture from a person who commits a violation specified under sub. (2).

(2) The department shall promulgate rules that specify violations of rules relating to asbestos abatement and management that are promulgated under ss. 285.11, 285.13, 285.17 and 285.27 to which sub. (1) applies. In a rule promulgated under this subsection, the department may limit the applicability of sub. (1) based on the frequency of violation and on health and environmental risks caused by the violation.

(3) The department shall submit any proposed rules under sub. (2) to the department of justice. The department may not promulgate a rule under sub. (2) unless the rules is approved by the department of justice. History: 1999 s.9.

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Appendix 1

Summary of Public Comments on Order # AM-20-02

Proposed Revision to Ch. NR 447, Wis. Adm. Code, Pertaining to Asbestos Citation Authority.

The Wisconsin Department of Natural Resources has received comments on the asbestos citation rule package proposing the creation of s. NR 447.19 through four public hearings, written comments to the Department, the annual DNR asbestos conference, and a discussion group of contractors in related fields. Involved parties such as asbestos abatement contractors, environmental consultants, representatives of the Association of General Contractors (AGC), demolition contractors, and building owners provided these comments. The Department took into consideration each of these comments, and in response has revised portions of the rule. This document lists the comments received and provides the Department's responses.

COMMENT: The subjectivity of some phrases in ch. NR 447, specifically "adequately wet" (ss. NR 447.08(1)(b), 447.08(1)(c), NR 447.08(2)(a), NR 447.08(3), NR 447.08(4)(a), NR 447.08(6)(a), NR 447.13(1)(a)), "carefully lowering" (s. NR 447.08(2)(b)), NR 447.08(6)(b), "no visible emissions" (ss. NR 447.08(3)(a) 2.a., NR 447.08(4)(b), NR 447.13(1)) and "thoroughly inspect" (s. NR 447.06(1)) caused concern because the determination requires an opinion or judgment by a Department inspector. The approximately fifteen parties who voiced this concern suspect that the burden of proof will be transferred from the Department to the regulated community, resulting in high costs to defend against citations based on these subjective portions of ch. NR 447. As a measure to correct this concern, the parties have suggested that the citation authority be limited to those sections of ch. NR 447 that allow for a definite distinction between compliance and non-compliance (black and white).

RESPONSE: The proposed rule language has been revised to cover only the sections of ch. NR 447 that provide a distinct determination between compliance and non-compliance. All sections containing the subjective language were removed from the proposed rule language rule. The citation system now includes only pre-inspection, notification, and active waste disposal site requirements.

COMMENT: Approximately six parties questioned the manner in which the Department chose their inspection sites. The concern arose primarily from asbestos abatement contractors that felt they were targeted too often while other contractors conducting renovations and owners violated ch. NR 447 regulations. These contractors wanted to know if the citation authority would target them also.

RESPONSE: Inspection sites are chosen by use of a priority list, priorities are ranked as low, high and top. Priorities are created based on the potential for an environmental hazard, prior enforcement history, and would also target non-notified sites when discovered. Top priority sites are those that arise from complaints concerning non-notified operations, renovations with large quantities of asbestos and large-scale demolition projects. The regulations are aimed at the proper identification of building materials that contain asbestos and are to be affected by renovation or demolition operations and asbestos removal work practices and proper handling of asbestos materials. The regulation states that owners and operators are responsible for compliance.

COMMENT: The same group that offered the previous comment also suggested that the Department should focus on building owners and renovation projects. They stated that the building owners neglected to do pre-inspections and "shopped" for low bids from contractors that would not comply, or question the situation.

RESPONSE: The current regulations do apply to both the owner and operators at any applicable project site. The revised rule will allow a citation to be written for the owners and operators that violate ch. NR 447 and do not perform a pre-inspection or notify the Department of an asbestos abatement project. The regulated community may need to assist the Department in locating non-compliant projects.

COMMENT: Three comments were made in regard to creating a policy that stated specific citation dollar amounts for specific violations. It was suggested that this would help the Department to be consistent with the issuance of citations.

RESPONSE: Environmental Wardens of Law Enforcement Division of the DNR will be responsible for issuing citations for the specific asbestos violation(s). Citations will be written on a case by case basis and take into account a variety of factors including past history. Citation dollar amounts shall be doubled for second violations occurring within a 5-year period of the first violation.

COMMENT: Education of the general public, and both general and specialty contractors was suggested by two parties to insure that everyone was well educated on the implications of this rule and had an understanding of ch. NR 447 in general.

RESPONSE: Education is currently being done to reach targeted groups affected by ch. NR 447. The Department's Air Management Program has held an annual Asbestos Conference for the asbestos abatement industry.

The Department's Internet web page, <http://www.dnr.state.wi.us/org/aw/air/reg/asbestos/asbestos.htm>, provides information on the Asbestos Program. The Internet web page also contains the notification form for asbestos abatement projects so that people can obtain and fill out the needed form quickly. The Air Management program will continue these efforts because of the importance of communication and education.

COMMENT: One party stated that stepped enforcement was already in place, yet has failed to enforce the pre-inspection and notification requirements due to lack of funding and personnel. This party was concerned that the same would be the case with the proposed citation authority.

RESPONSE: The lack of enforcement related to pre-inspection and notification requirements stems from the difficulty of creating a case substantial enough to warrant the use of the Department of Justice. The citation authority rule is being developed to act as an immediate deterrent to owners and operators who violate the pre-inspection and notification requirements.

COMMENT: The age of the field staff and their relative experience in the field was a concern for one party. Because the citation authority would require a timely response, the party believed that the Department inspector must have a level of experience that would allow them to make the proper decision at the site.

RESPONSE: The field inspector will be gathering information that will be used by the Environmental Warden and other DNR officials, including the field inspector's supervisor and also the Asbestos Program Coordinator, to determine if a violation exists. If the information clearly shows a violation exists, the Environmental Warden will then issue a citation. Although age is not necessarily representative of an inspector's knowledge of the regulations and experience in the field, the average years of experience of the Departments' asbestos inspectors is approximately seven years.

COMMENT: One party asked what would constitute an incomplete notification, and at what point would a citation be issued. It was asked that this be clarified in order to assist the regulated community in compliance.

RESPONSE: An incomplete notification includes a notification that does not have the required information, a notification that does not meet the 10 working day waiting period, and a notification that does not include the required fee. The notification requirements are located in s. NR 447.07, Wis. Adm. Code. Currently, the Asbestos Coordinator calls the entity and requests that a revision be sent to all required DNR offices with the required changes. If the problems continue on a frequent basis the stepped enforcement will be followed with a Letter of Noncompliance (LON), a Notice of Violation (NOV) and then referral to the Wisconsin Department of Justice (DOJ).

COMMENT: One party asked the question of who would be cited for failure to notify and pre-inspect. The party questioned this to determine if the owner would be cited, or if it would concentrate on the contractors, or both.

RESPONSE: As mentioned above, both the owner and operator for any project are responsible for assuring that the project is performed in compliance with the regulations.

COMMENT: One party asked if consultants could be culpable through ch. NR 447, and more specifically s. NR 447.19.

RESPONSE: If the consultant can be determined to fit under the definition of "operator" as defined in s. NR 447.02 (30), and the operator has not met the requirements of ch. NR 447, or any section thereof, they may be culpable.

COMMENT: It was suggested that the citation minimum should be greater than the cost of a pre-inspection in order for the citation to be a deterrent.

RESPONSE: The citations will range between \$500 and \$5000. The cost of a pre-inspection varies depending on the size and complexity of any project. In many instances owners and operators conduct renovations and demolitions and are caught midway through their projects without the required pre-inspection. At that point they are required to inspect and would also be issued a citation for no pre-inspection prior to renovation or demolition. If violations exist with positive friable or Regulated Asbestos Containing Materials over the 160 square feet /260 linear feet threshold, the case will be handled through stepped enforcement.

COMMENT: One party asked if citations would be processed through the normal circuit court process.

RESPONSE: Yes.

COMMENT: It was suggested that the Department focus more attention on non-friable asbestos abatement projects.

RESPONSE: Most projects involving non-friable asbestos are not regulated by the Department and are considered a low priority ranking.

COMMENT: One party stated that they took objection to the lack of building owners present at the discussion group.

RESPONSE: Building owners were present at the public hearings and the annual conference, and were encouraged to comment at those times.

COMMENT: One party stated that citation authority is a good idea because too many small violations are not cited because of the involved process of stepped enforcement.

RESPONSE: The Department agrees with this comment.

COMMENT: One party suggested that the rule is being created because there is more work involving asbestos, more complaints, and additional fees could support this activity.

RESPONSE: The Department agrees that the asbestos program is labor intensive. The citation authority is intended as an additional tool to aid in compliance with the regulations. Fees collected through citations go to the Wisconsin school funds and do not go to the Department.

COMMENT: A party questioned how the citation authority would be used in regards to regulated renovation projects that were not notified.

RESPONSE: A citation could be issued if the owner or operator failed to perform the required pre-inspection or notification to the Department. Additionally, the owner/operator would be required to file an after-the-fact notification with the appropriate fees.

Should the work practices not be in compliance with the regulations, then this project would be a candidate for stepped enforcement, with potential referral to the Wisconsin Department of Justice Attorney General's office.

Appendix 2

Table 1. Comparison of Citation Rule Proposal for Public Hearing vs. Citation Rule for Final Authorization

General Rule Requirements of NR 447	Asbestos Citation Rule Proposal for Public Hearing	Asbestos Citation Rule for Final Authorization 3/27/03 RULE
<p>The Asbestos Rule covers owners and operators of all air contaminant sources that emit asbestos or whose actions cause the emission of asbestos into the ambient air. In Wisconsin, the primary source of potential asbestos emissions is the renovation and demolition industry.</p> <ul style="list-style-type: none"> NR 447.03 outlines the requirements for asbestos mills. NR 447.04 pertains to asbestos containing materials in roadways. NR 447.05 applies to manufacturing operations using commercial asbestos. NR 447.06 defines demolition and renovation applicability. NR 447.07 lists the notification requirements. NR 447.08 regulates procedures for asbestos emission control for demolition and renovation activities. NR 447.09 applies to the spray application of asbestos containing materials. NR 447.10 regulates fabricating operations that use commercial asbestos. 	<p>Citations may be issued for violations of the following regulatory requirements:</p> <p>Pre-inspection</p> <ul style="list-style-type: none"> NR 447.06(1) – The owner/operator shall thoroughly inspect for the presence of asbestos prior to the commencement of a demolition or renovation activity. <p>Notification</p> <ul style="list-style-type: none"> NR 447.07(1) and (3) – The owner or operator shall provide a notice of intent to demolish or renovate, postmarked at least 10 working days prior to the project start date. <p>Asbestos Emission Control</p> <ul style="list-style-type: none"> NR 447.08(1), (2)(a) and (b), (3), (4)(a) and (b), (5), (6)(a), (b), (c), and (d), (9) and (10) – Remove all RACM from a facility prior to any activity that would disturb the material, adequately wet the asbestos, carefully lower, and place in leak tight containers. <p>Asbestos Waste Disposal</p> <ul style="list-style-type: none"> NR 447.13(1) – Discharge no visible emissions by adequately wetting and sealing asbestos-containing waste material in labeled, leak tight containers. 	<p>Citations may be issued for violations of the following regulatory requirements:</p> <p>Pre-inspection</p> <ul style="list-style-type: none"> NR 447.06(1) – The owner/operator shall inspect for the presence of asbestos prior to the commencement of a demolition or renovation activity. <p>Notification</p> <ul style="list-style-type: none"> NR 447.07(1) and (3) – The owner or operator shall provide a notice of intent to demolish or renovate, postmarked at least 10 working days prior to the project start date. <p>Active Asbestos Waste Site</p> <ul style="list-style-type: none"> NR 447.17(1),(2),(3), and (4) – There shall be no visible emissions at an active waste site and must maintain a fence and signs when a natural barrier does not exist, or must be covered with 6 inches at least once every 24 hours, or use an alternative emissions control method. NR 447.17(5)(a) and (6) – An active waste disposal site shall maintain waste shipment records for all asbestos-containing materials received until closure. NR 447.17(7) – Upon closure, comply with all

General Rule Requirements of NR 447	Asbestos Citation Rule Proposal for Public Hearing	Asbestos Citation Rule for Final Authorization
<ul style="list-style-type: none"> NR 447.11 regulates the use of specific insulating materials. NR 447.12 outlines the requirements for waste disposal for asbestos mills. NR 447.13 covers waster disposal for manufacturing, fabricating, demolition, renovation, and spraying operations. NR447.14 regulates inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations. NR 447.15 covers air cleaning as it applies to asbestos. NR 447.16 outlines the reporting requirements for any new source to which the chapter applies. NR 447.17 regulates active waste disposal sites. NR 447.18 covers operations that convert asbestos containing waste materials into non-asbestos material. 	<ul style="list-style-type: none"> NR 447.13(2) and (3) – All asbestos containing waste must be disposed of as soon as practical at a waste disposal operated in accordance with NR 447.17 by vehicles marked during loading and unloading. NR 447.13 (4) – Maintain waste shipment records for all asbestos-containing waste material transported off site. <p><i>Inactive Asbestos Waste Sites</i></p> <ul style="list-style-type: none"> NR 447.14(1) and (2) – Inactive waste sites that have received asbestos-containing waste materials shall discharge no visible emissions, cover with at least six inches and vegetation, and maintain a fence and signs when a natural barrier does not exist. <p><i>Active Asbestos Waste Sites</i></p> <ul style="list-style-type: none"> NR 447.17(1),(2),(3), and (4) – There shall be no visible emissions at an active waste site and must maintain a fence and signs when a natural barrier does not exist, or must be covered with 6 inches at least once every 24 hours, or use an alternative emissions control method. NR 447.17(5)(a) and (6) – An active waste disposal site shall maintain waste shipment records for all asbestos-containing materials received until closure. NR 447.17(7) – Upon closure, comply with all the provisions of NR 447.14. 	<p>the provisions of NR 447.14.</p> <ul style="list-style-type: none"> NR447.17(10) – Notify the department of the excavation or disturbance of asbestos containing waste material that has been deposited at the waste site 45 days prior to the start of such activity. <p>For any owner or operator found to have violated these regulatory requirements for any second or subsequent violation within a five-year period, the minimum and maximum citation forfeitures shall be doubled.</p>

<p>General Rule Requirements of NR 447</p>		<p>Asbestos Citation Rule Proposal for Public Hearing</p> <ul style="list-style-type: none"> NR 447.17(10) – Notify the department of the excavation or disturbance of asbestos containing waste material that has been deposited at the waste site 45 days prior to the start of such activity. <p>Any owner or operator found to have violated these regulatory requirements for any second or subsequent violation within a five-year period, the minimum and maximum citation forfeitures shall be doubled.</p>		<p>Asbestos Citation Rule for Final Authorization</p>	
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CORRESPONDENCE/MEMORANDUM

Appendix 3.

DATE: December 18, 2002

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

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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 failure to complete a required 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.

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 sever 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 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

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Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number AM-20-02

Subject
 Revision of Chapter NR 447, pertaining to the creation of rules for asbestos citation authority.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs

- | | |
|--|---|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

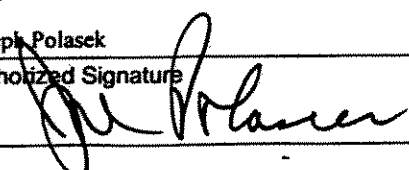
Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Estimate 1000 additional hours or 0.5 FTE for issuance of citations and accompanying court time.
 0.5 FTE equivalent to \$30,000 annually. The cost may be absorbed by a reduction in equivalent time of other staff currently involved in the stepped enforcement program.

Long-Range Fiscal Implications

Citation issuance should decrease over time as the regulated community becomes aware of the Department's position on asbestos and demolition violations.

Prepared By: Joseph Polasek	Telephone No. 608/266-2794	Agency DNR
Authorized Signature 	Telephone No. 15	Date (mm/dd/ccyy) 12-19-02

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number AM-20-02

Subject
 Revision of Chapter NR 447, Wis. Adm. Code, pertaining to the creation of rules for an asbestos citation authority.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	\$ 30,000	\$ -
(FTE Position Changes)	(0.50 FTE)	(- FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	\$ -	\$ -
B. State Costs by Source of Funds		
GPR	\$ -	\$ -
FED		-
PRO/PRS	30,000	-
SEG/SEG-S		-
State Revenues	Increased Revenue	Decreased Revenue
GPR Taxes	\$ -	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	\$ -	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

Prepared By: Joseph Polasek	Telephone No. 608/266-2794	Agency DNR
Authorized Signature 	Telephone No.	Date (mm/dd/ccyy) 12-19-02

Draft Wisconsin DNR Draft

Asbestos Demolition and Renovation / Field Data and Inspection Checklist

Part I. Preliminary Observations and Information

Complete Part I for all inspections. Part II is completed when operations can be observed and evaluated.

Owner/Site: _____
 Location: _____
 Date: _____

Inspector: _____
 Region: _____
 Time: _____

Notification Compliance	In Compliance	Substantive Compliance	In Compliance
	Violations Suspected		Violations Suspected

Operator Name: _____ Address: _____
 Phone Number: _____ Contact: _____

1. Reason for Inspection: _____ Displayed I.D. Yes No
 Entry Refused Yes No

2. Entry Notations: Name and position of on-site person: _____

3. Facility Description (Setup and Conditions Observed): _____

4. Suspected Problems and Samples/Photos Taken: (Mark sample locations on grid) _____

5. Potential for Exposure: (Note building occupancy or public access to contamination) _____

6. Was any Notification received at a DNR office? Yes No
 If yes, was notification deficient? (Quantity, dates, location, operator, waste disposal) Yes No
 Explain: _____

7. Was any pre-inspection conducted prior to the renovation or demolition? Yes No
 If yes, provide following information: Inspector: _____ Certification Number: _____
 Date: _____ Inspector's Phone Number: _____

8. Activity Description:
 a. Is there more than one project at this facility? Yes No N/A
 If yes, explain trades and scope of work: _____

b. Project Type: Demolition Renovation Emergency Renovation Ordered Demolition
 c. Describe the project and current phase: _____

d. Describe the type of abatement: Work Inactive Work in Progress Part II attached
 Full Containment Glovebag Mini-containment Other: _____
 Explain: _____

9. Type of ACM - Is it Friable? Yes No Method of Determining Friability: _____ Method of Measurement: _____

<input type="checkbox"/> If Pipe Insulation	<input type="checkbox"/> sf Sprayed-on	<input type="checkbox"/> sf Block
<input type="checkbox"/> sf Ceiling Tile	<input type="checkbox"/> sf Troweled-on	<input type="checkbox"/> sf Plaster
<input type="checkbox"/> sf Floor Tile	<input type="checkbox"/> sf Roofing	<input type="checkbox"/> sf Mastic
<input type="checkbox"/> sf Drywall	<input type="checkbox"/> sf AC-cement	<input type="checkbox"/> f ³ Removed

Notes: _____

ASBESTOS DEMOLITION AND RENOVATION FIELD DATA AND INSPECTION CHECKLIST

Part II. Substantive Compliance Demonstration

Complete Part II for all inspection where it is possible to evaluate substantive compliance.

1. General Information

- a. Was all RACM removed before demolition, renovation, or other activity which may disturb asbestos or preclude access to it? __Yes __No __N/A
- b. Was ACM removal observed? __Yes __No __N/A
- c. Is a person trained in the NESHAP regulations as described in 40 CFR 61.145(c)(10) available during removal or disturbance? __Yes __No __N/A

2. Adequate Wetting

- a. Is water or wetting agent present at the site? __Yes __No __N/A
Equipment: __Garden Hose __Spray Bottle __Hudson Sprayer
__Airless Sprayer __Other: _____
- b. Water observed being sprayed during stripping or disturbance of ACM? __Yes __No __N/A
- c. Examining removed or otherwise disturbed ACM;
It is: __Easy to wet (TSI, spray-on, etc.) __Hard to wet (Amosite containing, transite)
__None Available
If easy to wet, was it wet throughout? __Yes __No __N/A
If hard to wet, were all exposed surfaces wetted? __Yes __No __N/A
- d. Examining ACM waste containers:
Type of Container: __Bags __Drums __Other: _____
__Clear __Opaque
Weight for size: __Light for size __Heavy
Visible Moisture: __Droplets __Water on bottom __No visible moisture
Are containers leak-tight? Explain: _____ __Yes __No __N/A
 - 1. Were sealed ACWM containers opened and inspected? __Yes __No __N/A
Number Opened: _____
How: __In containment __In sealed glove bag
Container from: __Containment __Storage Area __Dumpster
__Other: _____
Type of ACM: _____ __Yes __No __N/A
Visible water or water droplets in container? __Yes __No __N/A
Container resealed? __Yes __No __N/A
- e. Does the material change when it is wet? (i.e. changes in color, texture, weight, etc.) __Yes __No __N/A
Explain: _____
- f. Was material wetting demonstrated/discussed with the operator or supervisor? __Yes __No __N/A
- g. Do any of the following factors apply? __Yes __No __N/A
Temperature below 32° F. at point of removal: __Yes __No __N/A
Dry removal was authorized by DNR: __Yes __No __N/A
Records for dry removal were available for inspection: __Yes __No __N/A
Building in imminent danger of collapse: __Yes __No __N/A

Coordinator's authorized dry removal or daily temperature log with 3 recorded temperatures per day are required when wetting is suspended. Also operator must remove in units or sections and use local exhaust ventilation and collection with HEPA unit. Material from emergency demolition and material encased in concrete must be adequately wetted as exposed.

Notes: _____

3. **Other work practices**

- a. Is stripped material allowed to drop? Yes No N/A
How far? _____ ft.
- b. Is material further damaged by dropping? Yes No N/A
- c. Does dropping result in dust or fine particulate? Describe: _____ Yes No N/A
- d. Removed waste is transported from a height above ground of;
 Less than 50 ft. More than 50 ft.
1. If less than 50 feet, is waste ACM carefully lowered to ground level and not by dropping or throwing, sliding or otherwise increasing damage to the RACM materials? Yes No N/A
2. If more than 50 feet, is waste ACM transported in dust-tight chutes or leak-tight containers? Yes No N/A

4. **Waste Handling**

- a. Are there visible emissions in relation to asbestos materials to the outside air? Yes No N/A
- b. Is there any suspect ACM on the ground?
 Inside containment, after removal is complete (debris) Outside containment, inside facility. Outdoors, near dumpster. Yes No N/A
- c. Waste containers are marked with;
1. Generator name and location Yes No N/A
2. Hazard Warning Yes No N/A
3. D.O.T Waste Classification Yes No N/A
- d. During load-out and waste disposal, is the vehicle marked with 14"x 21" hazard warning signs? Yes No N/A
- e. Is the waste secured in a manner that prevents any visible emissions, load loss, and spills or leakage of liquids? Yes No N/A

5. **General Safety Evaluation**

Referral to OSHA? Yes No

- a. Is work area under containment? Yes No N/A
 Full Critical Barriers Glove Bag Mini-containment None
- b. Are there breaches in the containment? Explain: _____ Yes No N/A
- c. Is the containment under negative pressure? Yes No N/A
Manometer reading, if present: _____
Number of negative air machines in use: _____
- d. Is negative pressure apparent with positive air flow from clean room into work area? (walls, decon doors pulling into containment)
- e. Is the regulated area clearly marked? Yes No N/A
- f. Are there uncontrolled openings in containment? Yes No N/A
- g. Respiratory protection in use by operator? _____ Yes No N/A
- h. Respirator used by inspector? _____ Yes No N/A
- i. Is air quality being monitored? Yes No N/A
- j. Decontamination facilities available? Yes No N/A
- k. Decontamination method used by inspector: Double Suit Shower
 HEPA Vac. None Other: _____

-Draft- Instructions for Completing the Wisconsin DNR Asbestos Demolition and Renovation/Field Data and Inspection Checklist

The following is a step by step explanation for completing the inspection form. This document has been created to aid in consistent reporting. Part I must be completed for all inspections. Part II must be completed for all inspections that it is possible to determine substantive compliance (i.e. observe work practices).

Part I. Preliminary Observations and Information

Owner/Site – Owner of facility and facility name

Location – Address of facility

Date – Date of inspection

Inspector – Name of DNR or DNR contracted inspector

Region – Region of facility and inspection

Time – Time of arrival at and departure from inspection site

Notification Compliance/ Substantive Compliance

- Mark in boxes whether the Notification was compliant and whether the owner/operator was compliant as a whole.

Operator Name – Entity on site that controls activity, access, or otherwise supervises the renovation or demolition as described in NR 447.02(30).

Phone Number – Operator phone number.

Address – Operator address.

Contact – Operator contact.

- I. 1. *Reason for Inspection* - Choose from COMPLAINT, REFERRAL, ROUTINE, HIGH PRIORITY, or TOP PRIORITY.

COMPLAINT – A complaint or tip from an entity other than a regulatory agency.

REFERRAL – A potential violation forwarded to the DNR from another regulatory agency.

ROUTINE – Does not have HIGH or TOP PRIORITY but may still warrant an inspection.

HIGH PRIORITY – Site is designated as such due to the amount of RACM being removed and/or the owner's/operator's regulatory status. (Noted on ACTS)

TOP PRIORITY – Site is designated as such due to the amount of RACM being removed and/or the owner's/operator's regulatory status. (Noted on ACTS)

Displayed I.D. – Was Agency I.D. displayed at point of site entry?

Entry Refused – Did owner/operator allow access to site?

2. *Entry Notations: Name & Position of on-site person.* - Any additional information pertaining to gaining access to the site.

3. *Facility Description*: Type of facility, conditions observed, outside indications of demolition/renovation/asbestos removal.

4. *Suspected Problems and Samples/Photos Taken*: Identify potential violations on site. List samples and photographs taken to support allegations. Mark samples on grid (II.6.) and attach Chain of Custody form.

5. *Potential for Exposure*: Note building occupancy and public access to contamination.

6. *Was any notification received at a DNR office?* Includes Central Office or Regional Offices.

If yes, was notification deficient? As marked by the Asbestos Coordinator. (Noted in "Comments" section of notification on ACTS)

7. *Was any Pre-inspection conducted prior to renovation or demolition?* A pre-inspection must yield a report composed by a Wisconsin DHFS certified asbestos inspector and be made available to the DNR.

If yes, provide following information: Provide *Inspector's Name, DHFS Certification Number, Date of Inspection, and the Inspector's Phone Number.*

8. *Activity Description*:

a. *Is there more than one project at this facility?*

If yes explain trades and scope of work: Explain type of work and affect it may have on regulated work being inspected or determining compliance.

b. *Project Type*: Choose from *Demolition, Renovation, Emergency Renovation, Ordered Demolition.*

c. *Describe the project and current phase*: Describe renovation/demolition work and work being conducted while present.

Check; *Work Inactive, Work in Progress, and/or Part II attached.*

d. *Describe the type of abatement*: Choose from or a combination of *Full Containment, Glovebag, Mini-containment, or Other.* Explain if multiple methods used.

9. *Type of ACM – Is it Friable?*: Can crushed, pulverized, or reduced to powder using hand pressure.

Method of Determining Friability – Assumed by Type of Material, Rolled between fingers (hand pressure).

Method of Measurement: Tape measure, utilizing known dimensions of facility components such as 12x12 floor tile or 16" cement blocks.

Complete totals of asbestos categories in box.

Notes: Reference all notes to the appropriate section of Part I.

Part II. Substantive Compliance Demonstration

1. General Information

- a. *Was all RACM removed before demolition, renovation, or other activity that may disturb asbestos or preclude access to it? Check yes if asbestos was removed intentionally prior to any other activity that would disturb it.*
- b. *Was ACM removal observed? Was intentional ACM removal observed.*
- c. *Is a person trained in the NESHAP regulations as described in 40 CFR 61.145(c)(10) available during removal or disturbance? Acceptable licenses include State Licensed Asbestos Supervisor, Roof Supervisor, Inspector, Management Planner, and Project Designer.*

2. Adequate Wetting

- a. *Is water or wetting agent present at the site? Are water/wetting agent hookups or containerized water/wetting agent accessible for the project. If yes, choose equipment available: Garden Hose, Spray Bottle, Hudson Sprayer, Airless Sprayer, or Other.*
- b. *Was water observed being sprayed during stripping or disturbance of ACM?: This refers only to water usage that was actually seen during removal, not evidence of water being used (i.e. wet floors). If no removal activities were observed, then check N/A.*
- c. *Examining Removed or otherwise disturbed ACM;*
 - It is; - Easy to wet (porous material that easily absorbs water such as TSI, Fireproofing, etc.).*
 - Hard to wet (material that sheds or repels water such as amosite containing materials and transite),*
 - None Available (no material available to examine).*

If easy to wet, was it wet throughout?: Was ACM wet through total depth of material?

If hard to wet, were all exposed surfaces wetted?: Were all surfaces wet enough to prevent emissions?

d. *Examining ACM waste containers:*

Type of Container: Bags (glovebags should be inside waste bags), Drums (probably lined with waste bags) Other.

Clear or Opaque (Some observations may be made if bag is clear)

Weight for size: Light for size (significant amount of ACM, but container not very heavy), Heavy (reasonable amount of ACM in container, weight clearly greater than the sum of the waste materials in the container)

Visible Moisture: Droplets (moisture, droplets, condensation on materials or side of waste containers), Water on bottom (accumulation of standing water in bottom of container), No visible moisture (none of the above are present and there is no moisture absorbed or present in/on the ACM).

Are containers leak tight?: Describe any leakage, the areas of the container that were leaking, type of container that is leaking, presence and size of holes, punctures, etc., nature of leak (emissions, water, etc.).

1. *Were sealed ACWM containers opened and inspected?* If any container is found to have holes, punctures, etc. or contents will be inspected, the container must be inspected inside a sealed glovebag or containment.

Number opened: number of waste containers opened during inspection.

How: In containment or in sealed glovebag.

Container from: Containers original placement when the inspector arrived on site. Choose from *Containment, Storage Area, Dumpster, or Other.*

Type of ACM: Identify type(s) of ACM present in the inspected container.

Visible water or water droplets in container?: Any water visible on material or on sides or bottom of container.

Container resealed?: All opened containers must be resealed.

e. *Does the material change when it is wet?:* Material may change in color, texture, weight, etc. when wetted. If possible, photograph dry material, wet the same material and photograph the material wet. This can be used as a visual reference for the dryness/wetness of the material. Explain difference in material.

f. *Was material wetting demonstrated/discussed with the operator or supervisor?:* Use the above example to demonstrate wetting or discuss adequate wetting when ever appropriate.

g. Do any of the following factors apply?

Temperature below 32° F at point of removal: If the temperature is below 32° F at the point of removal and in the area of the removal, then the ACM does not need to be wetted during removal, but must be wetted immediately following removal.

Dry Removal was Authorized by DNR: With the exception of the above, any dry removal of ACM requires the written approval of DNR Asbestos Coordinator.

Records for dry removal were available for inspection: For freezing temperatures, temperature recordings must be made at the beginning, middle and end of each day and made available for inspection. Any written approval for dry removal must be made available for inspection.

Building in imminent danger of collapse: Building may collapse at any time. Must be stated in demolition order by a state or local government representative.

Notes: Make reference to section that notes apply to.

3. Other work practices

- a. *Is stripped material allowed to drop? Is material thrown/dropped from one level to another? How far is it allowed to drop?*
- b. *Is material further damaged by dropping? Does the material break into a large number of small pieces or is reduced to powder? Are visible emissions present at point of impact?*
- c. *Does dropping result in dust or fine particles? Is dust or fine particulate present in the area that materials are being dropped? Describe the conditions and materials.*
- d. *Removed waste is transported from a height above ground of; Less than 50ft. or More than 50ft. If more than 50ft., ACM must be transported to the ground using leak-tight chutes or containers.*
 1. *If less than 50 feet, is waste ACM carefully lowered to ground level not dropping or throwing, sliding, or otherwise increasing damage to the RACM materials? Activity causes visible emissions, breakage, or exposes inadequately wet surfaces.*
 2. *If more than 50 feet, is waste ACM transported in dust-tight chutes or leak-tight containers? Does not create visible emissions to the outside air.*

4. Waste Handling

- a. Are there visible emissions in relation to asbestos materials to the outside air?: Are there visible emissions caused by asbestos activity (removal, dropping, disposal, disturbance)? Are the emissions escaping the contained area?
- b. Is there any suspect ACM on the ground? Choose from *Inside containment, after removal is complete (debris)*, ACM present after a project has been complete, but not properly cleaned; *Outside containment, inside facility*, ACM present outside contained area within facility; *Outdoors, near dumpster*, ACWM that was not properly containerized or fell from compromised container.
- c. Waste containers are marked with;
 1. Generator name and location - Name and address
 2. Hazard Warning - Asbestos Warning
 3. D.O.T. Waste Classification - Class 9 – Hazardous Substance (Black and White)
- d. During load-out and waste disposal, is the vehicle marked with 14"x21" hazard warning signs?
- e. Is the waste secured in a manner that prevents any visible emissions, load loss, and spills or leakage of liquids?: Transported in a closed, leak-tight container.

5. General Safety Evaluation – Determination for the inspector's own safety and a potential referral to OSHA if necessary.

Referral to OSHA?

- a. *Is work area under containment?* Yes means entire area is sealed (i.e. contained). This includes critical barriers, walls, floors, and proper decontamination chamber.
- b. *Are there breaches in the containment?* Holes, tears, uncovered windows and doorways, etc. Explain conditions observed.
- c. *Is the containment under negative pressure?* Yes means negative air machines are inside containment, decon doors, walls are being pulled in, manometer is in place with a negative pressure differential.

Manometer reading, if present: OSHA requires -.02 Inches of Water pressure differential in order to be adequate.

Number of negative air machines in use: Number of machines should be relative to the size of containment.

- d. *Is negative pressure apparent with positive air flow from clean room into work area?:* Walls, decon doors are pulling into containment.
- e. *Is the regulated area clearly marked? Are asbestos signs posted at containment entry (or otherwise regulated) areas.*
- f. *Are there uncontrolled openings in containment? These areas are not sealed/isolated from the rest of the facility, and would allow public or non-asbestos workers access to containment or regulated areas.*
- g. *Respiratory protection in use by operator? Is respiratory protection being used by the operator? If so, what type? Options; Half Mask Respirator or PAPR.*
- h. *Respirator used by inspector? N/A if inspector did not enter containment or regulated area. Otherwise indicate whether respiratory protection was used and what type.*
- i. *Is air quality being monitored? Are pumps and cassettes present on site? Are they being used?*
- j. *Decontamination facilities available? In order to be considered decontamination facility, must have three rooms/chambers, with the middle being a shower.*
- k. *Decontamination method used by inspector: N/A if inspector did not enter containment. Options include; Double Suit, Shower, HEPA Vac., None, or Other.*
- l. *Electrical lock-out in use? Power and lighting source should be from outside containment. All power and HVAC to the inside of containment should be locked-out.*
- m. *Miscellaneous Hazards:*

High work area temperatures: May be found in projects removing pipe insulation from steam pipes or heating components.

Confined Space? Do not enter a confined space without the proper training!

Trip and Fall Hazards? Electrical cords, tools, etc.

Scaffold Rails? Present? Meets OSHA standards?

Foot Hazards? Nails, glass, etc. Wear proper footwear.

- n. *Has the inspector been unsafely exposed to hazardous material? If yes, you must file a report with your supervisor.*

6. **Sketch:** Draw sketch of area that project is taking place. Indicate related areas including containment, glove bags, decon, other points of entry, dumpsters, etc. Also mark sample numbers in locations that samples were taken.

Part III. *List person involved and nature of statements. Also note who controls facility including responsibility of other contractors or subcontractors, consultants, etc. Attach sample Chain of Custody form, photo log, name(s) of on-site workers, and certification numbers.*