

CR 87-110

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

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FEB 15 1988
3:05 pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, John T. Coughlin, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to asbestos standards for public employes were duly approved and adopted by this department on 2/12/88.
(Subject) (Date)

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 3:30 p.m. in the city of Madison, this 12th day of February A.D. 19 88.

John T. Coughlin
Secretary

4-1-88

ORDER OF ADOPTION

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Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02 (1) and 101.055 (3) (a), Stats., the Department of Industry, Labor and Human Relations creates; amends; repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter (s):

ILHR 32

(Number)

Asbestos Standards for Public Employees

(Title)

The attached rules shall take effect on The first day of the month following publication in the Wisconsin Administrative Register pursuant to section 227.22, Stats.

Adopted at Madison, Wisconsin, this

date: 2/12/88

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN
RELATIONS

John T. Cougle
Secretary



RULES in FINAL DRAFT FORM

Rule: Chapter ILHR 32

Relating to: Asbestos Standards for Public Employees

Clearinghouse Rule No.: 87-110

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to repeal Ind 1910.93a; and to create ch. ILHR 32, relating to asbestos standards for public employes.

* * * * *

ANALYSIS OF RULES

Statutory authority: ss. 101.02 (1) and 101.055 (3) (a), Stats.
Statutes interpreted: ss. 101.055 and 101.11, Stats.

Pursuant to section 101.055 (3) (a) of the Wisconsin Statutes, the Department of Industry, Labor and Human Relations is responsible for adopting standards to protect the safety and health of public employes. The adopted standards are to provide protection at least equivalent to that afforded to private sector employes under standards promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).

Presently, the department's safety and health standards for public employes are contained in chapters Ind 1000-2000 and parallel the OSHA standards 29 CFR 1910 and 29 CFR 1926. The OSHA standards are constantly being revised. The proposed department rules are to be identical to the OSHA asbestos standards issued in June, 1986. The standards lower the permissible airborne asbestos fiber level to 0.2 f/cc and provide an "action" level of 0.1 f/cc which requires the monitoring, training and medical surveillance for employes exposed at or above this action level.

The adoption of the asbestos standards is expected to result in minimal impacts for public sector employers for the following reasons:

Major asbestos remedial projects will in most instances be performed by private sector contractors who will be under the jurisdiction of federal OSHA;

Public sector workers generally are engaged in small asbestos abatement projects where exposure levels are minimized;

Small-scale, short duration operations, as defined in the standards, are exempt from the requirement of providing a controlled enclosure of the work area;

Requirements of the new standards represent current "state of the art" procedures for asbestos projects; and

Employers are not required to implement the requirement of the new standards unless monitoring shows exposure above the new and lower permissible level.

The adoption of the new federal OSHA asbestos standards will also bring the state into compliance with the federal EPA rules for public sector workers involved with asbestos abatement projects. If the state did not implement asbestos standards at least equivalent to OSHA, the EPA rules would prevail.

SECTION 1. Ind 1910.93a is repealed.

SECTION 2. Chapter ILHR 32 is created to read as follows:

CHAPTER ILHR 32
ASBESTOS STANDARDS
FOR
PUBLIC EMPLOYEES

Subchapter I
Scope, Application, and Definitions

ILHR 32.001 PURPOSE. This chapter establishes minimum occupational asbestos safety and health standards for public employes.

ILHR 32.002 SCOPE. The provisions of this chapter apply to all places of employment and public buildings of a public employer.

ILHR 32.003 APPLICATION. (1) RETROACTIVITY. The provisions of this chapter shall apply to all places of employment and public buildings of a public employer whether existing prior to the effective date of this chapter or subsequently established or built, unless otherwise specified in the rule.

(2) CODE CONFLICTS. If requirements of this chapter or other Wisconsin Administrative code chapters specify varying requirements, the most restrictive requirement shall govern.

ILHR 32.01 DEFINITIONS. In this chapter:

(1) "Agency", as defined in s. 101.055 (2) (a), Stats., means an office, department, independent agency, authority, institution, association, society or other body in state government created or authorized to be created by the constitution or any law, and includes the legislature and the courts.

(2) "Approved" means acceptable to the department.

(3) "Department" means the department of industry, labor and human relations unless otherwise specified.

(4) "Place of employment" means any place as defined in s. 101.01 (2) (a), Stats., and includes farms of a public employer where research or education takes place.

(5) "Public employe" or "employe", as defined in s. 101.055 (2) (b), Stats., means any employe of the state, of any state agency or of any political subdivision of the state.

(6) "Public employe representative" or "employe representative", as defined in s. 101.055 (2) (c), Stats., means an authorized collective bargaining agent, an employe who is a member of a workplace safety committee or any person chosen by one or more public employes to represent those employes.

(7) "Public employer" or "employer", as defined in s. 101.055 (2) (d), Stats., means the state, any state agency or any political subdivision of the state.

(8) "Secretary" means the secretary of the department of industry, labor and human relations or appointed representative, unless otherwise specified. For the purpose of this chapter, the term secretary shall be substituted for the following titles referenced in the adopted OSHA standards of s. ILHR 32.50:

(a) Secretary of Labor;

(b) Assistant Secretary of Labor;

(c) Director of the National Institute for Occupational Safety and Health, U.S. Department of H.H.S;

(d) Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor;

(e) Director of the Office of Standards Development, OSHA, U.S. Department of Labor; and

(f) Area Director, Occupational Safety and Health Administration.

Subchapter II Administration and Enforcement

ILHR 32.05 INSPECTIONS. (1) RIGHT OF ENTRY TO INVESTIGATE OR INSPECT. The authorized representatives of the department, upon presentation of the appropriate credentials to an employer, may:

(a) Enter without delay and at reasonable times any building, place of employment or workplace of a public employer, or an environment where work is performed by an employe of an employer; and

(b) Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials, and to question privately any employer or employe.

(2) PARTICIPATION IN INSPECTIONS. Pursuant to s. 101.055 (5), Stats., a representative of the employer, an employe, and an employe representative shall be provided an opportunity to accompany a department inspector on any inspection conducted under this chapter.

(3) REQUESTS FOR INSPECTIONS. Any person who believes a safety or health standard or variance is being violated, or that a situation exists which poses a recognized hazard likely to cause death or serious physical harm, may request the department to conduct an inspection.

(a) If an employe or employe representative requesting an inspection so designates, that person's name may not be disclosed to the employer or any other person, including any state agency except the department.

(b) When deemed necessary by the department, a request for an inspection shall be made on a form provided by the department.

Note: Copies of the request for inspection form (SBD-5907) may be obtained from the Safety and Buildings Division, P.O. Box 7969, Madison, Wisconsin 53707.

(4) ORDERS. The department shall issue orders for violation of this chapter in accordance with s. 101.055 (6), Stats.

ILHR 32.06 POSTING DEPARTMENT ORDER. Upon issuance of an order of noncompliance, the employer shall post a copy of the order at or near the site of the violation.

(1) An order issued shall be posted for a period of 3 days, or until the violation is abated, whichever is longer.

(2) The employer shall ensure that the order is not altered, defaced or covered by other materials.

(3) An order issued shall be posted regardless of whether there has been a petition for variance or hearing.

ILHR 32.09 PENALTIES. Penalties for violations of this chapter may be assessed in accordance with s. 101.02, Stats.

Note 1: Section 101.02 (13) (a), Stats., indicates penalties will be assessed against any employer, employe, owner or other person who fails or refuses to perform any duty lawfully enjoined, within the time prescribed by the department, for which no penalty has been specifically provided, or who fails, neglects or refuses to comply with any lawful order made by the department, or any judgment or decree made by any court in connection with ss. 101.01 to 101.25, Stats. For each such violation, failure or refusal, such employe, owner or other person must forfeit and pay into the state treasury a sum not less than \$10 nor more than \$100 for each violation.

Note 2: Section 101.02 (12), Stats., indicates that every day during which any person, persons, corporation or any officer, agent or employe thereof, fails to observe and comply with an order of the department will constitute a separate and distinct violation of such order.

SUBCHAPTER III
GENERAL REQUIREMENTS

ILHR 32.15 OSHA SAFETY AND HEALTH STANDARDS. (1) OSHA 1910. All places of employment and public buildings of an employer shall comply with the OSHA safety and health standards 1910.19 and 1910.1001 and Appendices A and C to E, relating to occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; federal register, vol. 51, No. 119, Friday, June 20, 1986.

(2) OSHA 1926. All places of employment and public buildings of an employer shall comply with the OSHA safety and health standards 1926.55 and 1926.58 and Appendices A and C to E, relating to occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; federal register, vol. 51, no. 119, Friday, June 20, 1986.

(3) CORRECTIONS. All places of employment and public buildings of an employer shall comply with the OSHA safety and health standards 29 CFR and 1910 and 1926, relating to occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; corrections and information collection requirements; federal register, Vol. 52, No. 91, Tuesday, May 12, 1987.

Subchapter V
Incorporation of Standards by Reference

ILHR 32.50 INCORPORATION OF STANDARDS BY REFERENCE. (1) AUTHORITY. Section 101.055 (3) (a), Stats., permits the department to incorporate by reference the standards adopted in sub. (4).

(2) COPIES. Copies of the adopted standards are on file in the offices of the department, the Secretary of State and the Revisor of Statutes. Copies also may be purchased through the respective organizations.

(3) INTERIM AMENDMENTS. Interim amendments of the adopted standards shall have no effect in the state until the time that this subsection is correspondingly revised to reflect the changes.

(4) STANDARDS. The following standards are hereby incorporated by reference into this chapter.

Table 32.50-1

OSHA	Occupational Safety and Health Administration Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20402
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1. Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite, 29 CFR Parts 1910 and 1926, Federal Register, Vol. 51, No. 119, Friday, June 20, 1986.

2. Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Corrections and Information Collection Requirements, 29 CFR Parts 1910 and 1926, Federal Register, Vol. 52, No. 91, Tuesday, May 12, 1987.

(END)

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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

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State of Wisconsin \ Department of Industry, Labor and Human Relations

Office of the Secretary
201 E. Washington Avenue
P.O. Box 7946
Madison, Wisconsin 53707
Telephone 608/266-7552

February 15, 1988

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FEB 15 1988

Gary Poulson
Assistant Revisor of Statutes
Suite 904
30 West Mifflin Street
Madison, Wisconsin 53703

Revisor of Statutes
Bureau
Douglas LaFollette
Secretary of State
Room 271, GEF-1
201 East Washington Avenue
Madison, Wisconsin 53702

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 87-110

RULE NO. Chapter ILHR 32

RELATING TO Asbestos Standards for Public Employees

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

- 1. Order of Adoption.
- 2. Rules Certificate Form.
- 3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,

John T. Coughlin
Secretary